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May 1, 1997

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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 226

RIN 0584–AC07

Child Nutrition and WIC Reauthorization Act of 1989 and Other Amendments

AGENCY: Food and Consumer Service, USDA.

ACTION: Interim rule, with request for comments.

SUMMARY: This interim rule incorporates changes to the Child and Adult Care Food Program (CACFP) as required by the Child Nutrition and WIC Reauthorization Act of 1989, the Child Nutrition Improvement Act of 1992, and the Older Americans Act Amendments of 1992. These changes consist of making one change and one clarification to the requirements governing participation of adult day care centers in the CACFP; changing the basis for making commodities available to State agencies; clarifying the rules governing the participation of for-profit centers in the CACFP; and making two specific technical adjustments in the CACFP regulations. This interim rule also clarifies that households participating in the Food Distribution Program on Indian Reservations (FDPIR) are categorically eligible as free meal recipients under the CACFP. These changes are intended to reduce administrative burdens at the Federal, State, and local levels.

DATES: This rule is effective June 2, 1997. To be assured of consideration, comments must be postmarked on or before June 30, 1997.

ADDRESSES: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, United States Department of Agriculture, 3101 Park Center Drive, Room 1006, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this location, Monday through Friday, 8:30 a.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie or Mr. Edward Morawetz at the above address or by telephone at (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will effect State agencies, certain types of institutions in the CACFP, and households participating in both the FDPIR and the CACFP, by simplifying and/or clarifying the rules governing their CACFP participation. The Administrator has determined that these effects do not constitute a significant economic impact.

Executive Order 12372

The Child and Adult Care Food Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule-related notice at 48 FR 29114, June 24, 1983).

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions, or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all available administrative procedures must be exhausted. In the Child and Adult Care Food Program, the administrative procedures are set forth under the following regulations: (1) Institution appeal procedures in 7 CFR § 226.6(k); and (2) Disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR Part 3015.

Information Collection

In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Food and Consumer Service's (FCS) intention to request Office of Management and Budget (OMB) review of the proposed adjustments to be made to the information collections for the Child and Adult Care Food Program (CACFP) as a result of the interim rule, Child Nutrition and WIC Reauthorization Act of 1989 and Other Amendments.

To be assured of consideration, comments must be received by June 30, 1997.

Comments concerning the information collection aspects of this interim rule should be sent to Mr. Robert Eadie at the address listed in the **ADDRESS** section of this preamble. Commenters are asked to separate their information collection requirements from their comments on the remainder of the interim rule.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of 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.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 7 CFR Part 226, Child and Adult Care Food Program.

OMB Number: 0584–0055.

Expiration Date: April 30, 1997.

Type of request: Revision of existing collection.

Abstract: The interim rule, Child Nutrition and WIC Reauthorization Act of 1989 and Other Amendments, incorporates changes as required by the Child Nutrition and WIC Reauthorization Act of 1989, the Child Nutrition Improvement Act of 1992, and the Older Americans Act Amendments of 1992.

Collection of Information: Commodity Assistance.

Section 226.5 contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department has submitted a copy of this section to OMB for its review.

Donation of Commodities: (Child Care Program).

The formula for making entitlement commodity determinations is changing from ''current year'' to ''preceding year'' data. The Department will, at the end of each school year, compare the number of lunches and suppers actually served in the State during that school year to the number served in the preceding year and adjust the State's commodity entitlement accordingly for the subsequent school year.

The information collected includes the number of institutions participating in CACFP that request commodities. The Department uses this information to do advance planning in order to provide for the timely purchase and distribution of commodities. Preference for commodities and a list of recipients are each collected once each year from each State agency. Annual reporting burden for this collection of information is estimated to average 5 hours for each response for 53 State agencies. Thus, the total annual reporting burden for this collection is 265 hours, and remains unchanged by this interim regulation.

Collection of Information: Title XX Reimbursement Claims.

Sections 226.6, 226.10, 226.11, and 226.15 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department has submitted a copy of these sections to OMB for its review.

State Agency Administrative Responsibilities: (Child Care Program).

The CACFP eligibility criteria for private for-profit child care centers is being changed to permit such centers to participate if at least 25 percent of their enrolled children, or 25 percent of their licensed capacity, whichever is less, are title XX recipients. This provision would help make centers which serve a large number of part-time title XX children eligible to participate in CACFP.

The information to be collected includes documentation from title XX centers that are currently providing services for which they receive compensation under title XX of the Social Security Act, and certification that not less than 25 percent of enrolled children or 25 percent of licensed capacity, whichever is less, are title XX beneficiaries. It also includes the review, and approval or denial, of applications for participation, the processing of claims for reimbursement, and the maintenance of documentation to support the claim. This documentation is submitted by centers once each year and reviewed by the State agency. Annual recordkeeping burden for this collection of information is estimated to average 8 hours for each response for 1,742 institutions. The annual reporting burden is estimated to average 33 hours for each of the 53 State agencies, and 2.3 hours for each of 1,742 institutions. Thus, the annual recordkeeping burden for this collection is 13,936 hours for institutions, and the reporting burden is 1,749 hours for State agencies and 4,007 for institutions.

Collection of Information: Adult Day Care.

Section 226.19a contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department has submitted a copy of this section to OMB for its review.

Adult Day Care Center Provisions: (Adult Day Care Program).

This provision extends eligibility to adults attending adult day care centers, but who reside in group living arrangements. This is consistent with current program policy.

The collection of information includes documentation to support that reimbursement is claimed for meals served in centers which serve individuals that are functionally impaired or 60 years of age or older in a group, either inside their homes or in a group living arrangement. Annual recordkeeping burden for this collection of information is estimated to average 8 hours for each response for 1,025 institutions, and the annual reporting burden is estimated to average 2.3 hours for each response for 1,025 institutions. Thus, the total annual recordkeeping burden for this collection is estimated to be 8,200 hours, and the total annual reporting burden is estimated to be 2,358.

Collection of Information: Technical Clarification Provision.

Sections 226.2 and 226.23 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department has submitted a copy of these sections to OMB for its review.

Free and Reduced-price meals: (Child Care Program).

This provision provides categorical eligibility to CACFP participants who also participate in FDPIR. Such households would not need to submit income information on their application in order to receive free and reduced price benefits. Indication that they participate in FDPIR is sufficient.

Implementation of this provision would reduce the reporting burden for free and reduced-price eligibility determination by 1,200 hours.

Total burden hours in interim rule:
Reporting—8,379
Recordkeeping—22,136

Good Cause

This rule implements substantive and technical changes mandated by statutory amendments to Section 17 of the National School Lunch Act (42 USC 1766) which do not provide the Secretary with any discretion in their implementation. Thus, the rule is non-discretionary. For this reason, the Administrator of the Food and Consumer Service has determined that, in accordance with 5 USC 553, prior notice and comment is unnecessary and contrary to public interest. Since the rule merely implements cited statutory provisions, it constitutes an interpretive rule for which notice and comment are not required by 5 USC 553. The rule further implements one technical clarification regarding categorical eligibility for FDPIR participants. The Administrator of the Food and Consumer Service has determined that, in accordance with 5 USC 553, prior notice and comment on this technical clarification is contrary to the public interest and that good cause exists for making this rule effective thirty days from the date of publication.

Background

On November 10, 1989, the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147) made several changes to Section 17 of the National School Lunch Act (NSLA) (42 U.S.C. 1766). In addition to changing the name of the Program to the Child and Adult Care Food Program (CACFP) in Section 105(a), Pub. L. 101–147 included

provisions which: (1) simplified the free and reduced price application process; (2) established a one-third daily Recommended Dietary Allowance (RDA) nutritional requirement for lunches served in adult day care centers; (3) made additional administrative funds available to family day care home sponsors to reach children located in low-income or rural areas; (4) permitted State agencies to allow biennial applications by institutions; (5) allowed governors to designate a separate State agency to administer only the adult portion of the CACFP; (6) changed the basis for making commodities available to State agencies; and (7) made two miscellaneous technical changes. Congressional explanatory statements on Pub. L. 101–147 (*Cong. Rec.* S14021, October 24, 1989) also requested that Program regulations be amended to reduce to three visits per year the number of facility visits required of school-sponsored after-school care. This request will be addressed in a separate rulemaking at a later date.

On August 14, 1992, the Child Nutrition Improvement Act of 1992 (Pub. L. 102–342) amended Section 17(a) of the NSLA (42 U.S.C. 1766(a)). Pursuant to the amendment made in Pub. L. 102–342, any private for-profit child care center providing nonresidential day care services may participate in the CACFP if it receives compensation under title XX of the Social Security Act (42 U.S.C. 1397, et seq.) for at least 25 percent of its eligible enrolled children or 25 percent of its licensed capacity, whichever is less.

On September 15, 1992, the Older Americans Act Amendments of 1992 (Pub. L. 102–375) amended Section 17 of the NSLA (42 U.S.C. 1766). This amendment allows institutions to participate in the CACFP if they provide adult day care services to functionally impaired adults or to individuals sixty years of age or older in a group setting outside of their home or their group living arrangements, on a less than 24-hour basis.

In response to the above-referenced legislative provisions, the Department published a final rule on January 16, 1990 (55 FR 1376) that changed the Program name from the ''Child Care Food Program'' to the ''Child and Adult Care Food Program''. The Department also published a final rule on July 14, 1993 (58 FR 37847) on a meal pattern to be used in adult day care centers participating in CACFP. The adult meal pattern rule contains the requirement found in Section 105(b)(3)(A) of Pub. L. 101–147 that lunches served in adult day care centers provide approximately one-third of the Recommended Dietary Allowances to participating individuals. Finally, the Department has issued a separate rule, regarding provisions set forth in Pub. L. 101–147 related to the content and processing of free and reduced price applications in both the CACFP and the Summer Food Service Program for Children.

This interim rule incorporates in the CACFP regulations other provisions from Pub. L. 101–147, Pub. L. 102–342, and Pub. L. 102–375 relating to the CACFP. In addition, this interim rule incorporates one clarifying provision to the CACFP regulations: categorical free meal eligibility to households participating in the FDPIR.

1. Alternate State Agencies for Adult Day Care

Section 105(b)(3)(B) of Pub. L. 101–147 amended Section 17(o)(6) (42 U.S.C. 1766(o)(6)) of the NSLA to allow the Governor of a State to designate a State agency, other than the existing CACFP State agency, to administer the adult day care component of the CACFP. This change in the statute recognizes that, in some instances, another State-level agency may be more cognizant of or capable of meeting the needs of adults in day care programs due to a long-standing relationship with the adult day care community and prior administration of other Federal programs for the elderly.

Accordingly, this interim rule amends Section 226.2 by expanding the definition of ''State agency'' to include a State agency other than the existing CACFP State agency, designated by the Governor, to administer the adult day care component of the CACFP.

2. Commodity Assistance

Section 6(e) of the National School Lunch Act (42 U.S.C. 1755(e)) establishes a per-meal commodity or cash-in-lieu of donated commodity assistance rate for lunches served under the National School Lunch Program. Section 17(h)(1) of the Act (42 U.S.C. 1766(h)(1)) authorizes payment of that rate to States for each lunch and supper served by institutions participating in the CACFP. Prior to the enactment of Pub. L. 101–147, the value of commodities donated to each State for any school year was, by law, calculated by multiplying the number of lunches and suppers served in CACFP institutions in that State during the current school year by the rate for commodities established for that school year. The Department must do considerable advance planning in order to provide for the timely purchase and distribution of commodities. Since it cannot know the actual number of lunches and suppers served until well after the school year is over, it was difficult under the previous system for the Department to accurately forecast and purchase commodities for the CACFP.

Congress recognized this problem and in Section 131(b) of Pub. L. 101–147 amended Section 17(h) of the NSLA (42 U.S.C. 1766(h)) to change the method of calculating commodity assistance. The effect of this change is that for the CACFP, the value of commodity assistance for institutions participating in the CACFP will now be calculated by multiplying the number of lunches and suppers served in participating institutions during the *preceding* school year by the current-year rate for commodities. At the end of each school year, the Department must determine the actual number of lunches and suppers served during that year, compare the actual number served in that year with the number served during the preceding year, and adjust commodity entitlements upwards or downwards, as necessary. The Department will make such adjustments in the next school year.

This provision does not affect the payment of cash-in-lieu of commodities. State agencies electing to receive cash-in-lieu of commodities for the CACFP will continue to receive payments based upon the number of meals actually served during the *current* school year. Section 17(h) of the NSLA establishes entitlement for cash-in-lieu of commodities, and payment is made on an ongoing basis as part of the reimbursement claiming process.

The preamble to the FCS Final Rule ''Cash in Lieu of Donated Foods and Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction'' (published at 58 FR 39113 (July 22, 1993) includes an in-depth discussion of the amendment made to Section 6(e)(1) of the NSLA by Section 131(a)(1) of Pub. L. 101–147, which changed the base for calculating commodity assistance. Pub. L. 101–147 has an identical effect on the calculation of commodity assistance for both the NSLP and the CACFP. As noted in this preamble, at the Department's discretion, it may make current year adjustments for significant variations in the number of reimbursable meals served. Generally, the Department will exercise this discretion only in exceptional circumstances.

Accordingly, this interim rulemaking amends Section 226.5(b) by changing the basis for entitlement commodity determinations from ''current year'' to

''preceding year'' data and by establishing a process under which the Department will, at the end of each school year, compare the number of lunches and suppers actually served in the State during that school year to the number served in the preceding year and adjust the State's commodity entitlement accordingly for the subsequent school year.

3. Title XX Reimbursement Claims

Section 17(a) of the NSLA (42 U.S.C. 1766(a)) previously allowed the participation of a proprietary title XX child care center ''if such organization receive[d] compensation under such title for at least 25 percent of the children for which the organization provides such nonresidential day care services.'' Section 202 of Pub. L. 102–342 amended this provision to permit a private for-profit center to participate in CACFP if it receives title XX compensation for at least 25 percent of its enrolled children, or 25 percent of its licensed capacity, whichever is less.

This provision assists proprietary centers in situations where 25 percent or more of their licensed capacity is used by title XX recipients, but the actual number of title XX recipients is less than 25 percent of the total number of children enrolled. For example, a private for-profit day care center has a licensed capacity of 100 and an enrollment of 125, of which 25 are title XX children. Enrollment exceeds licensed capacity because a number of children are in part-time care, and the actual number of children in attendance at any one time never exceeds licensed capacity. The center is eligible to participate in the CACFP because 25 percent of the center's licensed capacity (25/100) consists of title XX children. Similarly, a private for-profit center has a licensed capacity of 100 and an enrollment of 75, of which 20 are title XX children. The center is eligible to participate in the CACFP because 27 percent of the center's enrollment (20/75) consists of title XX children. In both examples, the lesser of the two numbers—enrollment or licensed capacity—was chosen as a basis for determining CACFP eligibility.

Pub. L. 102–342 did not amend Section 17(o) of the NSLA, which permits a private for-profit adult day care center to participate in the CACFP only if at least 25 percent of its enrolled eligible participants are title XIX or XX beneficiaries.

Accordingly, this rulemaking amends Sections 226.2, 226.6, 226.10, 226.11, 226.15, 226.17, and 226.19 by changing the CACFP eligibility criteria for private for-profit child care centers to permit such centers to participate if at least 25 percent of their enrolled children, or 25 percent of their licensed capacity, whichever is less, are title XX recipients.

4. Adult Day Care

Section 811(a) of Pub. L. 102–375 amended Section 17(o)(2)(A)(i) of the NSLA (42 U.S.C. 1766(o)(2)(A)(i)) to affirm that approved centers may claim reimbursement for meals served to individuals where the centers provide day care services to functionally impaired adults or individuals 60 years of age or older in a group, either outside their home or outside their group living arrangement. This includes meals served in a group living arrangement.

The purpose of adult day care, as stated by Congress in the Conference Report (H. Rept. 100–427) on the Older American Act Amendments of 1987, is to ''. . . assist its participants to remain in the community, enabling families and other care givers to continue caring for an impaired individual at home.'' This report evinces Congress's intent that CACFP benefits be available to individuals who attend adult day care while remaining in the community. Accordingly, we believe it is consistent with Congressional intent to define individuals remaining in the community as those residing in their own homes (whether alone or with spouses, children or guardians) or in group living arrangements. Group living arrangements include residential communities, which may or may not be subsidized by federal, State or local funds, but which are private residences housing an individual or a group of individuals who are primarily responsible for their own care and who maintain a presence in the community, but who may receive on-site monitoring. The law's addition of group living arrangements to this section of the NSLA does not require a change in previous FCS policy; rather, it confirms that policy.

Under this policy, the Department has interpreted the term ''group living arrangement'' to exclude residential *institutions* because the residents of such institutions no longer remain in the community or reside with family members or other caregivers who would benefit from the respite that adult day care services provide. Examples of such excluded residential institutions would be hospitals, nursing homes, asylums for the mentally ill or for persons with mental or physical disabilities, convalescent homes, apartment complexes designed only for the functionally impaired that provide meals and full-time care, hospices, and assisted living retirement facilities.

The Department also believes it necessary to emphasize that each adult day care center must maintain records that document that qualified adult day care participants reside in their own homes (whether alone or with spouses, children or guardians) or in group living arrangements as newly defined in Section 226.2.

Accordingly, this rulemaking amends Sections 226.2 and 226.19a to make clear that adult day care centers may receive meal reimbursement under the CACFP if they provide day care services to qualified persons in a group setting, either outside their homes or their group living arrangement and must document each participant's living arrangement.

5. Technical Clarification Provision

This provision clarifies that households participating in the FDPIR are ''categorically eligible'' to receive free meals in the CACFP. In accordance with Section 9(b)(6) of the NSLA (42 U.S.C. 1758(b)(6)), households receiving food stamps under the Food Stamp Act of 1977, as amended (7 U.S.C. 2011, *et seq.*) (FSA) are ''categorically eligible'' to receive free meals under the Child Nutrition Programs. The FDPIR is authorized by Section 4(b) of the FSA. Under that section, eligible households may alternatively elect to participate in the FDPIR. Because eligible households must meet similar criteria to those required for food stamp eligibility, and since the FDPIR is authorized under the FSA, households electing to participate in the FDPIR fall within the NSLA's classification of people ''categorically eligible'' for free meals in the CACFP.

Accordingly, this rulemaking amends Sections 226.2 and 226.23 to make clear FDPIR participants are ''categorically eligible'' to receive free meals in the CACFP.

6. Miscellaneous Technical Amendments

For purposes of Section 17 of the NSLA, Section 310 of Pub. L. 101–147 redefined the existing term ''handicapped children'' to now be defined as ''children with handicaps'' (42 U.S.C. 1766(a)). In addition, the term ''Internal Revenue Code of 1954'' was redefined to reflect the latest version of the Code, which was published in 1986.

Accordingly, this rule removes the reference to ''handicapped children'' in the definition of a ''child care center'' at Section 226.2 and replaces it with ''children with handicaps.'' In addition, it removes the reference to ''mentally or physically handicapped persons'' in the definition of ''children'' at Section 226.2

and replaces it with ''persons with mental or physical handicaps.'' Finally, references to the Internal Revenue Code at Sections 226.15(a), 226.17(b)(2), 226.19(b)(2), and 226.19a(b)(4) are updated.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, infants and children, Surplus agricultural commodities.

Accordingly, the Department is amending 7 CFR Part 226 as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.2:

a. Paragraph (a) of the definition of *Adult day care center* is amended by adding the words ''or a group living arrangement'' after ''homes''.

b. The definition of *Child care center* is amended by removing the words ''handicapped children'' and adding in their place the words ''children with handicaps''.

c. Paragraph (c) of the definition of *Children* is amended by removing the words ''mentally or physically handicapped persons'' and adding in their place the words ''persons with mental or physical handicaps''.

d. The definition of *Documentation* is revised.

e. A new definition of *FDPIR household* is added in alphabetical order.

f. The definition of *Free meal* is revised.

g. A new definition of *Group living arrangement* is added in alphabetical order.

h. The definition of *Proprietary Title XX center* is revised.

i. The definition of *State agency* is amended by adding a new sentence to the end of the paragraph.

j. The definition of *Verification* is amended by revising the fourth sentence.

The additions and revisions specified above read as follows:

§ 226.2 Definitions.

* * * * *

Documentation means:

(a) The completion of the following information on a free and reduced-price application:

(1) Names of all household members;

(2) Income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income);

(3) The signature of an adult household member; and

(4) The social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number; or

(b) For a child who is a member of a food stamp or FDPIR household or an AFDC assistance unit, ''documentation'' means the completion of only the following information on a free and reduced-price application:

(1) The name(s) and appropriate food stamp, FDPIR or AFDC case number(s) for the child(ren); and

(2) The signature of an adult member of the household; or

(c) For a child in a tier II day care home who is a member of a household participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced-price meals:

(1) The name(s), appropriate case number(s) and name of qualifying program(s) for the child(ren); and

(2) The signature of an adult member of the household; or

(d) For an adult participant who is a member of a food stamp or FDPIR household or is an SSI or Medicaid participant, as defined in this section, ''documentation'' means the completion of only the following information on a free and reduced-price application:

(1) The name(s) and appropriate food stamp or FDPIR case number(s) for the participant(s) or the adult participant's SSI or Medicaid identification number, as defined in this section; and

(2) The signature of an adult member of the household.

* * * * *

FDPIR household means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Distribution Program on Indian Reservations.

* * * * *

Free meal means a meal served under the Program to a participant from a family that meets the income standards for free school meals; or to a child who is automatically eligible for free meals by virtue of food stamp, FDPIR or AFDC recipiency; or to an adult participant who is automatically eligible for free meals by virtue of food stamp or FDPIR recipiency or is a SSI or Medicaid participant. Regardless of whether the participant qualified for free meals by virtue of meeting one of the criteria of this definition, neither the participant nor any member of their family shall be required to pay or to work in the food service program in order to receive a free meal.

* * * * *

Group living arrangement means residential communities which may or may not be subsidized by federal, State or local funds but which are private residences housing an individual or a group of individuals who are primarily responsible for their own care and who maintain a presence in the community but who may receive on-site monitoring.

* * * * *

Proprietary Title XX center means any private, for profit center:

(a) Providing nonresidential child care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act, and in which title XX child care beneficiaries constitute no less than 25 percent of enrolled eligible participants or licensed capacity, whichever is less, during the calendar month preceding initial application or annual reapplication for Program participation; or,

(b) Providing nonresidential adult day care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act and in which adult beneficiaries were not less than 25 percent of enrolled eligible participants during the calendar month preceding initial application or annual reapplication for Program participation.

* * * * *

State agency * * * This also may include a State agency other than the existing CACFP State Agency, when such agency is designated by the Governor of the State to administer only the adult day care component of the CACFP.

* * * * *

Verification * * * However, if a food stamp, FDPIR or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp or FDPIR household or AFDC assistance unit; or, for an adult participant, if a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided, verification for such participant shall include only confirmation that the participant is included in a currently certified food stamp or FDPIR household or is a current SSI or Medicaid participant.

* * * * *

3. In § 226.5, paragraph (b) is revised to read as follows:

§ 226.5 Donation of commodities.

* * * * *

(b) The value of such commodities donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of reimbursable lunches and suppers served in participating institutions in that State during the preceding school year by the rate for commodities established under section 6(e) of the Act for the current school year. Adjustments shall be made at the end of each school year to reflect the difference between the number of reimbursable lunches and suppers served during the preceding year and the number served during the current year, and subsequent commodity entitlement shall be based on the adjusted meal counts. At the discretion of FCS, current-year adjustments may be made for significant variations in the number of reimbursable meals served. Such current-year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a disaster that necessitates institutional closures for a prolonged period of time. CACFP State agencies electing to receive cash-in-lieu of commodities will receive payments based on the number of reimbursable meals actually served during the current school year.

4. In § 226.6:

a. Paragraph (b)(8) is revised.

b. Paragraph (c)(11) is revised.

The revisions specified above read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(b) * * *

(8) For proprietary title XX child care centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under title XX of the Social Security Act, and certification that not less than 25 percent of enrolled children or 25 percent of licensed capacity, whichever number is less, in each such center during the most recent calendar month were title XX beneficiaries. In the case of title XIX or title XX adult day care centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of enrolled adult participants in each such center during the most recent calendar month were title XIX or title XX beneficiaries;

* * * * *

(c) * * *

(11) The claiming of Program payment for meals served by a proprietary title XX child care center during a calendar month in which less than 25 percent of enrolled children or 25 percent of licensed capacity, whichever number is less, were title XX beneficiaries. In the case of an adult day care center, the claiming of Program payment for meals served by a proprietary title XIX or title XX center during a calendar month in which less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

* * * * *

5. In § 226.10, paragraph (c) is revised to read as follows:

§ 226.10 Program payment procedures.

* * * * *

(c) Claims for Reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the final Report of the Child and Adult Care Food Program (FCS 44) required under § 226.7(d). In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim. Independent proprietary title XX child care centers shall submit the number and percentage of the enrolled participants, or the licensed capacity receiving title XX benefits for the month claimed for months in which not less than 25 percent of the enrolled children or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries. Sponsoring organizations of such child care centers shall submit the number and percentage of the enrolled children or licensed capacity, whichever is less, receiving title XX benefits for each center for the claim. Sponsoring organizations of such centers shall not submit claims for child care centers in which less than 25 percent of the enrolled children and licensed capacity were title XX beneficiaries for the month claimed. Independent proprietary title XIX or title XX adult day care centers shall submit the percentages of enrolled adult participants receiving title XIX or title XX benefits for the month claimed for months in which not less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries. Sponsoring organizations of such adult day care centers shall submit the percentage of enrolled adult participants receiving title XIX or title XX benefits for each center for the claim. Sponsoring organizations of such centers shall not submit claims for adult day care centers in which less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries for the month claimed.

* * * * *

6. In § 226.11, paragraph (b) and the introductory text of paragraph (c) are revised to read as follows:

§ 226.11 Program payments for child care centers, adult day care centers and outside-school-hours care centers.

* * * * *

(b) Each child care institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to children, except that such reports shall be made for a proprietary title XX center only for calendar months during which not less than 25 percent of enrolled children, or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries. Each adult day care institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to adult participants, except that such reports shall be made for a proprietary title XIX or title XX center only for calendar months during which no less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

(c) Each State agency shall base reimbursement to each child care institution on the number of meals, by type, served to children multiplied by the assigned rates of reimbursement, except that reimbursement shall be payable to proprietary title XX child care centers only for calendar months during which not less than 25 percent of enrolled children, or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries. Each State agency shall base reimbursement to each adult day care institution on the number of meals, by type, served to adult participants multiplied by the assigned rates of reimbursement, except that reimbursement shall be payable to proprietary title XIX and title XX adult day care centers only for calendar months during which not less than 25 percent of enrolled adult participants were title XIX or Title XX beneficiaries. In computing reimbursement, the State agency shall either:

* * * * *

7. In § 226.15:

a. Paragraph (a) is amended by removing ''1954'' and adding ''1986'' in its place.

b. Paragraph (b)(6) is revised.

The revision specified above reads as follows:

§ 226.15 Institution provisions.

* * * * *

(b) * * *

(6) For each proprietary title XX child care center, documentation that it provides nonresidential day care services for which it receives compensation under title XX of the Social Security Act, and certification that not less than 25 percent of the enrolled children, or 25 percent of the licensed capacity, whichever is less, during the most recent calendar month were title XX beneficiaries. For each proprietary title XIX or title XX adult day care center, documentation that it provides nonresidential day care services for which it receives compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of the adult participants enrolled during the most recent calendar month were title XIX or title XX beneficiaries. Sponsoring organizations shall provide documentation and certification for each proprietary title XIX or title XX center under its jurisdiction.

* * * * *

§ 226.17 Amended

8. In § 226.17:

a. Paragraph (b)(2) is amended by removing ''1954'' and adding ''1986'' in its place.

b. The second sentence of paragraph (b)(4) is amended by adding the words '', or 25 percent of licensed capacity, whichever is less,'' after the word ''children'' the third time it appears.

§ 226.19 Amended

9. In § 226.19:

a. Paragraph (b)(2) is amended by removing ''1954'' and adding ''1986'' in its place.

b. The third sentence of paragraph (b)(5) is amended by adding the words ''or 25 percent of licensed capacity, whichever is less,'' after ''children'' the third time it appears.

10. In § 226.19a:

a. The first sentence of paragraph (b)(3) is amended by adding the words ''or a group living arrangement'' after ''home''.

b. The first sentence of paragraph (b)(4) is amended by removing ''1954'' and adding ''1986'' in its place.

c. Paragraph (b)(10) is amended by adding a new sentence to the end of the paragraph.

The addition specified above reads as follows:

§ 226.19a Adult day care center provisions.

* * * * *

(b) * * *

(10) * * * Finally, each adult day care center shall maintain records which document that qualified adult day care participants reside in their own homes (whether alone or with spouses, children or guardians) or in group living arrangements as defined in § 226.2.

11. In § 226.23:

a. The second sentence of paragraph (c)(2) is amended by adding the words ''or FDPIR'' after the words ''food stamp'' each time they appear.

b. The fifth and seventh sentences of paragraph (d) are amended by adding the words ''or FDPIR'' after the words ''food stamp'' each time they appear.

c. The sixth sentence of paragraph (e)(1)(i) is amended by adding the words ''or FDPIR'' after the words ''food stamp'' each time they appear.

d. Paragraph (e)(1)(ii)(F) is amended by adding to the first sentence '', FDPIR'' after the words ''food stamp'' and by revising the seventh sentence.

e. Paragraph (e)(1)(iii)(E) is amended by adding to the first sentence the words ''or FDPIR'' after the words ''food stamp'' and by revising the seventh sentence.

f. Paragraph (e)(1)(iv) is revised.

g. The introductory text of paragraph (e)(1)(v) and paragraph (e)(1)(v)(A) are amended by adding the words ''or FDPIR'' after the words ''food stamp'' each time they appear.

h. Paragraph (e)(1)(v)(B) is revised and the undesignated text following the paragraph is removed.

i. Paragraphs (e)(2)(vii)(A) and (e)(2)(vii)(B) are revised.

j. Paragraph (h)(2)(i) is amended by revising the second sentence.

k. Paragraph (h)(2)(iii)(A) is revised.

l. Paragraph (h)(2)(iii)(D) is amended by adding the words ''FDPIR,'' between the words ''or'' and ''AFDC''.

m. Paragraph (h)(2)(iv) is revised.

n. Paragraph (h)(2)(v)(A) is revised.

o. Paragraph (h)(2)(v)(C) is amended by revising the second sentence.

p. Paragraph (h)(2)(vi) is amended by adding the word ''FDPIR,'' between the words ''stamps,'' and ''AFDC''.

The revisions specified above read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(e)(1) * * *

(ii) * * *

(F) * * * These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp, Indian tribal organization or welfare office to determine current certification for receipt of food stamps, FDPIR or AFDC benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. * * *

* * * * *

(iii) * * *

(E) * * * These verification efforts may be carried out through program reviews, audits and investigations and may include contacting employers to determine income, contacting a food stamp, Indian tribal organization or welfare office to determine current certification for receipt of food stamps or FDPIR benefits, contacting the issuing office of SSI or Medicaid benefits to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to provide the amount of income received. * * *

* * * * *

(iv) If they so desire, households applying on behalf of children who are members of food stamp or FDPIR households or AFDC assistance units may apply for free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. In addition, households of children enrolled in tier II day care homes who are participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced price meals may apply under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. Households applying on behalf of children who are members of food stamp or FDPIR households, AFDC assistance units, or, for children enrolled in tier II day care homes, other qualifying Federal or State program, shall be required to provide:

(A) The names and food stamp, FDPIR, AFDC, or for tier II homes, other case numbers of the child(ren) for whom automatic free meal eligibility is claimed; and

(B) The signature of an adult member of the household as provided for in paragraph (e)(1)(ii)(G) of this section. In accordance with paragraph (e)(1)(ii)(F) of this section, if a case number is

provided, it may be used to verify the current certification for the child(ren) for whom free meal benefits are claimed. Whenever households apply for benefits for children not receiving food stamp, FDPIR, AFDC, or for tier II homes, other qualifying Federal or State program benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(ii) of this section.

(v) * * *

(B) The signature of an adult member of the household as provided in paragraph (e)(1)(iii)(F) of this section. In accordance with paragraph (e)(1)(iii)(G) of this section, if a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided, it may be used to verify the current food stamp, FDPIR, SSI, or Medicaid certification for the adult(s) for whom free meal benefits are being claimed. Whenever households apply for benefits for adults not receiving food stamp, FDPIR, SSI, or Medicaid benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(iii) of this section.

(2) * * *

(vii) * * *

(A) In the case of households of enrolled children that provide a food stamp, FDPIR or AFDC case number to establish a child's eligibility for free meals, any termination in the child's certification to participate in the Food Stamp, FDPIR or AFDC Programs, or

(B) In the case of households of adult participants that provide a food stamp or FDPIR case number or an SSI or Medicaid assistance identification number to establish an adult's eligibility for free meals, any termination in the adult's certification to participate in the Food Stamp, FDPIR, SSI or Medicaid Programs.

* * * * *

(h) * * *

(2) * * *

(i) * * * However,

(A) If a food stamp, FDPIR or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp or FDPIR household or AFDC assistance unit; or

(B) If a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided for an adult, verification for such adult shall include only confirmation that the adult is included in a currently certified food stamp or FDPIR household or is currently certified to receive SSI or Medicaid benefits.

* * * * *

(iii) * * *

(A) Section 9 of the National School Lunch Act requires that, unless households provide the child's food stamp, FDPIR or AFDC case number, or the adult participant's food stamp or FDPIR case number or SSI or Medicaid assistance identification number, those selected for verification must provide the social security number of each adult household member;

* * * * *

(iv) Households of enrolled children selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp, FDPIR, or AFDC Program they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of a current ''Notice of Eligibility'' for Food Stamp, FDPIR, or AFDC Program benefits or equivalent official documentation issued by a food stamp, Indian Tribal Organization, or welfare office which shows that the children are members of households or assistance units currently certified to participate in the Food Stamp, FDPIR, or AFDC Programs. An identification card for any of these programs is not acceptable as verification unless it contains an expiration date. Households of enrolled adults selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp Program or FDPIR or SSI or Medicaid Programs, they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of:

(A) A current ''Notice of Eligibility'' for Food Stamp or FDPIR benefits or equivalent official documentation issued by a food stamp, Indian Tribal Organization, or welfare office which shows that the adult participant is a member of a household currently certified to participate in the Food Stamp Program or FDPIR. An identification card is not acceptable as verification unless it contains an expiration date; or

(B) Official documentation issued by an appropriate SSI or Medicaid office which shows that the adult participant currently receives SSI or Medicaid assistance. An identification card is not acceptable as verification unless it contains an expiration date. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in a termination of benefits.

(v) * * *

(A) *Written evidence* shall be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, letters from employers, and, for enrolled children, current certification to participate in the Food Stamp, FDPIR or AFDC Programs, or, for adult participants, current certification to participate in the Food Stamp, FDPIR, SSI or Medicaid Programs. Whenever written evidence is insufficient to confirm eligibility, the State agency may use collateral contacts.

* * * * *

(C) * * * Information concerning income, family size, or food stamp/FDPIR/AFDC certification for enrolled children, or food stamp/FDPIR/SSI/Medicaid certification for enrolled adults, which is maintained by other government agencies and to which a State agency can legally gain access may be used to confirm a household's eligibility for Program meal benefits. * * *

* * * * *

Dated; April 10, 1997.

Mary Ann Keeffe,

Acting Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 97–11350 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–19]

RIN 0579–AA83

Karnal Bunt Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations to modify the criteria for classifying regulated areas by including in those criteria a requirement that a bunted wheat kernel be found in or associated with a field within an area before that area will be designated as a regulated area. We are also modifying the classification of restricted areas by establishing separate restricted areas for seed and for regulated articles other than seed. We are taking this action because tests currently available for use in identifying spores do not allow us to differentiate between small numbers of Karnal bunt spores and the spores of an as yet unnamed, but widely distributed, ryegrass smut. This action will have the effect of removing some areas in

Arizona and California from the list of regulated areas and will relieve restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas.

DATES: Interim rule effective April 25, 1997. Consideration will be given only to comments received on or before June 2, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–19, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–016–19. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION: Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14.

On October 4, 1996, we published in the **Federal Register** (61 FR 52190–52213, Docket No. 96–116–14) a final rule that, in part, established criteria for levels of risk for areas with regard to Karnal bunt and for the movement of regulated articles based on those criteria. In that final rule, levels of risk were assigned to areas based on their proximity to fields in which Karnal bunt spores were detected during preharvest samples or in which contaminated seed was planted.

In November 1996, a sample of a forage mixture containing wheat seed and seed of a number of grass species was tested and found to contain Karnal bunt-like teliospores. By a process of elimination, it was eventually determined that the source of the teliospores was the annual ryegrass in the forage mixture. Subsequent research showed that the teliospores associated with the ryegrass seed were produced by a disease different from Karnal bunt, but with teliospores that are so similar as to be indistinguishable by tests currently available. As a result of the survey, testing, and research activities carried out by the Animal and Plant Health Inspection Service (APHIS), Agricultural Research Service, and several State agricultural agencies, we believe that:

- A substantial portion of the ryegrass seed produced in the United States contains teliospores produced by an as yet unnamed smut affecting ryegrass;
- This seed has been widely distributed in the United States and to at least 26 foreign countries, and it is likely that this wide distribution has contributed to the ryegrass smut disease becoming well established;
- Ryegrass is one of the most common weeds occurring in wheat fields, and is frequently planted with wheat in forage and pasture mixes;
- Information currently available indicates that it is impossible to make a definitive determination as to the identity of teliospores when only small numbers are present. In most surveys in which Karnal bunt teliospores were found, the number of spores detected in the sample were five or fewer. Previous methods of identifying teliospores included size, morphology, and the results of DNA/PCR tests. None of these methods are practical for determining whether small numbers of teliospores detected are Karnal bunt or the ryegrass smut; and
- Scientists consulted by APHIS have concluded that a positive determination as to the presence of Karnal bunt can now be made only when bunted wheat kernels are present.

Based on the considerations listed above, we concluded that the detection of spores alone does not now allow us to make a conclusive determination that Karnal bunt disease is present in an area or article. That conclusion had an immediate effect on the States of Alabama, Florida, Georgia, and Tennessee, where grain in a number of storage facilities had been found to be contaminated with spores that appeared to be Karnal bunt spores, and on South Carolina, where seed from a seed lot contaminated with those spores had been planted. Specifically, we announced on March 17, 1997, that we were lifting all emergency action notifications affecting those States due to the fact that no bunted wheat kernels had been detected in those areas, only the Karnal bunt-like spores. In that same announcement, we stated our intention to develop a new regulatory standard for determining the presence of Karnal bunt that would apply to all parts of the United States. Therefore, we are amending the Karnal bunt regulations to make them consistent with our determination that the detection of a bunted wheat kernel is necessary to confirm the presence of Karnal bunt.

Classification of Regulated Areas

In § 301.89–3(e), we have revised the criteria for classifying regulated areas. Those criteria had been based on a finding that a field contained spores or had been planted with seed that tested positive for the presence of spores; we are now requiring that a bunted wheat kernel be found in or associated with a field within an area before that area will be designated as a regulated area.

In revising the classification criteria, we have retained the categories of restricted areas and surveillance areas, but we have split the category of restricted area to establish restricted areas for seed, which is the regulated article that presents the greatest risk of spreading Karnal bunt, and restricted areas for regulated articles other than seed. Because of the higher risk presented by seed, restricted areas for seed cover a larger area than do the restricted areas for regulated articles other than seed.

Under the new classification criteria, a restricted area for seed is a distinct definable area that includes at least one field that has been associated with a bunted wheat kernel. A field's association with a bunted wheat kernel will be established when it has been determined that:

- A bunted wheat kernel was found in the field during surveys;
- Seed from a lot contaminated with a bunted wheat kernel was planted in the field; or
- The field was found during surveys to contain spores and was traced back from a handling facility in which grain containing a bunted wheat kernel is stored.

The boundaries of a restricted area for seed—i.e., how much of an area surrounding the field or fields found to be associated with a bunted wheat kernel will be included within the restricted area for seed—will be determined in accordance with the existing criteria in paragraphs (b) through (d) of § 301.89–3, which provide for regulating less than an entire State, the inclusion of noninfected acreage in a regulated area, and the

temporary designation of nonregulated areas as regulated areas.

The individual fields that are determined to be associated with a bunted wheat kernel are also designated as restricted areas for regulated articles other than seed. The identity of those fields is determined using the same criteria discussed above with regard to restricted areas for seed, but it is the field itself, without any adjacent areas, that is designated as the restricted area for regulated articles other than seed.

Surveillance areas are those areas that include at least one field in which a bunted wheat kernel was found during surveys or one field in which spores were found during survey and that field was traced back from a handling facility in which grain containing a bunted wheat kernel was stored. These classification criteria are similar to those used to classify fields in the two restricted area categories, the difference being that the restricted area categories include fields planted with contaminated seed. Because a surveillance area will, in all cases, fall within the boundaries of a restricted area for seed, a surveillance area designation will only have an effect, for the purposes of movement, on the movement of regulated articles other than seed. The boundaries of a surveillance area will be determined using the criteria in paragraphs (b) through (d) of § 301.89–3, which provide for regulating less than an entire State, the inclusion of noninfected acreage in a regulated area, and the temporary designation of nonregulated areas as regulated areas.

List of Regulated Areas

The list of regulated areas in § 301.89–3(f) has been revised to reflect the new area classifications and the new regulated areas that have been identified based on the revised classification criteria discussed above. The regulated areas are still listed alphabetically by State, and each classification—i.e. restricted area for seed, restricted area for regulated articles other than seed, and surveillance area—lists areas or fields by county. Where individual fields are listed, they are designated by specific field numbers that have been assigned by State or local agricultural agencies or by the growers themselves. In all cases, the owners of those fields have already been notified of the regulatory status of their fields.

In Arizona, the counties of La Paz, Maricopa, Pinal, and Yuma are designated as restricted areas for seed due to the detection of bunted wheat kernels or the planting of contaminated seed in fields within those counties. In all, 21 fields were found with bunted wheat kernels during the 1996 preharvest surveys in those counties, and 103 fields—5 of which are among the 21 fields found to contain bunted wheat kernels—were identified as having been planted with contaminated seed. Those 119 fields found to contain bunted wheat kernels or that were planted with contaminated seed comprise the restricted areas for regulated articles other than seed in Arizona and are listed individually by county. Cochise, Graham, and Pima counties have been removed from the list of regulated areas, and the size of the regulated areas in La Paz, Maricopa, Pinal, and Yuma counties has been reduced.

The surveillance areas in Arizona are located in La Paz, Maricopa, and Pinal counties, where the 21 fields found to contain bunted wheat kernels were located. The borders of the surveillance areas in Arizona extend roughly 3 miles in each direction from each bunted wheat kernels field or cluster of bunted wheat kernel fields; the edges of each surveillance area lie along township and range lines in order that they may be described clearly and consistently. This 3-mile radius around the bunted wheat kernel fields or field clusters was established for Arizona based on the experience gained through our Karnal bunt control efforts and on our knowledge of the epidemiology of plant diseases. The 3-mile radius encompasses, in most cases, fields that share common ownership with the fields in which bunted wheat kernels were detected. Given that the disease may be spread through contaminated farm equipment, we believe that this common ownership factor must be considered. Supporting this consideration is our finding that 56 percent of the spore-positive fields in Arizona fall within the 9 square miles surrounding fields found to contain bunted wheat kernels. Beyond the 3-mile radius, the number of additional spore-positive fields does not increase as quickly: A 5-mile radius (25 square miles) encompasses 73 percent of the spore-positive fields—a 17-percent increase—and a 10-mile radius (100 square miles) takes in 77 percent of the spore-positive fields. We have determined, therefore, that establishing surveillance areas in Arizona that extend approximately 3 miles around the fields found to contain bunted wheat kernels will allow us to concentrate on the areas from which the movement of regulated articles presents the highest risk without unnecessarily extending restrictions into lower-risk areas.

In California, the Bard-Winterhaven area of Imperial County and the Palo Verde Valley area of Imperial and Riverside counties are designated as restricted areas for seed. The Bard-Winterhaven area is designated as a restricted area for seed because it abuts Yuma County, Arizona, and falls within a distinct definable wheat production area that includes fields in Yuma County that were planted with contaminated seed. The Palo Verde Valley is designated as a restricted area for seed because 55 fields within the valley are considered to be positive for Karnal bunt. The 55 fields had not been examined individually for bunted wheat kernels during the 1996 surveys, but they had been found to contain spores. Grain from those fields that had been commingled at a grain storage facility was found to contain bunted wheat kernels that could not be traced back to any individual field or fields. The combination of spores in the fields and bunted wheat kernels in grain associated with the fields gives us reason to believe that those fields are affected with Karnal bunt. Those 55 fields in the Palo Verde Valley comprise the restricted area for regulated articles other than seed in California; all the fields are located in Riverside County and are listed under the entry for that county. The remaining areas in Imperial and Riverside counties that had been classified as regulated areas have been removed from the list of regulated areas.

In New Mexico, there are 106 fields located in Dona Ana, Hidalgo, Luna, and Sierra counties that were identified as having been planted with contaminated seed. Those 106 fields comprise the restricted areas for regulated articles other than seed in the State, and the areas surrounding those fields, which are the same as the regulated areas of New Mexico described in the October 4, 1996, final rule, are designated as restricted areas for seed. Because there were no fields found to contain bunted wheat kernels in New Mexico—only fields planted with contaminated seed—there are no surveillance areas in the State.

There are 24 fields located in El Paso and Hudspeth counties, Texas, that were identified as having been planted with contaminated seed. Those 24 fields comprise the restricted areas for regulated articles other than seed in the State, and the areas surrounding those fields, which are the same as the regulated areas of Texas described in the October 6, 1996, final rule, are designated as restricted areas for seed. Because there were no fields found to

contain bunted wheat kernels in Texas—only fields planted with contaminated seed—there are no surveillance areas in the State.

Maps showing the location of all the regulated areas described above, including the individual fields listed as restricted areas for regulated articles other than seed, may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Those maps are available for inspection at the APHIS field offices listed below.

Regulated Areas in Arizona and California:

Phoenix Karnal Bunt Office, 3658 East Chipman Road, Phoenix, AZ, phone (602) 414–4740;

Buckeye Karnal Bunt Office, 26405 West Highway 85, Buckeye, AZ, phone (602) 386–4514;

Casa Grande Karnal Bunt Office, 884 West Highway 84, Casa Grande, AZ, phone (520) 836–5192; and

Yuma Karnal Bunt Office, 350 West 16th Street, room 305, Yuma, AZ, phone (520) 783–3901.

Regulated areas in New Mexico: USDA–APHIS–PPQ Karnal Bunt Office, Mike Perry, 270 South 17th Street, Las Cruces, NM, phone (505) 527–6983.

Regulated areas in Texas: USDA–APHIS–PPQ, George Nash, 903 San Jacinto Boulevard, suite 270, Austin, TX, phone (512) 916–5241 or (512) 916–5242.

As noted in previous paragraphs, we have removed several areas in Arizona and California from the list of regulated areas, which means that growers and other persons in those areas will no longer be subject to restrictions on the movement of regulated articles from the areas no longer listed in § 301.89–3(f). APHIS will, however, continue to check for bunted wheat kernels in samples drawn from grain grown in those areas to ensure continued confidence, both nationally and internationally, in APHIS' Karnal bunt control measures and certification. The data gathered could also be used as the basis for releasing specific areas from regulation for the purposes of seed movement.

Planting Within Regulated Areas

We have made three changes to the restrictions of § 301.89–4, ''Planting,'' to make that section consistent with the amended regulations described above. First, we have removed a reference in paragraph (a) to the planting of wheat, durum wheat, and triticale in fields outside of a regulated area because there are no restrictions placed by the regulations on fields outside of the regulated areas described in § 301.89–3(f).

Second, we have removed paragraphs (a)(1) and (a)(2), which stated that wheat, durum wheat, and triticale may not be planted during the 1996–1997 crop season in fields that tested positive for Karnal bunt during preharvest samples or that had been planted with contaminated seed. Those paragraphs have been replaced with a single paragraph stating that those crops may not be planted in a field listed in § 301.89–3(f) as a restricted area for regulated articles other than seed. The new paragraph has the same effect as the two it replaces in that it prohibits the planting of wheat, durum wheat, and triticale in a field within a restricted area; however, the fields themselves are now the restricted areas and can be referred to as such.

Third, we have revised paragraph (b) of § 301.89–4 to remove the requirement for testing seed that originated outside the regulated area prior to its being planted within the regulated area. We have no reason to believe that seed originating outside the regulated areas poses a risk of spreading Karnal bunt—which is why the regulations place no restrictions on the movement of such seed—so we do not believe it is necessary for that seed to be tested prior to planting in a regulated area.

Movement Restrictions for Grain

We have amended § 301.89–6, ''Issuance of a certificate or limited permit,'' to relax the testing requirements for grain. Grain to be moved from a surveillance area will be required to undergo one test and be found free from spores in order for the grain to qualify for movement under a certificate. Grain from a surveillance area had been required to undergo two tests, with the second one occurring at the means of conveyance or storage facility immediately prior to movement. We have eliminated the requirement for the first test based on two factors: the low confidence in the efficacy of the first test, and our increased confidence in the efficacy of the sampling and testing of grain at the means of conveyance or storage facility.

In the 1995–1996 crop season, the first test was done on a preharvest sample taken in the field. We have determined that testing a preharvest sample in addition to testing grain at the means of conveyance or storage facility does not significantly improve the detection of Karnal bunt. Karnal bunted kernels occur in clusters within fields, so that spores from the clusters are not randomly distributed throughout the field. This significantly decreases the chances of finding a spore in a preharvest sample taken from a field. In contrast, we have found that the routine handling of grain prior to its being loaded onto a conveyance mixes the grain to the extent that the majority of spores present in the grain will be distributed throughout the grain by the time it is loaded onto a conveyance. That finding led us to conclude that there is a 99 percent probability of finding spores in a 50 gram sample taken at the means of conveyance or storage facility when there is a single bunted wheat kernel in 1.5 million kernels. We found that testing a preharvest sample increases that probability by only .05 percent. Based on the high level of confidence of tests done on samples taken at the means of conveyance or storage facility, and the minimal improvement in the detection levels offered by tests done on preharvest samples, we believe that a single test performed at the means of conveyance immediately prior to movement will enable us to detect the presence of Karnal bunt spores in grain aboard a conveyance.

In view of our finding that the first test formerly required by the regulations should be discontinued because it does not significantly aid the efficacy of our Karnal bunt program, owners and handlers of grain may wish to consider arranging their own tests for their grain before it is commingled with grain from other sources, if they believe such testing would provide them with useful business information about the Karnal bunt status of their grain.

Grain found to contain spores will be ineligible for movement under a certificate due to the fact that the grain will have originated in a surveillance area, i.e., an area that includes at least one field in which a bunted wheat kernel has been detected. That link to bunted wheat kernels gives us reason to believe that grain containing spores presents a greater risk of being infected with Karnal bunt, so we will allow grain found to contain spores to be moved only under a limited permit, which means that the grain will be subject to measures intended to mitigate the risk of the grain spreading Karnal bunt.

Also in § 301.89–6, we have removed paragraph (d), which sets forth the eligibility requirements for the movement of grain from a restricted area. Grain may not be grown in a field listed in § 301.89–3(f) as a restricted area for regulated articles other than seed, so those eligibility requirements are no longer applicable.

Other Changes

We have amended the definition of *distinct definable area* to make it consistent with the changes to the classification criteria for restricted areas. The definition had stated that an inspector would consider survey results, including the number of positive fields and the relative spore count of fields within an area, when determining the boundaries of a distinct definable area surrounding a restricted area. We have amended that definition to remove the references to the number of positive fields and relative spore counts because the presence of a single positive field in an area—i.e. a field found to contain or to be associated with a bunted wheat kernel—now serves as the basis for the classification of that area as a restricted area, and because spore counts no longer serve as a criterion for determining an area's classification.

As a result of the changes to the criteria for classifying regulated areas and to the movement and planting restrictions for grain, much of the information contained in the chart that comprised ''Appendix to Subpart—Karnal Bunt'' is no longer applicable. We have, therefore, removed the appendix from the regulations.

In addition to those changes, we have also made two other minor changes to the regulations. First, we have corrected the fourth sentence of § 301.89–3(d), which refers to ''the list of designated regulated areas in paragraph (e) of this section.'' That list is actually in paragraph (f) of § 301.89–3, so we have changed the reference to reflect the correct location of the list. Second, we have redesignated footnotes 3 through 6 as footnotes 2 through 5; this change was necessary because the revision to § 301.89–4 discussed above resulted in the removal of footnote 2.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment in order that the amended regulations are in place prior to the impending spring grain harvest in the affected States. Immediate action is also warranted to relieve restrictions on growers and other persons in certain areas of Arizona and California that will no longer be classified as regulated areas to ease the restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas that continue to be classified as regulated areas.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This action amends the Karnal bunt regulations by including a requirement that a bunted wheat kernel be found in or associated with a field within an area before that area will be designated as a regulated area. This will relieve restrictions on growers and other persons in certain areas of Arizona and California that no longer meet the criteria for classification as regulated areas. This action also eases the restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas that continue to be classified as regulated areas. We are taking this action on an expedited basis and are making it effective upon signature in order that the amended regulations published in this document are in place prior to the impending spring grain harvest in the affected States. This situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable.

This rule substantially reduces the size of the area regulated for Karnal bunt, which means that there will no longer be restrictions imposed upon the movement of regulated articles such as grain, seed, and straw from those areas released from regulation. This rule also eases restrictions on the movement of grain and other regulated articles from those areas that remain under regulation. Given these changes, we anticipate that this rule will have a significant deregulatory impact on affected entities. As discussed in the regulatory flexibility analysis for the October 4, 1996, final rule cited above, the majority of the affected entities in the regulated areas have been determined to be small entities. (That regulatory flexibility analysis was published in the **Federal Register** on April 3, 1997 [62 FR 15809–15819, Docket No. 96–016–18].) We will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Act Analysis.

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0121.

Accordingly, 7 CFR part 301 is amended as follows:

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

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

§ 301.89–1 [Amended]

2. In § 301.89–1, the definition of *distinct definable area* is amended by removing the words '', including the number of positive fields and the relative spore count of the fields within the area''.

3. Section 301.89–3 is amended as follows:

a. In paragraph (d), the fourth sentence is amended by removing the words ''paragraph (e)'' and adding the words ''paragraph (f)'' in their place.

b. Paragraphs (e) and (f) are revised to read as follows.

§ 301.89–3 Regulated areas.

* * * * *

(e) The Administrator will classify fields or areas within the regulated boundaries as either restricted areas or

surveillance areas according to the following categories:

(1) *Restricted areas for seed.* A restricted area for seed is a distinct definable area that includes at least one field that has been:

(i) Found during survey to contain a bunted wheat kernel;

(ii) Planted with seed from a lot found to contain a bunted wheat kernel; or

(iii) Found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

(2) *Restricted areas for regulated articles other than seed.* Individual fields will be designated as restricted areas for regulated articles other than seed under the following circumstances:

(i) The field was found during survey to contain a bunted wheat kernel;

(ii) The field was planted with seed from a lot found to contain a bunted wheat kernel; or

(iii) The field was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

(3) *Surveillance areas:* A surveillance area will be an area that includes at least one field that was either:

(i) Found during survey to contain a bunted wheat kernel; or

(ii) Found to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

(f) The following areas are designated as regulated areas, and those areas are divided into restricted areas or surveillance areas as indicated below. (Maps of the regulated areas may be obtained by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 134, Riverdale, MD 20737–1236.)

Arizona

(1) *Restricted areas for seed.*

La Paz County. The entire county.

Maricopa County. The entire county.

Pinal County. The entire county.

Yuma County. The entire county.

(2) *Restricted areas for regulated articles other than seed.* The following numbered fields are restricted areas for the regulated articles other than seed.

La Paz County

319050508
319072200
319072212

Maricopa County

301060505
301060506
301060601
301060602
301060603
301060604
301092503
301102505
301102506
301103502
302063605
302071004
302071005
302071007
302071012
302071101
302071102
302071105
302071402
302071405
302071410
302071412
302071504
302071507
302071509
302072205
302072802
302073306
302073307
302073310
302073403
302073404
302073406
302073409
302110403
302110405
302110406
302131311
303102206
303111502
303111503
303113002
303112502
303112505
304023202
304031904
304031906
304073004
304073005
304073010
304081410
304081413
304081415
304081417
304081505
304081506
304082202
304082302
304082303
304082607
304082703
305031601
305031603
305050105
305050309
306013222
306013231
306020404
306020501
306020601
306020623
316123301
316123302
316123303
316131801
316131901
316131904
316132302
316132604
316152306
316152315

Pinal County

307011701
307011709
307012008
307012207
308102604
308102605
315220501
315220701
315220904

Yuma County

321010208
321010210E
321010301
32101SEC11
321033501
321033502
321033503
321040405
321040911
321040912
321040915
321040917
321041903
321041904
321041908
321041918
321042903
323030401
323030501
323030504
323030505
323030507
323030508
323030605A
323030608A
323030608B

(3) *Surveillance areas.*

La Paz County. The area beginning at the point where the Colorado River intersects the north side of Section 6, Township 7 North, Range 21 West, then east to the northeast corner of Section 1, Township 7 North, Range 21 West, then south to the southeast corner of Section 36, Township 7 North, range 21 West, then west to the northeast corner of Section 3, Township 6 North, range 21 West, then south to the southeast corner of Section 15, Township 5 North, Range 21 West, then west to the Colorado River, then north up the Colorado River to the point of beginning.

Maricopa County. The area beginning at the northwest corner of Section 7, Township 1 South, Range 6 East, then east to the northeast corner of Section 12, Township 1 South, Range 6 East, then south to the southeast corner of Section 1, Township 2 South, Range 6 East, then west to the northwest corner of Section 9, Township 2 South, Range 6 East, then south to the southeast corner of Section 32, Township 2 South, Range 6 East, then west to the southwest corner of Section 33, Township 2 South, Range 5 East, then north to the northwest corner of Section 4, Township 2 South, Range 5 East, then east to the southeast corner of Section 36, Township 1 South, Range 5 East, then north to the southeast corner of Section 25, Township 1 South, Range 5 East, then west to the southwest corner of Section 25, Township 1

South, Range 5 East, then north to the northwest corner of Section 25, Township 1 South, Range 5 East, then east to the northeast corner of Section 25, Township 1 South, Range 5 East, then north to the point of beginning;

The area beginning at the northwest corner of Section 19, Township 4 North, Range 2 West, then east to the northeast corner of Section 24, Township 4 North, Range 1 West, then south to the northwest corner of Section 6, Township 3 North, Range 1 East, then east to the northeast corner of Section 1, Township 3 North, Range 1 East, then south to the southeast corner of Section 36, Township 1 North, Range 1 East, then east to the southwest corner of Section 31, Township 1 North, Range 1 East, then north to the northwest corner of Section 6, Township 1 North, Range 1 East, then west to the southwest corner of Section 31, Township 2 North, Range 3 West, then north to the point of beginning; and

The area beginning at the northwest corner of Section 10, Township 1 North, Range 5 West, then east to the northeast corner of Section 9, Township 1 North, Range 4 West, then south to the southeast corner of Section 4, Township 1 South, Range 4 West, then west to the southwest corner of Section 3, Township 1 South, Range 5 West, then north to the point of beginning.

Pinal County. The area beginning at the northwest corner of Section 23, Township 4 South, Range 2 East, then east to the northeast corner of Section 23, Township 4 South, Range 3 East, then south to the southeast corner of Section 26, Township 5 South, Range 3 East, then west to the southwest corner of Section 26, Township 5 South, Range 2 East, then north to the point of beginning.

California

(1) *Restricted areas for seed.*

Imperial County. That portion of Imperial County known as the Bard-Winterhaven area bounded by a line drawn as follows: Beginning at the intersection of the west boundary line of Range 22 East and the California-Arizona State line; then, north along this boundary line to its intersection with the All American Canal; then northeasterly along this canal to its intersection with the south boundary line of Section 25, Township 15 South, Range 23 East; then east along this line to its intersection with the California-Arizona State line; then southerly and westerly along this State line to the point of beginning; and

That portion of Imperial County known as the Palo Verde Valley (in part) bounded by a line drawn as follows: Beginning at the intersection of the Riverside-Imperial County line and the California-Arizona State line; then, westerly and southerly along this State line to its intersection with the north boundary line of Township 10 South; then west along this boundary line to its intersection with the west boundary line of Range 21 East; then north along this boundary line to its intersection with the Riverside-Imperial County line; then easterly along this County line to the point of beginning.

Riverside County. That portion of Riverside County known as the Palo Verde Valley (in part) bounded by a line drawn as follows: Beginning at the intersection of the north boundary line of Township 2 South and the California-Arizona State line; then southerly and southwesterly along this State line to its intersection with the Riverside-Imperial County line; then westerly along this county line to its intersection with the west boundary line of Range 21 East; then north along this boundary line to its intersection with the north boundary line of Township 2 South; then east along this boundary line to the point of beginning.

(2) *Restricted areas for regulated articles other than seed.* The following numbered fields are restricted areas for the regulated articles other than seed.

Riverside County

01 Desert
05 Desert
09 Desert
11 Desert
12 Desert
23 Desert
28 Desert
44 Desert
55 Desert
56 Desert
57 Desert
N08 Desert
N09 Desert
N10 Desert
N11 Desert
N14 Desert
N15 Desert
N16 Desert
N17 Desert
N18 Desert
N19 Desert
N26 Desert
N27 Desert
N28 Desert
N29 Desert
N30 Desert
N31 Desert
N32 Desert
N33 Desert
N37 Desert
N42 Desert
N43 Desert
N44 Desert
N45 Desert
N46 Desert
N47 Desert
N48 Desert
N49 Desert
N50 Desert
N51 Desert
N52 Desert
N55 Desert
N56 Desert
N57 Desert
N58 Desert
N59 Desert
N117 Desert
N118 Desert
N119 Desert
N120 Desert
N121 Desert
N128 Desert
N129 Desert
N130 Desert
N136 Desert

(3) *Surveillance areas.*

Imperial County. That portion of Imperial County known as the Palo Verde Valley (in part) bounded by a line drawn as follows: Beginning at the intersection of the Riverside-Imperial County line and the California-Arizona State line; then, westerly and southerly along this State line to its intersection with the north boundary line of Township 10 South; then west along this boundary line to its intersection with the west boundary line of Range 21 East; then north along this boundary line to its intersection with the Riverside-Imperial County line; then easterly along this County line to the point of beginning.

Riverside County. That portion of Riverside County known as the Palo Verde Valley (in part) bounded by a line drawn as follows: Beginning at the intersection of the north boundary line of Township 2 South and the California-Arizona State line; then southerly and southwesterly along this State line to its intersection with the Riverside-Imperial County line; then westerly along this county line to its intersection with the west boundary line of Range 21 East; then north along this boundary line to its intersection with the north boundary line of Township 2 South; then east along this boundary line to the point of beginning.

New Mexico

(1) *Restricted areas for seed.*

Dona Ana County. Beginning at the intersection of the Sierra-Dona Ana County line and Interstate 25; then south along Interstate 25 to the Texas State line; then west and south along the New Mexico-Texas State line to the United States-Mexico boundary; then west along the United States-Mexico boundary to the Luna-Dona Ana County line; then north and east along the Dona Ana County line to the point of beginning.

Hidalgo County. Beginning at the intersection of the Arizona-New Mexico State line and Interstate 10; then east along Interstate 10 to the Hidalgo-Grant County line; then south and east along the Hidalgo County line to the Luna County line; then south along the Hidalgo County line to its southernmost point; then west and north along the Hidalgo county line to point of beginning.

Luna County. Beginning at the intersection of the Grant-Luna County line and Interstate 10; then east along Interstate 10 to U.S. Highway 180; then north along U.S. Highway 180 to State Route 26; then north along State Route 26 to State Route 27; then north along State Route 27 to the Luna-Sierra County line; then east along the Luna County line to the Dona Ana County line; then south along the Luna County line to the United States-Mexico boundary; then west along the United States-Mexico boundary to the Hidalgo County line; then north along the Luna County line to the point of beginning.

Sierra County. Beginning at intersection of the Luna-Sierra County line and State Route 27; then north along State Route 27 to State Route 152; then east along State Route 152 to Interstate 25; then south along Interstate 25 to the Dona Ana County line; then west and south to the Luna County line; then west along the Luna-Sierra County line to the point of beginning; and

Beginning at the intersection of the Socorro-Sierra County line and State Route

142; then southeast along State Route 142 to State Route 52; then south along State Route 52 to Interstate 25; then north along Interstate 25 to the Socorro-Sierra County line; then west along the Socorro-Sierra County line to the point of beginning.

(2) *Restricted areas for regulated articles other than seed.* The following numbered fields are restricted areas for the regulated articles other than seed.

Dona Ana County

02–01
02–02
02–03
02–04
08–01
08–02
08–03
08–04
11–01
11–02
13–01
13–02
13–03
13–13
13–04
13–05
13–06
13–08
13–09
13–10
13–11
25–01
25–02
27–01
28–01
29–01
29–02
29–03
29–04
33–01
33–02
33–03
33–04
33–10
37–01
37–02
37–03
37–04
41–01

Hidalgo County

43–01
44–01

Luna County

46–01
46–02
49–01
49–02
49–03
49–04
49–05
49–06
49–07
49–08
49–09
49–10
49–11
49–12
49–13
62–01
62–02
62–03
65–01
65–02
65–03
65–04
69–01
69–02
71–01
71–02
71–03
71–04
71–05
71–06
71–07

Sierra County

29–05
29–06
33–05
33–06
33–07
33–08
33–09
33–11
79–01
79–02
81–01
81–02
81–03
81–04
81–05
81–06
81–07
81–08
81–09
81–10
81–11
81–12
81–13
81–14
81–15
81–16
81–17
81–18
81–19
81–20
81–21
81–22
85–01
94–01

(3) *Surveillance areas.* None.

Texas

(1) *Restricted areas for seed.*

El Paso County. Beginning at a point on the Rio Grande River due east from the intersection of County Route 659 and County Route 375; then due east along an imaginary line to County Route 659; then north along County Route 659 to Interstate 10; then southeast along Interstate 10 to the El Paso County line; then southwest along the El Paso County line to the Rio Grande River; then north along the Rio Grande River to the point of beginning.

Hudspeth County. Beginning at the intersection of the El Paso-Hudspeth County line and Interstate 10; then southeast along Interstate 10 to County Route 34; then south along County Route 34 to County Route 192; then due south along an imaginary line to the Rio Grande River; then northwest along the Rio Grande River to the El Paso-Hudspeth County line; then north along the El Paso-Hudspeth County line to the point of beginning.

(2) *Restricted areas for regulated articles other than seed.* The following numbered fields are restricted areas for the regulated articles other than seed.

El Paso County

IB–1
IB–2
IB–3
IB–4
IB–4A
IB–5
IB–6
IB–7
IB–8
IB–9
IB–10
IB–11
IB–12
IB–13
IB–14
IB–15
TD–20
TD–21
TD–22
TD–23

Hudspeth County

TD–16
TD–17
TD–18
TD–19

(3) *Surveillance areas.* None.

4. Section 301.89–4 is revised to read as follows:

§ 301.89–4 Planting.

Wheat, durum wheat, and triticale may be planted in all fields within a regulated area, except as follows:

(a) Wheat, durum wheat, and triticale may not be planted in a field listed in § 301.89–3(f) as a restricted area for regulated articles other than seed.

(b) Prior to planting, wheat seed, durum wheat seed, and triticale seed that originated within a regulated area must be:

(1) Tested and found free from spores and bunted wheat kernels; then

(2) Treated with a fungicide in accordance with § 301.89–13(d).

§ 301.89–5 [Amended]

5. In § 301.89–5, paragraph (a)(3), footnote 2 and its reference in the text are redesignated as footnote 1.

6. Section 301.89–6 is amended as follows:

a. In paragraph (a) introductory text and (a)(2), footnotes 3 and 4 and their references in the text are redesignated as footnotes 2 and 3, respectively.

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

c. Paragraph (d) is removed and reserved.

§ 301.89–6 Issuance of a certificate or limited permit.

* * * * *

(b) To be eligible for movement under a certificate, grain from a surveillance area must be tested upon being loaded into a means of conveyance immediately prior to movement and

found free from spores. If spores are found, the grain will be eligible for movement only under a limited permit issued in accordance with paragraph (c) of this section.

* * * * *

§§ 301.89–7 and 301.89–9 [Amended]

6. In §§ 301.89–7 and 301.89–9, footnotes 5 and 6 and their references in the text are redesignated as footnotes 4 and 5, respectively.

Appendix to Subpart—Karnal Bunt [Removed]

8. The ''Appendix to Subpart—Karnal Bunt'' is removed.

Done in Washington, DC, this 25th day of April 1997.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–11357 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. 95–040–4]

RIN 0579–AA73

Genetically Engineered Organisms and Products; Simplification of Requirements and Procedures for Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; withdrawal.

SUMMARY: This document withdraws the final rule pertaining to genetically engineered plants introduced under notification and to the petition process for the determination of nonregulated status that was published in the **Federal Register** on April 24, 1997, and that was scheduled to become effective on May 27, 1997. The published document was an incorrect version of the final rule and contained errors in the text. The correct version of the final rule will be published in the **Federal Register** as soon as possible.

DATES: This withdrawal is effective May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. John Payne, Director, Biotechnology and Scientific Services, PPQ, APHIS, 4700 River Road Unit 98, Riverdale, MD 20737–1237; (301) 734–7602. For technical information, contact Dr. Michael Schechtman, Domestic Programs Leader, Biotechnology and Scientific Services, PPQ, APHIS; (301) 734–7601.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340 (referred to below as the regulations) pertain to the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are derived from known plant pests (regulated articles). Before introducing a regulated article, a person is required under § 340.0 of the regulations to either (1) notify the Animal and Plant Health Inspection Service (APHIS) in accordance with § 340.3 or (2) obtain a permit in accordance with § 340.4. Introductions under notification must meet specified eligibility criteria and performance standards. Under § 340.4, a permit is granted when APHIS has determined that the conduct of the trial, under the conditions specified by the applicant or stipulated by APHIS, does not pose a plant pest risk. The regulations also provide that petitions may be submitted to APHIS seeking a determination that an article should not be regulated under 7 CFR 340.

On April 24, 1997 (62 FR 19903–19917, Docket No. 95–040–2), APHIS published in the **Federal Register** a final rule to amend, and thereby simplify, the notification and petition provisions of the regulations. The final rule was scheduled to become effective on May 27, 1997. The published document was an incorrect version of the final rule and contained errors in the text. Therefore, we are withdrawing the final rule and will publish the correct version of the final rule in the **Federal Register** as soon as possible.

Authority: 7 U.S.C. 150aa-150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 28th day of April 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–11358 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 454 and 457

Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations; Common Crop Insurance Regulations, Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of fresh market tomatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations to the 1997 and prior crop years.

EFFECTIVE DATE: June 2, 1997.

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

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

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

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public

Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) of 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 UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production, if adequate records are available to support the certification or receive a transitional yield. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

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

National Performance Review

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

Background

On Friday, September 13, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 48423–48428 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR § 457.128 Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring fresh market tomatoes found at 7 CFR part 454 (Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations). FCIC also amends 7 CFR part 454 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 34 comments were received from congressional offices, the crop insurance industry and FCIC. The comments received, and FCIC's responses are as follows:

Comment: One representative of FCIC indicated that the definition of ''Acre'' was confusing and recommended it be defined similar to the procedure contained in the loss handbook which states ''Divide 43,560 (the number of square feet in one acre) by the row width for any row width below 6 feet. If the row width is 6 feet or more, divide by 6 feet. (You now have the lineal feet of beds (rows) in one acre. The lineal feet of rows per acre cannot be less than 7,260 feet regardless of the row width.)'' Another representative of FCIC stated that acreage in California is based solely on land area, not on row spacing. All acreage in California is planted to 60 inch (5 foot) beds and 43,560 should not be divided by 5 foot beds.

Response: The definition will not be changed because it will work for all areas of the country as it is now stated.

Comment: A representative of FCIC recommended a definition for ''first fruit set'' be added since it is referenced in the stage guarantee.

Response: FCIC agrees and has added a definition for ''first fruit set.''

Comment: The crop insurance industry recommended that the definition of ''irrigated practice'' should also address the quality of the water being applied.

Response: FCIC disagrees. There are no clear criteria regarding the quality of water necessary to produce a crop. Such criteria would be difficult to develop and administer due to the complex interactions of various factors. No change has been made to the definition.

Comment: The crop insurance industry recommended that the definition of ''replanting'' be revised because the phrase ''replace the tomato plants and then replacing the tomato plants'' was confusing and awkward. They suggested ''plant the tomato plants and then replacing the tomato plants.''

Response: FCIC agrees that the wording is awkward and has amended the definition for clarification.

Comment: The crop insurance industry stated that: (1) The definition of ''ripe tomato'' is not clear because it does not specify how much red color is allowable in determining production to count. The packer dictates to the producer what can be packed in terms of color. Packers will not allow any red tomatoes to be shipped. (2) The definition of ''potential production'' suggests that the insurance provider will count green and red tomatoes to determine the amount of production. Without a clear definition loss adjusters will not know which tomatoes to count when appraising tomatoes. (3) They have a legal interpretation that mature green and ripe tomatoes are one and the same. Based on the policy language in the proposed rule it is difficult to determine which tomatoes are production to count.

Response: The definition of ''ripe tomato'' has been revised. It now states ''A tomato that meets the definition of a mature green tomato, except the

tomato shows some red color and can still be packed for fresh market under the agreement or contract with the packer.'' This permits the loss adjuster to know that only tomatoes that could be packed will be considered production to count.

Comment: The crop insurance industry questioned whether the phrase ''all optional units established for a crop year must be identified on the acreage report for that crop year'' could cause problems if the production reporting date and acreage reporting date do not coincide. They stated that policyholders may read this to mean that they can change their units at acreage reporting time, even if not supported by the production reports submitted by the earlier production reporting date.

Response: Production reports must be filed by the producer the earlier of the acreage reporting date or 45 calendar days after the cancellation date for the crop and any optional units that the producer will select and enter on the acreage report must be determined at that time. The provision has been clarified by stating ''all optional units you selected for the crop year must be identified on the acreage report for that crop year.''

Comment: Representatives of FCIC recommended that optional unit division by irrigated and non-irrigated acreage be deleted. In most of the counties it is a requirement that the acreage be irrigated to be insurable.

Response: This provision has been deleted.

Comment: The crop insurance industry suggested that section 3(a) begin with the phase '' You may select only one price percentage ***.'' It would not then be necessary to include complex provisions regarding different varieties with different maximum prices.

Response: Methods used to select price elections vary among insurance providers. While some require selection of a percentage, others require selection of a specific dollar amount. The suggested change will not work in all circumstances. No change has been made to the provisions.

Comment: Representatives of FCIC stated that the stage guarantees should be revised for California because the input costs do not follow the existing guidelines. A major expense of growing fresh tomatoes in California is harvesting and packing the crop. Tomatoes in California are not tied and staked so the stage guarantees should be similar to those of canning and processing tomatoes.

Response: FCIC agrees and has made the recommended change.

Comment: The crop insurance industry and FCIC requested that cherry, roma and plum type tomatoes be insurable.

Response: FCIC generally does not offer insurance for cherry, roma, or plum type tomatoes because there are no uniform standards for marketability. However, in areas where such standards exist, insurance may be offered. No acreage of cherry, roma, or plum type tomatoes should be included in the guarantee or the production to count, unless coverage is provided in the Special Provisions for that type.

Comment: The crop insurance industry questioned whether the provision excluding tomatoes grown for direct marketing from being insurable should be under the section for ''Insured Crop'' rather than the section for ''Insurable Acreage.''

Response: FCIC agrees and has changed the location of this provision to ''Insured Crop.''

Comment: Representatives of FCIC recommended deleting the phrase ''or by written agreement'' from section 8(d), so that only the Special Provisions would permit insurance to attach to tomatoes grown for direct marketing, interplanted with another crop, or planted into an established grass or legume.

Response: FCIC agrees. This section has been revised and now includes the provision to exclude cherry, roma, and plum type tomatoes unless allowed by the Special Provisions, to ensure that proper standards exist.

Comment: Representatives of FCIC recommended that a provision be added to allow tomatoes to be insured when grown on acreage that has not been in annual production for several years. It is a recommended practice to grow tomatoes on acreage that has been newly cleared, formerly served as pasture land, etc., to eliminate some of the risk of disease and insect damage.

Response: A new section 9(b) has been added to incorporate this suggestion.

Comment: The crop insurance industry stated that section 9(b)(4) in the proposed rule (redesignated as section 9(a)(2)(iii)) was difficult to understand and opposed the change that would not require the application of a fumigant or nematicide if the tomatoes were destroyed prior to reaching the second stage. They also stated that nematodes are such a problem in some areas that fumigation prior to replanting possibly should be required.

Response: FCIC agrees that these provisions were confusing and that a fumigant or nematicide may be needed even if the tomatoes are destroyed prior to reaching the second stage. These provisions have been modified accordingly, clarified and re-designated.

Comment: The crop insurance industry questioned whether section 9(b)(5) of the proposed rule should be moved under the section for ''Insured Crop'' rather than remaining in the section for ''Insurable Acreage.'' Some representatives of FCIC stated that producer and packer agreements are not needed because a majority of the growers own the packing facilities in their region. They recommended that this section be deleted. Other representatives stated that without this provision growers might plant acreage after normal dates with the hopes of filling a market void.

Response: This section has been moved under ''Insured Crop'' but has not been deleted in order to ensure that those producers who do not have their own packing facilities have a market for the crop and to prevent producers from planting after normal dates. FCIC cannot offer insurance when there is only speculation that a market may exist.

Comment: Representatives of FCIC and congressional offices requested that disease and insect infestation be insurable causes of loss according to the provisions for annual crops. They did not agree with the limitations that cover these perils only if adverse weather prevents the proper application of control measures, causes properly applied control measures to be ineffective, or causes disease or insect infestation for which no effective control mechanism is available. They stated that changing the provision would simplify the rule by dispensing with the requirement for a weather determination and more closely matches coverage for other crops under the program.

Response: FCIC agrees and section 11 has been revised accordingly.

Comment: The crop insurance industry stated that language should be added to indicate that quality deductions are not allowed for unharvested production.

Response: The provisions have been amended to specify that unharvested production of mature green and ripe tomatoes remaining after harvest has ended with a classification size of 6×7 ($2^{8}/_{32}$ inch minimum diameter) or larger; or that grade in accordance with the requirements specified in the Special Provisions for cherry, roma, or plum types will be production to count. If the tomato would not have met classification size or grade requirements whether harvested or not, such tomatoes should not be included as production to count.

Comment: Representatives of FCIC recommended that a provision be added specifying that only that amount of appraised production in excess of the difference between the final stage guarantee and the stage guarantee applicable to acreage that does not qualify for the final stage guarantee will be considered production to count.

Response: FCIC agrees and has amended the provisions accordingly.

Comment: The crop insurance industry stated that they believe the written agreement should be continuous if no substantive changes occur from one year to the next.

Response: Written agreements are, by design, temporary and intended to address unusual circumstances. If the condition for which a written agreement is needed exists each crop year, the Special Provisions should be amended to reflect this condition. No change has been made to these provisions.

Comment: The crop insurance industry suggested combining the provisions contained in section 14(e) with the provisions in section 14(a).

Response: Section 14(e) is intended to be a limited exception, not the rule, in those cases where conditions are discovered after the sales closing date, which make written agreements necessary. The provisions are clearly stated and have not been combined.

Comment: The crop insurance industry recommended that the tomato program be added to several areas to cover fall planted tomato acreage in northern Florida, southern Georgia, and Virginia. Specifically, they suggested that insurance be available beginning with the 1998 crop year in Cook, Colquitt, Tift, Lowndes, and Echols Counties, Georgia, and Hamilton County, Florida. They also suggested coverage in North Hampton and Accomack Counties, Virginia.

Response: Recommendations for program expansion must be made to the appropriate Regional Service Office within FCIC. Adding coverage in the requested areas will not require changes to these provisions.

Comment: Congressional offices stated that it is crucial that this new policy be available for the 1997 crop year in Arkansas.

Response: To be effective for the 1997 crop year, this rule had to be published as a final rule by November 30, 1996. Since that date has passed the rule cannot be effective until the 1998 crop year.

In addition to the changes described above, FCIC has made the following changes to the Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions:

1. Section 1—Changed the definition of ''carton,'' ''good farming practices,'' ''planting period,'' ''practical to replant,'' ''potential production,'' ''production guarantee (per acre),'' and ''row width'' for clarification. Deleted the definition of ''prevented planting'' because prevented planting coverage is not provided for this crop.

2. Section 3—Added section 3(d) to specify that production guarantees will be contained in the Special Provisions for cherry, roma, or plum type tomatoes if these types are insurable.

3. Section 10—Clarified when coverage begins. Added the provision from the current policy that specifies the end of the insurance period is ''November 20 of the crop year in California and September 20 in all other states.'' This will prevent the provision of ''120 days after the date of transplanting or replanting'' from extending the insurance period past November 20 in California or September 20 in all other states.

4. Section 12—Added a provision to specify that the maximum amount of replanting payment per acre for cherry, pear, or plum types will be contained in the Special Provisions.

5. Section 13—Added provisions regarding production to count for cherry, roma and plum type tomatoes if authorized by the Special Provisions.

List of Subjects in 7 CFR Parts 454 and 457

Crop insurance, Fresh market tomato (guaranteed production plan) crop insurance regulations, guaranteed production plan of fresh market tomato.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 454 and 457 as follows:

PART 454—FRESH MARKET TOMATO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS FOR THE 1987 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 454 continues to read as follows:

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

2. The part heading is revised to read as set forth above.

3. Subpart heading ''Subpart—Regulations for the 1987 and Succeeding Crop Years'' is removed.

4. Section 454.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 454.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations for the 1987 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

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

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

5. Section 457.128 is added to read as follows:

§ 457.128 Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions.

The Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Guarantee Production Plan of Fresh Market Tomato Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Acre—Forty-three thousand five hundred sixty (43,560) square feet of land when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Carton—A container that contains 25 pounds of fresh tomatoes unless otherwise provided in the Special Provisions.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

First fruit set—The date when 30 percent of the plants on the unit have produced fruit that has reached a minimum size of one inch in diameter.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Picking of marketable tomatoes.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Mature green tomato—A tomato that:

(a) Has a heightened gloss due to a waxy skin that cannot be torn by scraping;

(b) Has a well-formed jelly-like substance in the locules;

(c) Has seeds that are sufficiently hard so they are pushed aside and not cut by a sharp knife in slicing; and

(d) Shows no red color.

Planting—Transplanting the tomato plants into the field.

Planting period—The time period designated in the Special Provisions during which the tomatoes must be planted to be insured as either spring-or fall-planted tomatoes.

Plant stand—The number of live plants per acre before any damage occurs.

Potential production—The number of cartons per acre of mature green or ripe tomatoes that the tomato plants would have produced by the end of the insurance period:

(a) With a classification size of 6 x 7 (2–8/32 inch minimum diameter) or larger for all types except cherry, roma, or plum; or

(b) Meeting the criteria specified in the Special Provisions for cherry, roma, or plum types.

Practical to replant—In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing windows that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. In counties that do not have both spring and fall planting periods, it will not be considered practical to replant after the final planting date unless replanting is generally occurring in the area. In counties that have spring and fall planting periods, it will not be considered practical to replant after the final planting date for the planting period in which the crop was initially planted.

Production guarantee (per acre)—The number of cartons determined by multiplying the approved APH yield per acre by the coverage level percentage you elect for the applicable type.

Replanting—Performing the cultural practices necessary to prepare the land to replace the tomato plants and then replacing the tomato plants in the insured acreage with the expectation of growing a successful crop.

Ripe tomato—A tomato that meets the definition of a mature green tomato, except the tomato shows some red color and can still be packed for fresh market under the agreement or contract with the packer.

Row width—The distance in feet from the center of one row of plants to the center of an adjacent row.

Written agreement—A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division

(a) In addition to the requirements for a unit, as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) basic units will be provided by planting period if spring and fall planting periods are provided for in the Special Provisions.

(b) Unless limited by the Special Provisions, basic units may be divided into optional units only if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(e) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) Records of current year's marketed production or measurement of stored production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Optional units may be established by section, section equivalent, or FSA Farm Serial Number if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the tomatoes in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each tomato type designated in the Special Provisions. The price election you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) The production guarantees per acre are progressive by stages and increase at specified intervals to the final stage production guarantee. The stages and production guarantees are as follows:

(1) For California:

Stage	Percent of stage 3 (final stage) production guarantee	Length of time
1	50	From planting until first fruit set.
2	70	From first fruit set until harvested.
3	100	Harvested acreage.

(2) For all other states, except California:

Stage	Percent of stage 4 (final stage) production guarantee	Length of time
1	50	From planting until qualifying for stage 2.
2	75	From the earlier of stakes driven, one tie and pruning, or 30 days after planting until qualifying for stage 3.
3	90	From the earlier of the end of stage 2 or 60 days after planting until qualifying for stage 4.
4	100	From the earlier of 75 days after planting or the beginning of harvest.

(c) Any acreage of tomatoes damaged to the extent that producers in the area generally would not further care for the tomatoes will be deemed to have been destroyed even though you continue to care for the tomatoes. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

(d) Any production guarantees for cherry, roma, or plum type tomatoes will be specified in the Special Provisions.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is September 30 preceding the cancellation date for counties with a January 15 cancellation date and December 31 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

CANCELLATION AND TERMINATION

State	Dates
California, Florida, Georgia, and South Carolina.	January 15.
All other states	March 15.

6. Report of Acreage

(a) In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the row width.

(b) If spring and fall planting periods are allowed in the Special Provisions you must report all the information required by section 6 (Report of Acreage) of the Basic Provisions (§ 457.8) and these Crop Provisions by the acreage reporting date for each planting period.

7. Annual Premium

In lieu of provisions contained in the Basic Provisions (§ 457.8), for determining premium amounts, the annual premium is determined by multiplying the final stage production guarantee by the price election, by the premium rate, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factor contained in the Special Provisions.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the tomatoes in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are transplanted tomatoes that have been planted for harvest as fresh market tomatoes;

(c) That are planted within the spring or fall planting periods, as applicable, specified in the Special Provisions;

(d) That, on or before the acreage reporting date, are subject to any agreement in writing (packing contract) executed between you and a packer, whereby the packer agrees to accept and pack the production specified in the agreement, unless you control a packing facility or an exception exists in the Special Provisions; and

(e) That are not (unless allowed by the Special Provisions):

(1) Grown for direct marketing;

(2) Interplanted with another crop;

(3) Planted into an established grass or legume; or

(4) Cherry, roma, or plum type tomatoes.

9. Insurable Acreage

(a) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(1) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant. Unavailability of plants will not be considered a valid reason for failure to replant.

(2) We do not insure any acreage of tomatoes:

(i) Grown by any person if the person had not previously:

(A) Grown fresh market tomatoes for commercial sales; or

(B) Participated in the management of a fresh market tomato farming operation, in at least one of the three previous years.

(ii) That does not meet the rotation requirements contained in the Special Provisions;

(iii) On which tomatoes, peppers, eggplants, or tobacco have been grown within the previous two years unless the soil was fumigated or nematicide was applied before planting the tomatoes, except that this limitation does not apply to a first planting in Pennsylvania or if otherwise specified in the Special Provisions; or

(b) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance from attaching if a crop has not been planted and harvested in at least one of the three previous calendar years, we will insure newly cleared land or former pasture land planted to fresh market tomatoes.

10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(a) Coverage begins on each unit or part of a unit on the later of the date you submit your application or when the tomatoes are planted.

(b) Coverage will end on any insured acreage at the earliest of:

(1) Total destruction of the tomatoes;

(2) Discontinuance of harvest;

(3) The date harvest should have started on any acreage that was not harvested;

(4) 120 days after the date of transplanting or replanting;

(5) Completion of harvest;

(6) Final adjustment of a loss; or

(7) November 20 of the crop year in California and September 20 in all other states.

11. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production that occurs or becomes evident after the tomatoes have been harvested.

12. Replanting Payment

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if the crop is damaged by an insurable cause of loss and the acreage to be replanted has sustained a loss in excess of 50 percent of the plant stand.

(b) The maximum amount of the replanting payment per acre will be:

(1) Seventy (70) cartons multiplied by your price election, multiplied by your insured share for all insured tomatoes except cherry, roma or plum types; and

(2) As specified in the Special Provisions for cherry, roma, or plum types.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8) that permit only one replanting payment each crop year, when both spring and fall planting periods are contained in the Special Provisions, you may be eligible for one replanting payment for acreage planted during each planting period within the crop year.

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee for the stage in which the damage occurred;

(2) Multiplying the results of section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 13(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 13(c)) by the respective price election;

(5) Totaling the results of section 13(b)(4);

(6) Subtracting this result of section 13(b)(5) from the results in section 13(b)(3); and

(7) Multiplying the result of section 13(b)(6) by your share.

(c) The total production to count (in cartons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Potential production lost due to uninsured causes;

(iii) Unharvested production of mature green and ripe tomatoes remaining after harvest has ended:

(A) With a classification size of 6 x 7 (2$^{8}/_{32}$ inch minimum diameter) or larger for types other than cherry, roma, or plum; or

(B) That grade in accordance with the requirements specified in the Special Provisions for cherry, roma or plum types.

(iv) Potential production on unharvested acreage and potential production on acreage when final harvest has not been completed;

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage:

(i) That is marketed, regardless of grade; and

(ii) That is unmarketed and:

(A) That grades eighty-five percent (85%) or better U.S. No. 1 with a classification size of 6 x 7 (2–8/32 inch minimum diameter) or larger for all types except cherry, roma, or plum; or

(B) That grade in accordance with the requirements specified in the Special Provisions for cherry, roma, or plum types.

(d) Only that amount of appraised production that exceeds the difference between the final stage guarantee and the stage guarantee applicable to the acreage will be production to count.

14. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on April 25, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–11351 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 292

[EOIR No. 115F; A.G. Order No. 2081–97]

RIN 1125–AA16

Executive Office for Immigration Review; Representation and Appearances: Law Students and Law Graduates

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule revises two of the current restrictions on supervising and compensating law students and law graduates who wish to represent aliens before the Immigration and Naturalization Service and the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Courts. The number of immigration cases, and thus the number of representatives needed, has increased in recent years. This revision will expand the pool of law students and law graduates eligible to represent aliens in such hearings.

EFFECTIVE DATE: This final rule is effective June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470, or Janice B. Podolny, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Suite 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: On October 15, 1996, the Executive Office for Immigration Review (EOIR) and the Immigration and Naturalization Service (INS) published and interim rule with request for comments in the Federal Register (61 FR 53609) amending 8 CFR part 292 by revising two of the current restrictions on law students and law graduates who wish to represent aliens before the INS and EOIR, including the Board of Immigration Appeals and the Immigration Courts. This final rule expands the pool of competent, properly supervised representatives for individuals who might otherwise be unable to obtain legal representation by removing these two restrictions upon law students and law graduates. The number of immigration cases completed in fiscal year 1995 totaled more than 168,000, and the need for individuals to represent these aliens has increased. Under this revised regulation, more law students and law graduates will be available to represent aliens in immigration proceedings because participants in legal aid clinics or programs sponsored by both law schools and non-profit organizations will be eligible. These law students and law graduates will also be able to accept compensation for their work so long as they are not paid, either directly or indirectly, by the alien whom they represent. This will allow law students and law graduates to work through legal aid clinics or programs which provide representation to aliens in immigration proceedings on a pro bono basis.

In response to the above rulemaking, EOIR and INS received one public comment. The commenter noted that the interim rule required law students to be supervised by a faculty member or an attorney, but did not provide for their supervision by an accredited representive. The commenter pointed out that limiting law students' supervision to faculty members or attorneys would limit the availability of law students for pro bono representation, since many non-profit organizations are staffed by accredited representatives and not licensed attorneys.

Since the primary purpose of this rule is to expand the pool of competent, properly supervised representative for individuals who might otherwise be unable to obtain legal representation, this comment will be accepted.

In addition, the reference to INS ''regional commissioner'' in 8 CFR § 292.1(a)(2)(iv) has been deleted and replaced with ''regional director'' in order to reflect a change in the official title of these INS officials.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only individuals in need of legal representation before INS and/or EOIR and does not have a significant economic impact on a substantial number of small entities. No additional costs will be incurred as a result of this rule. The purpose of this rule is merely to expand the pool of competent, properly supervised representatives for individuals who might otherwise be unable to obtain legal representation.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Executive Order 12988

The rule complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects in 8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 292 of chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 292—REPRESENTATION AND APPEARANCES

1. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

2. In § 292.1, paragraphs (a)(2)(ii), (iii), and (iv) are revised to read as follows:

§ 292.1 Representation of others.

(a) * * *

(2) * * *

(ii) In the case of a law student, he or she has filed a statement that he or she is participating, under the direct supervision of a faculty member, licensed attorney, or accredited representative, in a legal aid program or clinic conducted by a law school or non-profit organization, and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;

(iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents; and

(iv) The law student's or law graduate's appearance is permitted by the official before whom he or she wishes to appear (namely an immigration judge, district director, officer-in-charge, regional director, the Commissioner, or the Board). The official or officials may require that a law student be accompanied by the supervising faculty member, attorney, or accredited representative.

* * * * *

Dated: April 24, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–11279 Filed 4–30–97; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service, USDA

9 CFR Part 92

[Docket No. 94–136–2]

Zoological Park Quarantine of Ruminants and Swine Imported From Countries Where Foot-and-Mouth Disease or Rinderpest Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning ruminants and swine that are imported from a country where foot-and-mouth disease or rinderpest exists into a zoological park in the United States, to establish conditions under which such animals may be moved from one zoo to another within the United States. This change will benefit zoo programs that move animals for breeding and other purposes, and will facilitate the movement of animals for endangered species breeding programs, while continuing to protect against the introduction of dangerous animal diseases into the United States.

EFFECTIVE DATE: June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Morley Cook, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1228, (301) 734–6479.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) animal importation regulations (contained in 9 CFR part 92 and referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock. Among other requirements, the regulations restrict the importation of ruminants and swine to prevent the introduction and spread of foot-and-mouth disease (FMD) and rinderpest.

For many years some animals imported in accordance with these regulations have been admitted under the condition that they be placed in postentry quarantine in zoological parks (zoos) that have been approved by APHIS to receive such animals. We refer to such approved zoos as PEQ Zoos, because they are approved to hold imported animals in postentry quarantine (PEQ). At these zoos, the

imported animals are maintained in facilities that prevent access to them by the public and by domestic animals, and that include requirements for waste disposal and other matters that prevent the dissemination of any diseases the animals might carry.

On October 31, 1996, we published in the **Federal Register** (61 FR 56165-56169, Docket No. 94–136–1) a proposal to amend the regulations in 9 CFR 92.404(c) and 92.504(c), by specifying the circumstances under which APHIS will consent to the movement of imported wild ruminants and swine from a PEQ Zoo to a non-PEQ zoo within the United States.

Comments on the proposed rule

We solicited comments concerning our proposal for 60 days ending December 30, 1996. We received 11 comments by that date. They were from zoos, zoological and endangered species associations, veterinarians and veterinary associations, and animal industry groups. All the comments supported the proposed rule, but several suggested improvements or expansion of its coverage. The comments are discussed below by topic.

Three commenters suggested that the proposed procedures for allowing movement of animals between zoos should apply not only to ruminants and swine from countries where FMD and rinderpest exist, but also to animals from countries where African swine fever (ASF), hog cholera (HC), swine vesicular disease (SVD), vesicular exanthema of swine (VES), and contagious bovine pleuropneumonia (CBPP) exist. The comments suggested that since reliable diagnostic technologies exist for these diseases, ruminants and swine from countries affected by these diseases should also be allowed to move between zoos after spending at least one year in a postentry quarantine (PEQ) zoo.

We are not making any changes to the rule in response to this comment, but we are evaluating whether the suggested changes should be made in a future rulemaking. The suggested changes are outside the scope of the current rulemaking because the proposed rule and the affected sections of the regulations deal only with rinderpest and FMD, not the other diseases mentioned by the commenters.

Three commenters suggested that the rule should allow movement not only for live animals, but for carcasses, body parts, and biological specimens, after the animal they were derived from spent at least one year in a PEQ zoo without diagnosis of disease. These commenters believe that such materials should be allowed movement for scientific research or museum display purposes, and that they can be safely moved after the imported animal spends its first year in postentry quarantine.

We agree, and are adding the following sentence to §§ 92.404(c)(4) and 92.504(c)(4): ''The Administrator will approve the movement of a carcass, body part, or biological specimen derived from an imported animal subject to this agreement if the Administrator determines that the animal has spent at least one year in quarantine in a PEQ Zoo following importation without showing clinical evidence of foot-and-mouth disease, rinderpest, or other communicable disease that is exotic to the United States or for which APHIS has an eradication or control program in 9 CFR chapter I, and determines that the carcass, body part, or biological specimen will be moved only for scientific research or museum display purposes.''

Two commenters questioned whether APHIS would have adequate funding and staff resources to provide the oversight, monitoring, and surveillance necessary for effective implementation of the proposed changes.

We are not making any change in response to this comment. We believe these regulations are enforceable and that we have adequate manpower to enforce them. Many variables can affect the level of resources APHIS can apply to any given program at any given time; however, APHIS intends to allocate the number of staff hours necessary to ensure animals are moved between zoos under this program safely and in compliance with the regulatory requirements.

One commenter suggested that APHIS should revise APHIS Form 65–B, which is used in animal importation, to reflect the changes in the proposed rule and to update the form to show the current location of the Animal Import Center in Newburgh, New York, instead of Clifton, New Jersey. We agree, and are updating the form; however, no change to the regulations is necessary to accomplish this revision of APHIS Form 65–B.

One commenter suggested that the regulation should explicitly define which official or group within APHIS has the authority to approve the movement of an animal from one zoo to another.

We are not making any change in response to this comment. The proposed rule stated that ''The Administrator will approve the movement of an imported animal subject to this agreement . . .'' In §§ 92.400 and 92.500, ''Administrator'' is defined to include the Administrator of APHIS, or any other APHIS employee to whom authority has been or may be delegated to act in the Administrator's stead. Since work assignments and organizational structure may change frequently in APHIS, it is standard practice to designate the Administrator as responsible for certain decisions and activities, and to delegate this authority to specific APHIS staff using nonregulatory documentation internal to the agency, which does not require notice-and-comment rulemaking to change. Persons who are interested in determining who has been delegated authority to enforce particular sections of the regulations (such as the PEQ Zoo provisions) can readily determine this by contacting APHIS headquarters or an area office.

One commenter suggested that the rule should specify a foolproof method of animal identification to aid enforcement of the rule, and that APHIS should consider using new electronic identification technologies for this purpose.

We are not making any change in response to this comment. The proposed rule allows movement of ruminants and swine from a PEQ Zoo only to a zoo that is accredited by the American Zoo and Aquarium Association (AZA), or that has facilities and procedures in place related to preventing the spread of communicable animal diseases (including but not limited to procedures for animal identification, record keeping, and veterinary care) that are equivalent to those required for AZA accreditation. We do not believe it is necessary to specify a particular means of animal identification in the final rule because zoos already have a strong incentive to effectively identify animals for their own purposes (breeding, collection management, etc.), and the AZA accreditation process is an additional safeguard to ensure that identification and record keeping is effective. Specifying a separate, Federal requirement for identification would be an unnecessary regulatory burden; our experience has been that we can effectively work with existing identification procedures employed by zoos.

Several commenters raised issues related to the proposed rule's description in the agreements in §§ 92.404(c)(4) and 92.504(c)(4), that animals may be moved from a PEQ Zoo only to a zoo accredited by the AZA, or to a non-accredited zoo that ''has facilities and procedures in place related to preventing the spread of communicable animal diseases

(including but not limited to procedures for animal identification, record keeping, and veterinary care) that are equivalent to those required for AZA accreditation.'' There was some concern that this was too open-ended, and could preclude some zoos from receiving such animals only because they do not fully comply with voluminous AZA standards that specify effective methods (but not the *only* effective methods) to safely receive and maintain the animals without risk of spreading disease.

We are not making any change based on these comments, because we believe the rule clearly states that in approving movements to such zoos, the Administrator will focus on determining whether the zoo has standards *equivalent to* the AZA for preventing the spread of animal diseases. That decision will be made based on whether the receiving zoo achieves the necessary levels of biosecurity (a performance standard approach), rather than whether the zoo employs the exact same facility and procedure standards specified by the AZA (an engineering standard approach).

Miscellaneous

The proposed rule used the phrase ''or other communicable disease'' several times in reference to the observation of any clinical evidence of disease from animals held in isolation or quarantine. That phrase was intended to refer to any other communicable animal diseases that APHIS was either trying to exclude from the United States or prevent from spreading in the United States. In the interest of maximum clarity, we are changing the phrase ''or other communicable disease'' in the final rule to read ''or other communicable disease that is exotic to the United States or for which APHIS has an eradication or control program in 9 CFR chapter I.''

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule allows increased movement of certain imported ruminants and swine from one zoo to another in the United States. It will not increase the number of such animals that are imported. It should not have any appreciable impact on commerce, and will primarily benefit a small number of zoos that wish to acquire animals from other zoos or trade their own animals to other zoos.

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and

(3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The existing information collection and recordkeeping requirements in §§ 92.404 and 92.504 were previously approved by the Office of Management and Budget (OMB) under OMB control number 0579–0040, and we are adding that control number at the end of these sections.

List of Subjects in 9 CFR Part 92

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

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 92.404, paragraph(c) is revised to read as follows:

§ 92.404 Import permits for ruminants and for ruminant test specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

* * * * *

(c) *Wild ruminants from countries where foot-and-mouth disease or rinderpest exists.* This paragraph (c) applies to the importation of wild ruminants, such as, but not limited to, giraffes, deer and antelopes, from countries designated in part 94 of this subchapter as countries in which foot-and-mouth disease or rinderpest exist.

(1) Permits for the importation of wild ruminants will be issued only for importations through the Port of New York, and only if the animals are imported for exhibition in a PEQ Zoo. A PEQ Zoo is a zoological park or other place maintained for the exhibition of live animals for recreational or educational purposes that:

(i) Has been approved by the Administrator in accordance with paragraph (c)(2) of this section to receive and maintain imported wild ruminants; and

(ii) Has entered into the agreement with APHIS set forth in paragraph (c)(4) of this section for the maintenance and handling of imported wild ruminants.

(2) Approval of a PEQ Zoo shall be on the basis of an inspection, by an authorized representative of the Department, of the physical facilities of the establishment and its methods of operation. Standards for acceptable physical facilities shall include satisfactory pens, cages, or enclosures in which the imported ruminants can be maintained so as not to be in contact with the general public and free from contact with domestic livestock; natural or established drainage from the PEQ Zoo which will avoid contamination of land areas where domestic livestock are kept or with which domestic livestock may otherwise come in contact; provision for the disposition of manure, other wastes, and dead ruminants within the PEQ Zoo; and other reasonable facilities considered necessary to prevent the dissemination of diseases from the PEQ Zoo. The operator of the PEQ Zoo shall have available the services of a full-time or part-time veterinarian, or a veterinarian on a retainer basis, who shall make periodic examinations of all animals maintained at the PEQ Zoo for evidence of disease; who shall make a post-mortem examination of each animal that dies; and who shall make a prompt report of suspected cases of contagious or communicable diseases to an APHIS representative or the State agency responsible for livestock disease control programs.

(3) Manure and other animal wastes must be disposed of within the PEQ Zoo park for a minimum of one year following the date an imported wild ruminant enters the zoo. If an APHIS veterinarian determines that an imported ruminant shows no signs of

any communicable disease or exposure to any such disease during this 1-year period, its manure and other wastes need not be disposed of within the zoo after the 1-year period. If, however, an APHIS veterinarian determines that an imported ruminant does show signs of any communicable disease during this 1-year period, an APHIS veterinarian will investigate the disease and determine whether the ruminant's manure and other wastes may safely be disposed of outside the zoo after the 1-year period has ended.

(4) Prior to the issuance of an import permit under this section, the operator of the approved PEQ Zoo to which the imported ruminants are to be consigned, and the importer of the ruminants, if such operator and importer are different parties, shall execute an agreement covering each ruminant or group of ruminants for which the import permit is requested. The agreement shall be in the following form:

Agreement for the Importation, Quarantine and Exhibition of Certain Wild Ruminants and Wild Swine

_____, operator(s) of the zoological park known as _____ (Name) located at _____ (City and state), and _____ (Importer) hereby request a permit for the importation of _____ (Number and kinds of animals) for exhibition purposes at the said zoological park, said animals originating in a country where foot-and-mouth disease or rinderpest exists and being subject to restrictions under regulations contained in part 92, title 9, Code of Federal Regulations.

In making this request, it is understood and agreed that:

1. The animals for which an import permit is requested will be held in isolation at a port of embarkation in the country of origin, approved by the Administrator as a port having facilities which are adequate for maintaining wild animals in isolation from all other animals and having veterinary supervision by officials of the country of origin of the animals. Such animals will be held in such isolation for not less than 60 days under the supervision of the veterinary service of that country to determine whether the animals show any clinical evidence of foot-and-mouth disease, rinderpest, or other communicable disease that is exotic to the United States or for which APHIS has an eradication or control program in 9 CFR chapter I, and to assure that the animals will not have been exposed to such a disease within the 60 days next before their exportation from that country.

2. Shipment will be made direct from such port of embarkation to the port of New York as the sole port of entry in this country. If shipment is made by ocean vessel the animals will not be unloaded in any foreign port en route. If shipment is made by air, the animals will not be unloaded at any port or other place of landing, except at a port approved by the Administrator as a port not located in a country where rinderpest or foot-and-mouth disease exists or as a port in such a country having facilities and inspection adequate for maintaining wild animals in isolation from all other animals.

3. No ruminants or swine will be aboard the transporting vehicle, vessel or aircraft, except those for which an import permit has been issued.

4. The animals will be quarantined for not less than 30 days in the Department's Animal Import Center in Newburgh, New York.

5. Upon release from quarantine the animals will be delivered to the zoological park named in this agreement to become the property of the park and they will not be sold, exchanged or removed from the premises without the prior consent of APHIS. If moved to another zoological park in the United States, the receiving zoological park must be approved by the Administrator in accordance with paragraph 6 of this agreement.

6. The Administrator will approve the movement of an imported animal subject to this agreement if the Administrator determines that the animal has spent at least one year in quarantine in a PEQ Zoo following importation without showing clinical evidence of foot-and-foot mouth disease, rinderpest, or other communicable disease that is exotic to the United States or for which APHIS has an eradication or control program in 9 CFR chapter I, and determines that the receiving zoological park is accredited by the American Zoo and Aquarium Association (AZA), or the receiving zoological park has facilities and procedures in place related to preventing the spread of communicable animal diseases (including but not limited to procedures for animal identification, record keeping, and veterinary care) that are equivalent to those required for AZA accreditation. The Administrator will approve the movement of a carcass, body part, or biological specimen derived from an imported animal subject to this agreement if the Administrator determines that the animal has spent at least one year in quarantine in a PEQ Zoo following importation without showing clinical evidence of foot-and-foot mouth disease, rinderpest, or other communicable disease that is exotic to the United States or for which APHIS has an eradication or control program in 9 CFR chapter I, and determines that the carcass, body part, or biological specimen will be moved only for scientific research or museum display purposes.

_____
(Signature of importer)

Subscribed and sworn to before me this _____ day of _____, _____.

_____
(Title or designation)

_____
(Name of zoological park)

By _____
(Signature of officer of zoological park)

_____
(Title of officer)

Subscribed and sworn to before me this _____ day of _____, _____.

(Title or designation)

(Approved by the Office of Management and Budget under control number 0579–0040.)

3. Section 92.504, paragraph (c) is revised to read as follows:

§ 92.504 Import permits for swine and for swine specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

* * * * *

(c) *Wild swine from countries where foot-and-mouth disease or rinderpest exists.* This paragraph (c) applies to the importation of wild swine from countries designated in part 94 of this subchapter as countries in which foot-and-mouth disease or rinderpest exist.

(1) Permits for the importation of wild swine will be issued only for importations through the Port of New York, and only if the animals are imported for exhibition in a PEQ Zoo. A PEQ Zoo is a zoological park or other place maintained for the exhibition of live animals for recreational or educational purposes that:

(i) Has been approved by the Administrator in accordance with paragraph (c)(2) of this section to receive and maintain imported wild swine; and

(ii) Has entered into the agreement with APHIS set forth in paragraph (c)(4) of this section for the maintenance and handling of imported wild swine.

(2) Approval of a PEQ Zoo shall be on the basis of an inspection, by an authorized representative of the Department, of the physical facilities of the establishment and its methods of operation. Standards for acceptable physical facilities shall include satisfactory pens, cages, or enclosures in which the imported swine can be maintained so as not to be in contact with the general public and free from contact with domestic livestock; natural or established drainage from the PEQ Zoo which will avoid contamination of land areas where domestic livestock are kept or with which domestic livestock may otherwise come in contact; provision for the disposition of manure, other wastes, and dead swine within the PEQ Zoo; and other reasonable facilities considered necessary to prevent the dissemination of diseases from the PEQ Zoo. The operator of the PEQ Zoo shall have available the services of a full-time or part-time veterinarian, or a veterinarian on a retainer basis, who shall make periodic examinations of all animals maintained at the PEQ Zoo for evidence of disease; who shall make a post-mortem examination of each animal that dies; and who shall make a prompt report of suspected cases of contagious or communicable diseases to appropriate state or federal livestock sanitary officials.

(3) Manure and other animal wastes must be disposed of within the PEQ Zoo park for a minimum of one year following the date an imported wild swine enters the zoo. If an APHIS veterinarian determines that an imported swine shows no signs of any communicable disease during this 1-year period, its manure and other wastes need not be disposed of within the zoo after the 1-year period. If, however, an APHIS veterinarian determines that the swine does show signs of any communicable disease during this 1-year period, an APHIS veterinarian will investigate the disease and determine whether the swine's manure and other wastes may safely be disposed of outside the zoo after the 1-year period has ended.

(4) Prior to the issuance of an import permit under this section, the operator of the approved PEQ Zoo to which the imported swine are to be consigned, and the importer of the swine, if such operator and importer are different parties, shall execute an agreement covering each swine or group of swine for which the import permit is requested. The agreement shall be in the following form:

Agreement for the Importation, Quarantine and Exhibition of Certain Wild Ruminants and Wild Swine

_____, operator(s) of the zoological park known as _____ (Name) located at _____ (City and state), and _____ (Importer) hereby request a permit for the importation of _____ (Number and kinds of animals) for exhibition purposes at the said zoological park, said animals originating in a country where foot-and-mouth disease or rinderpest exists and being subject to restrictions under regulations contained in part 92, title 9, Code of Federal Regulations.

In making this request, it is understood and agreed that:

1. The animals for which an import permit is requested will be held in isolation at a port of embarkation in the country of origin, approved by the Administrator as a port having facilities which are adequate for maintaining wild animals in isolation from all other animals and having veterinary supervision by officials of the country of origin of the animals. Such animals will be held in such isolation for not less than 60 days under the supervision of the veterinary service of that country to determine whether the animals show any clinical evidence of foot-and-mouth disease, rinderpest, or other communicable disease that is exotic to the United States or for which APHIS has an eradication or control program in 9 CFR chapter I, and to assure that the animals will not have been exposed to such a disease within the 60 days next before their exportation from that country.

2. Shipment will be made direct from such port of embarkation to the port of New York as the sole port of entry in this country. If shipment is made by ocean vessel, the animals will not be unloaded in any foreign port en route. If shipment is made by air, the animals will not be unloaded at any port or other place of landing, except at a port approved by the Administrator as a port not located in a country where rinderpest or foot-and-mouth disease exists or as a port in such a country having facilities and inspection adequate for maintaining wild animals in isolation from all other animals.

3. No ruminants or swine will be aboard the transporting vehicle, vessel or aircraft, except those for which an import permit has been issued.

4. The animals will be quarantined for not less than 30 days in the Department's Animal Import Center in Newburgh, New York.

5. Upon release from quarantine the animals will be delivered to the zoological park named in this agreement to become the property of the park and they will not be sold, exchanged or removed from the premises without the prior consent of APHIS. If moved to another zoological park in the United States, the receiving zoological park must be approved by the Administrator in accordance with paragraph 6 of this agreement.

6. The Administrator will approve the movement of an imported animal subject to this agreement if the Administrator determines that the animal has spent at least one year in quarantine in a PEQ Zoo following importation without showing clinical evidence of foot-and-mouth disease, rinderpest, or other communicable disease that is exotic to the United States or for which APHIS has an eradication or control program in 9 CFR chapter I, and determines that the receiving zoological park is accredited by the American Zoo and Aquarium Association (AZA), or the receiving zoological park has facilities and procedures in place related to preventing the spread of communicable animal diseases (including but not limited to procedures for animal identification, record keeping, and veterinary care) that are equivalent to those required for AZA accreditation. The Administrator will approve the movement of a carcass, body part, or biological specimen derived from an imported animal subject to this agreement if the Administrator determines that the animal has spent at least one year in quarantine in a PEQ Zoo following importation without showing clinical evidence of foot-and-foot mouth disease, rinderpest, or other communicable disease that is exotic to the United States or for which APHIS has an eradication or control program in 9 CFR chapter I, and determines that the carcass, body part, or biological specimen will be moved only for scientific research or museum display purposes.

_____
(Signature of importer)

Subscribed and sworn to before me this _____ day of _____, _____.

_____
(Title or designation)

_____
(Name of zoological park)

By _____
(Signature of officer of zoological park)

_____
(Title of officer)

Subscribed and sworn to before me this _____ day of _____, _____.

_____
(Title or designation)

(Approved by the Office of Management and Budget under control number 0579–0040.)

Done in Washington, DC, this 24th day of April 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–11313 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 304, 308, 310, 327, 381, 416, and 417

[Docket No. 97–028N]

Technical Conference: Review of E. coli Testing

AGENCY: Food Safety and Inspection Service.

ACTION: Notice of technical conference.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a technical conference on May 8, 1997. The purpose of the conference is to provide an opportunity for industry, academia, and other interested parties to discuss with FSIS new information based on the first 3 months of testing meat and poultry for the presence of generic *E. coli* bacteria. The *E. coli* verification testing was required by FSIS's final rule ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems,'' published on July 25, 1996.

DATES: The meeting will be held from 8:30 a.m. to 4:30 p.m. on May 8, 1997.

ADDRESSES: The one-day conference will be held at the Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, VA 22209. The hotel has reserved a block of rooms until April 24 for participants in the technical conference. Please contact the hotel at (800) 368–3408 and cite code FSI to make reservations.

FOR FURTHER INFORMATION CONTACT: To register for the conference, contact Ms. Mary Gioglio at (202) 501–7244, (202) 501–7138, or FAX (202) 501–7642. To arrange for the presentation of technical data, contact Ms. Susan Knower (202) 501–6022, FAX (202) 501–6929. Presenters are asked to submit one original and two copies of written comments to: FSIS Docket Clerk, Docket #97–028N, U.S. Department of

Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. Persons wishing to present technical data are asked to bring 150 copies of their data for distribution to participants in the conference. Participants who require a sign language interpreter or other special accommodations should contact Ms. Gioglio at the above telephone or FAX numbers by April 30, 1997.

SUPPLEMENTARY INFORMATION: The final rule on Pathogen Reduction and HACCP, published on July 25, 1996, required all slaughter establishments to test for *E. coli* at a frequency based on production volume to verify that plants are meeting the established performance criteria. In the preamble to the final rule, FSIS solicited comments and information on a number of technical issues concerning the protocols for *E. coli* testing and announced that conferences would be held to discuss these issues.

The first conference was held on September 12 and 13, 1996. Participants discussed issues such as testing frequency, sampling procedures, and revision of the testing protocol to better account for differing establishment characteristics.

At the follow-up conference on May 8, a panel of industry and academia representatives will make presentations on *E. coli* verification testing by establishments that slaughter various types or subspecies of meat and poultry and discuss their observations and views. The new information should determine whether, and to what extent, changes are warranted in the testing protocol.

Transcripts of the conference will be available in the FSIS Docket Room.

Done at Washington, DC, on April 24, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–11315 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–31–AD; Amendment 39–10004; AD 97–09–08]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Limited (Formerly Government Aircraft Factories), Nomad Models N22S, N22B, and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive AD 82–25–09 which currently requires repetitively inspecting the pilot and co-pilot control wheel sub-assemblies for cracks, and if cracked, modifying the cracked part on the AeroSpace Technologies of Australia, Limited (ASTA), formerly Government Aircraft Factories (GAF) Nomad Models N22S, N22B, and N24A airplanes. This action would retain the repetitive inspection of the pilot and co-pilot control wheel sub-assemblies for cracks, but would include a modification that would terminate the repetitive inspections by replacing or re-working the control wheel sub-assembly with a part of improved design. This superseding action is prompted by cracking in the control wheel sub-assemblies and the manufacture of an improved part that would terminate the repetitive inspection. The actions specified by this Ad are intended to prevent failure of the pilot's and co-pilot's control wheels, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective June 23, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 23, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from AeroSpace Technologies of Australia, Limited, ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–31–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California, 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Nomad Models N22S, N22B, and N24A airplanes was published in the **Federal Register** on December 26, 1996 (61 FR 67965). This action proposed to supersede AD 82–25–09 with a new AD that would retain the repetitive 100 hour time-in-service (TIS) inspections for cracks on the pilot's and co-pilot's control wheel sub-assembly (ASTA part number (P/N) 1/N–45–1208) in the area adjacent to the circumferential weld adjoining the shaft spigot to each control wheel back support plate, modifying any cracked assembly by replacing the assembly with a part of improved design (ASTA P/N 2/N–45–1208 or an FAA approved equivalent part), or re-working the assembly with approved re-worked parts (ASTA P/N 1/N–03–734 or an FAA approved equivalent part), and if there are no signs of cracking during these inspections, terminating the repetitive inspections by accomplishing the modification to the control wheel sub-assemblies with parts of improved design. This modification is considered a terminating action for the repetitive inspections required in AD 82–25–09.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Relevant Service Information

Accomplishment of this action would be in accordance with Government Aircraft Factories (GAF) Nomad Alert Service Bulletin (SB) AS/B ANMD–27–27, Revision 1, dated November 5, 1982.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $1,592 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $29,280 or $1,952 per airplane. This figure is based on the cost of the initial inspection and modification and does not account for the repetitive inspections that may occur prior to the proposed modification. The FAA has no way to determine the number of airplanes that may have already accomplished this action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 82–25–09 and by adding a new airworthiness directive (AD) to read as follows:

97–09–08 Aerospace Technologies of Australia (ASTA) (formerly Government Aircraft Factories): Amendment No. 39–10004; Docket No. 95–CE–31–AD; Supersedes AD 82–25–09, Amendment 39–4510.

Applicability: Nomad Models N22S, N22B, and N24A airplanes, all serial numbers, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the pilot's and co-pilot's control wheels, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the pilot and co-pilot control wheel sub-assembly (ASTA part number (P/N) 1/N–45–1208) for structural cracking in the area adjacent to the circumferential weld adjoining the shaft spigot to each control wheel back support plate in accordance with ''2. *Accomplishment Instructions*'' section, ''*Part A*—Inspection'' paragraphs in Government Aircraft Factories (GAF) Nomad Alert Service Bulletin (SB) AS/B ANMD–27–27, Revision 1, dated November 5, 1982.

(1) If no cracks are visible, repetitively inspect the control wheel sub-assemblies at intervals not to exceed 100 hours TIS in accordance with the ''2. *Accomplishment Instructions*'' section, ''*Part A*—inspection'' paragraphs in GAF Nomad Alert SB AS/B ANMD–27–27, Revision 1, dated November 5, 1982 until the accomplishment of paragraph (b) of this AD.

(2) If cracks are visible during any inspection required by this AD, prior to further flight, modify the control wheel sub-assemblies by replacing or re-working the cracked part with parts of improved design (ASTA P/N 2/N–45–1208 or 1/N–03–734 (reworked part) or the FAA approved equivalent) in accordance with the ''2. *Accomplishment Instructions*'' section, ''*Part B*—Modification by Replacement or Rework'' paragraphs in GAF Nomad Alert SB AS/B ANMD–27–27, Revision 1, dated November 5, 1982.

(b) Upon the accumulation of 300 hours TIS after the effective date of this AD, modify the control wheel sub-assemblies (ASTA P/N 1/N–45–1208) by replacing the assemblies or re-working the assemblies with parts of improved design (ASTA P/N 2/N–45–1208 or P/N 1/N–03–734, respectively or the FAA approved equivalent) in accordance with the ''2. *Accomplishment Instructions*'' section, ''*Part B*—Modification by Replacement or Rework'' paragraphs in GAF Nomad Alert SB AS/B ANMD–27–27, Revision 1, dated November 5, 1982.

(c) Accomplishment of the modification in paragraph (b) of this AD is considered a terminating action for the repetitive inspections required in this AD.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California, 90712; telephone (562) 627–5224; facsimile (562) 627–5210. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

(f) The inspections and modifications required by this AD shall be done in accordance with Government Aircraft Factories Nomad Alert Service Bulletin AS/B ANMD–27–27, Rev. 1, dated November 5, 1982. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AeroSpace Technologies of Australia, Limited, ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This Amendment supersedes AD 82–25–09, Amendment 39–4510.

(h) This Amendment (39–10004) becomes effective on June 23, 1997.

Issued in Kansas City, Missouri, on April 21, 1997.

Larry D. Malir,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–10883 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–64; Amendment 39–9998; AD 97–09–02]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CFM International CFM56–5C series turbofan engines, that requires a reduction of the low cycle fatigue (LCF) retirement lives for certain high pressure turbine rotor (HPTR) front shafts, HPTR front air seals, HPTR disks, booster spools, and low pressure turbine rotor (LPTR) stage 3 disks. This amendment is prompted by results of a refined life analysis performed by the manufacturer which revealed minimum calculated LCF lives lower than published LCF retirement lives. The actions specified by this AD are intended to prevent an LCF failure of the HPTR front shaft, HPTR front air seal, HPTR disk, booster spool, and LPTR stage 3 disk, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7132, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–5C2/G–5C3/G, and –5C4 series turbofan engines was published in the **Federal Register** on March 26, 1996 (61 FR 13110). That action proposed to require a reduction of the low cycle fatigue (LCF) retirement lives for certain high pressure turbine rotor (HPTR) front shafts, HPTR front air seals, HPTR disks, booster spools, and low pressure turbine rotor (LPTR) stage 3 disks.

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

Two commenters object to the use of an AD to accomplish life limit changes, and suggest instead that operators incorporate the new limits into their FAA-approved maintenance programs. One commenter argues that the use of the AD process places unnecessary burdens on operators through additional record keeping. That commenter suggests alternatively that if the FAA does issue the AD, a new paragraph be added that states that incorporating the requirements of paragraphs (a) through (f) into an operator's maintenance program should be considered compliance with the AD and that after making that incorporation the AD would no longer apply. The FAA does not concur. Service life limits that appear as airworthiness limitations at the time of type certification can be changed to more restrictive limits only by way of rulemaking through an AD. A change to one operator's maintenance program alone will not mandate new, more restrictive, life limits for other operators. While these new limits may have appeared in service instructions or manuals before an AD is published, the FAA must complete the change by publishing the final rule AD. The FAA believes that recording the AD and its accomplishment is no more burdensome on operators than making changes to their maintenance program to specifically incorporate the same changes. Under the commenter's proposal, additional record keeping may be necessary to ensure that purchasers or other users of that operator's aircraft, who may not have FAA-approved maintenance programs, comply with the new, more restrictive limits. The FAA also does not concur with the commenter's proposed new paragraph which provides that once the changes are incorporated into a maintenance program the requirements of the AD would no longer apply, including the requirement that the changes may not be further adjusted without FAA approval. The FAA believes that these changes to life limits must be finalized in the form of an AD, and that no changes to the proposed AD are necessary.

Two commenters note that the booster spool life of 13,800 cycles identified in paragraph (d) of the AD is 1,200 cycles since new (CSN) less that the Chapter 05 life noted in Revision 3 of the CFM56–5C Engine Shop Manual (ESM), dated December 1, 1995. The FAA does not concur. An initial booster spool life for the CFM56–5C2/G, –5C3/G, and –5C4 series engines of 13,900 CSN was introduced by Temporary Revision (TR) TR–05–003, dated October 7, 1994. Temporary Revision TR–05–007, dated October 28, 1994, reduced the life to 13,000 CSN. The FAA has revised paragraph (d) of this final rule to state a life of 13,000 CSN to be consistent with current published life.

Two commenters note that the LPTR stage 3 disk life of 8,630 cycles identified in paragraph (e) of the AD is 930 CSN higher than the Chapter 05 life stated in Revision 3 of the CFM56–5C ESM, dated December 1, 1995. The FAA does not concur. An initial LPTR stage 3 disk life for the CFM56–5C2/G, –5C3/G, and –5C4 series engines of 9,200 CSN was introduced by TR–05–004, dated October 7, 1994. Temporary Revision TR–05–008, dated October 28, 1994, reduced the life to 7,000 CSN. The FAA has revised paragraph (e) of this final rule to state a life of 7,000 CSN to be consistent with the current published life.

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

There are approximately 10 engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are no engines installed on U.S. registered aircraft that would be affected by this AD. Therefore, there is no associated cost impact on U.S. operators as a result of this AD. However, should an affected engine be imported on an aircraft and placed on the U.S. registry in the future, it would not take any additional work hours per engine to accomplish the proposed actions. Assuming that the parts cost is proportional to the reduction of the LCF retirement lives, the required parts would cost approximately $25,736 per engine. Based on these figures, the total cost impact of the AD is estimated to be $25,736 per engine.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–09–02 CFM International: Amendment 39–9998. Docket 95–ANE–64.

Applicability: CFM International (CFMI) CFM56–5C2/G, –5C3/G, and –5C4 series turbofan engines, installed on but not limited to Airbus A340 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a low cycle fatigue (LCF) failure of the high pressure turbine rotor (HPTR) front shaft, HPTR front air seal, HPTR disk, booster spool, and low pressure turbine rotor (LPTR) stage 3 disk, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service HPTR front shafts, Part Numbers (P/N's) 1498M40P03, 1498M40P05, and 1498M40P06, prior to accumulating 8,400 cycles since new (CSN), and replace with a serviceable part.

(b) Remove from service HPTR front air seals, P/N's 1523M34P02 and 1523M34P03, prior to accumulating 4,000 CSN, and replace with a serviceable part.

(c) Remove from service HPTR disks, P/N 1498M43P04, prior to accumulating 6,200 CSN, and replace with a serviceable part.

(d) Remove from service booster spools, P/N 337–005–210–0, prior to accumulating 13,000 CSN, and replace with a serviceable part.

(e) Remove from service LPTR stage 3 disks, P/N's 337–001–602–0 and 337–001–605–0, prior to accumulating 7,000 CSN, and replace with a serviceable part.

(f) This action establishes the new LCF retirement lives stated in paragraphs (a) through (e) of this AD, which are published in Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(g) For the purpose of this AD, a ''serviceable part'' is one that has not exceeded its respective new life limit as set out in this AD.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(j) This amendment becomes effective on June 30, 1997.

Issued in Burlington, Massachusetts, on April 22, 1997.

Robert E. Guyotte,

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

[FR Doc. 97–11298 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–34]

Revision of Class D Airspace; Dallas Addison Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class D airspace at Addison Airport, Dallas, TX. As a result of the Class B airspace changes for Dallas-Fort Worth International Airport, the Class D airspace at Addison Airport is no longer sufficient to contain departing aircraft within controlled airspace. This action is intended to expand the Class D airspace to provide adequate airspace to contain aircraft operating under Instrument flight Rules (IFR) at Addison Airport, Dallas, TX.

DATES: *Effective:* 0901 UTC, September 11, 1997, *Comment Date:* Comments must be received on or before June 16, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 96–ASW–34, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An information docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–-0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class D airspace, providing controlled airspace for airport operations at Addison Airport, Dallas, TX. As a result of the Class B airspace changes for Dallas/Fort Worth International Airport, the Class D airspace at Addison Airport is no longer sufficient to contain arriving and

departing aircraft within controlled airspace. This action is intended to expand the Class D airspace to provide adequate airspace to contain aircraft operating under Instrument Flight Rules (IFR) at Addison Airport, Dallas, TX. This revision will avoid confusion on the part of the pilots flying near the airport, and promote the safe and efficient handling of air traffic in the area. This action will revise the Class D airspace at Addison Airport, Dallas, TX.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR § 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections.

Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this section is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ASW–34.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points,* dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace areas designated for an airport.

* * * * *

ASW TX D Dallas Addison Airport, TX [Revised]

Dallas, Addison Airport, TX
(Lat. 32°58′07″., long. 96°50′11″)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.4-mile radius of Addison Airport excluding that portion within the Dallas-Fort Worth, TX, Class B airspace area. This Class D airspace area shall be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on April 22, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–11375 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–02]

Revision of Class D Airspace; Little Rock, AFB, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class D airspace at Little Rock Air Force Base (AFB), AR. The development of a Precision Approach Radar (PAR) and a Tactical Air Navigation (TACAN) Standard Instrument Approach

Procedure (SIAP) to Runway (RWY) 07 at the airport has made this rule necessary. This action is intended to provide adequate Class D airspace for aircraft operating under Instrument Flight Rules (IFR) and executing the PAR or TACAN SIAP at Little Rock AFB, AR.

DATES: *Effective:* 0901 UTC, September 11, 1997.

Comment Date: Comments must be received on or before June 16, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 97–ASW–02, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class D airspace, providing controlled airspace for airport operations at Little Rock AFB, AR. The development of amended PAR and TACAN SIAP's to RWY 07 requires revision of the Class D airspace to provide adequate controlled airspace for aircraft operating in the vicinity of the airport. This revision will avoid confusion on the part of the pilots flying near the airport, and promote the safe and efficient handling of air traffic in the area. This action will revise the Class D airspace at Little Rock AFB, AR.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR § 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ASW–02.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (33 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points,* dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace designated for an airport.

* * * * *

ASW AR D Little Rock AFB, AR [Revised]

Little Rock AFB, AR
(Lat. 34°54′59″ N., long. 92°08′47″ W.)
Jacksonville TACAN
(Lat. 34°55′05″ N., long 92°09′27″ W.)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 5-mile radius of Little Rock AFB and within 1 mile each side of the 251° bearing from the airport extending from the 5-mile radius to 5.5 miles west of the airport and within 1.7 miles each side of the 229° radial of the Jacksonville TACAN extending from the 5-mile radius to 5.5 miles southwest of the airport excluding that airspace within the Little Rock, Adams Field, AR, Class C airspace area.

* * * * *

Issued in Fort Worth, TX, on April 22, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–11373 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–43]

Revision of Class E Airspace; Clarksville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace at Clarksville Municipal Airport, Clarksville, AR. New Nondirectional Radio Beacon (NDB) and Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) to Runways (RWYs) 09 and 27 have made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the NDB or GPS SIAPs to RWYs 09 or 27 at Clarksville Municipal Airport, Clarksville, AR.

DATES: *Effective:* 0901 UTC, September 11, 1997.

Comment Date: Comments must be received on or before June 30, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 96–ASW–43, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace, providing controlled airspace for airport operations at Clarksville Municipal Airport, Clarksville, AR. The development of new Nondirectional Radio Beacon (NDB) and Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runways (RWYs) 09 and 27 has made this rule necessary. This revision will avoid confusion on the part of the pilots flying near the airport, and promote the safe and efficient handling of air traffic in the area. This action will revise the Class E airspace at Clarksville Municipal Airport, Clarksville, AR.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does not receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ASW–43.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1859–1963 Comp., p. 389; 49 CFR 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points,* dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASW AR E5 Clarksville, AR [Revised]

Clarksville Municipal Airport, AR
(Lat. 35°28′14″ N., long. 93°25′38″ W.)
Clarksville NDB
(Lat. 35°28′09″ N., long. 93°25′25″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Clarksville Municipal Airport.

* * * * *

Issued in Fort Worth, TX, on April 22, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–11372 Filed 4–30–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–42]

Revision of Class E Airspace; Olney, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace at Olney Municipal Airport, Olney, TX. New Nondirectional Radio Beacon (NDB) and Global Positioning Systems (GPS) Standard Instrument Approach Procedures (SIAPs) to Runway (RWY) 17 have made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the NDB and GPS SIAP to Rwy 17 at Olney Municipal Airport, Olney, TX.

DATES: *Effective:* 0901 UTC, September 11, 1997.

Comment Date: Comments must be received on or before June 16, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 96–ASW–42, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 am and 3:00 pm, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace, providing controlled airspace operations at Olney Municipal Airport, Olney, TX. The development of new Nondirectional Radio Beacon (NDB) and Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) to Runway (RWY) 17 has made this rule necessary. This revision will avoid confusion on the part of the pilots flying near the airport, and promote the safe and efficient handling of air traffic in the area. This action will revise the Class E airspace at Olney Municipal Airport, Olney, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications

received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ASW–42.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points,* dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASW TX E5 Olney, TX [Revised]

Olney Municipal Airport, Olney, TX
(Lat. 33°21′03″N., long. 98°49′09″W.)
Olney NDB
(Lat. 33°21′04″N., long. 98°48′58″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Olney Municipal Airport and within 3.0 miles each side of the 347° bearing from the Olney NDB extending from the 6.6-mile radius to 10.2 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on April 22, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–11371 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–39]

Revision of Class E Airspace; Paragould, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace at Kirk Field, Paragould, AR. A new Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 04 and a new NDB SIAP to RWY 22 have made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the NDB SIAP to RWY 22 at Kirk Field, Paragould, AR.

DATES: *Effective:* 0901 UTC, September 11, 1997.

Comment Date: Comments must be received on or before June 16, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 96–ASW–39, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace, providing controlled airspace for airport operations at Kirk Field, Paragould, AR. The development of new NDB SIAP to RWY 22 requires revision of the Class E airspace to provide adequate controlled airspace for aircraft operating in the vicinity of the airport. This revision will avoid confusion on the part of the pilots flying near the airport, and promote the safe and efficient handling of air traffic in the area. This action will revise the Class E airspace at Kirk Field, Paragould, AR.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is

issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, with the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ASW–39.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves and established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routing matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points,* dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASW AR ES Paragould, AR [Revised]

Paragould, Kirk Field, AR
(Lat. 36°03′49″ N., long. 90°30′36″ W.)
Paragould NDB
(Lat. 36°03′46″ N., long. 90°30′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Kirk Field, and within 2.5 miles each side of the 218° radial from the Paragould NDB extending from the 6.4-mile radius to 9.5 miles southwest of the airport, and within 2.5 miles each side of the 062° radial of the Paragould NDB extending from the 6.4-mile radius to 7.5 miles northeast of the airport, excluding that airspace within the Jonesboro, AR, Class E airspace area.

* * * * *

Issued in Forth Worth, TX, on April 22, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–11370 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–41]

Establishment of Class E Airspace; Grants, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E airspace at Grants-Milan Municipal Airport, Grants, NM. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the GPS SIAP to RWY 31 at Grants-Milan Municipal Airport, Grants, NM.

DATES: *Effective:* 0901 UTC, September 11, 1997; *Comment Date:* Comments must be received on or before June 16, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 96–ASW–41, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief

Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 am and 3:00 pm, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace, providing controlled airspace for airport operations at Grants-Milan Municipal Airport, Grants, NM. The development of new GPS SIAP to RWY 31 requires establishment of Class E airspace to provide adequate controlled airspace for aircraft operating in the vicinity of the airport. This revision will avoid confusion on the part of the pilots flying near the airport, and promote the safe and efficient handling of air traffic in the area. This action will establish Class E airspace at Grants-Milan Municipal Airport, Grants, NM.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ASW–41.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points,* dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASW NM E5 Grants, NM [New]

Grants-Milan Municipal Airport, Grants, NM.
(Lat. 35°09′55″ N., long. 107°54′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Grants-Milan Municipal Airport.

* * * * *

Issued in Fort Worth, TX, on April 22, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–11369 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–37]

Revision of Class E Airspace; De Queen, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace at J. Lynn Helms Sevier County Airport, De Queen, AR. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 08 has made this rule necessary. This action is intended to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 08 and to contain Instrument Flight Rules (IFR) operations at J. Lynn Helms Sevier County Airport, De Queen, AR.

DATES: *Effective:* 0901 UTC, September 11, 1997.

Comment Date: Comments must be received on or before June 16, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 96–ASW–37, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace, providing controlled airspace for airport operations at J. Lynn Helms Sevier County Airport, De Queen, AR. The development of a new GPS SIAP to RWY 08 has made this rule necessary. This action will revise the Class E airspace at J. Lynn Helms Sevier County Airport, De Queen, AR.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR § 71.1.1 The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ASW–37.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

Part 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR 1959–

1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASW AR E5 De Queen, AR [Revised]

De Queen, J. Lynn Helms Sevier County Airport, AR
(Lat. 34°02′49″ N., long. 94°23′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of J. Lynn Helms Sevier County Airport and within 2.5 miles each side of the 263° bearing from the airport extending from the 6.4-mile radius to 7.0 miles west of the airport.

* * * * *

Issued in Fort Worth, TX, on April 22, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–11374 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–38]

Revision of Class E Airspace; Reserve, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace at Saint John the Baptist Parish Airport, Reserve, LA. A new Very High Frequency Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 35 has made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the VOR SIAP to RWY 35 at Saint John the Baptist Parish Airport, Reserve, LA.

DATES: Effective: 0901 UTC, September 11, 1997; Comment Date: Comments must be received on or before June 16, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 96–ASW–38, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace, providing controlled airspace for airport operations at Saint John the Baptist Parish Airport, Reserve, LA. The development of new VOR SIAP's to RWY 35 requires revision of the Class E airspace to provide adequate controlled airspace for aircraft operating in the vicinity of the airport. This revision will avoid confusion on the part of the pilots flying near the airport, and promote the safe and efficient handling of air traffic in the area. This action will revise the Class E airspace at Reserve, LA.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ASW–38.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASW LA E5 Reserve, LA [Revised]

Reserve, Saint John The Baptist Parish Airport, LA
(lat. 30°05′14″ N., long. 90°34′58″ W.)
Reserve VOR
(lat. 30°05′15″ N., long. 90°35′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Saint John The Baptist Parish Airport and within 2.4 miles each side of the 157° radial from the Reserve VOR extending from the 6.4-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX, on April 22, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–11368 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–36]

Revision of Class E Airspace; Weslaco, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace at Mid Valley Airport, Weslaco, TX. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13 has made this rule necessary. This action is intended to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 13 to contain Instrument Flight Rules (IFR) operations at Mid Valley Airport, Weslaco, TX.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

Comment Date: Comments must be received on or before June 16, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 96–ASW–36, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistance Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace, providing controlled airspace for airport operations at Mid Valley Airport, Weslaco, TX. The development of a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13 requires revision of the Class E airspace to provide adequate controlled airspace for aircraft executing the GPS SIAP. This action revises the Class E airspace at Mid Valley Airport, Weslaco, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemakng may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption

ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking acting is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA–public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ASW–36.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routing matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASW TX E5 Weslaco, TX [Revised]

Weslaco, Mid Valley Airport, TX
(Lat. 26°10′40″N., long. 97°58′25″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mid Valley Airport and within 4.0 miles each side of the 321° bearing from the airport extending from the 6.5-mile radius to 8.5 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on April 22, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–11367 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–35]

Revision of Class E Airspace; Killeen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace at Robert Gray Army Airfield, Killeen, TX. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 33 and a new Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME) SIAP to RWY 15 have made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rule (IFR) operations for aircraft executing the GPS SIAP to RWY 33 and the VOR/DME SIAP to RWY 15 at Robert Gray Army Airfield, Killeen, TX.

DATES: *Effective:* 0901 UTC, September 11, 1997; *Comment Date:* Comments must be received on or before June 16, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–35, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace to providing sufficient controlled airspace for IFR operations at Robert Gray Army Airfield, Killeen, TX. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 33 and a new Very High Frequency Ombidirectional Range (VOR)/Distance Measuring Equipment (DME) SIAP to RWY 15 have made this rule necessary. This revision will avoid confusion on the part of the pilots flying near the airport, and promote the safe and efficient handling of air traffic in the area. This action will revise the Class E airspace at Robert Gray Army Airfield, Killeen, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14

CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections.

Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ASW–35.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points,* dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASW TX E5 Killeen, TX [Revised]

Robert Gray Army Airfield (AAF), TX
(lat. 31°03′54″N., long. 97°49′40″W.)
Hood Army Airfield (AAF), TX
(lat. 31°08′16″N., long. 97°42′51″W.)
Gray VOR/DME
(lat. 31°01′58″N., long. 97°48′50″W.)
Killeen Municipal Airport, TX
(lat. 31°05′09″N., long. 97°41′11″W.)
Iresh NDB
(lat. 31°01′27″N., long. 97°42′29″W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Robert Gray AAF and within a 6.3-mile radius of Hood AAF and within 1.8 miles each side of the 037° and 217° radials of the Gray VOR/DME extending from the 7.6-mile radius to 14.6 miles southwest of the airfield and within a 6.5-mile radius of Killeen Municipal Airport and within 2.1 miles each side of the 197° bearing from the Iresh NDB extending from the 6.5-mile radius to 10.1 miles south of the airport, and within 1.7 miles each side of the 064° and 244° radials of the Gray VOR/DME extending from the 7.6-mile radius to 13.9 miles west of the airport, and within 2.0 miles each side of the 150° bearing from Robert Gray AAF extending from the 7.6-mile radius to 11.6 miles southeast of the airfield, and within 2.0 miles each side of the 339° bearing from Robert Gray AAF extending from the 7.6-mile radius to 10.3 miles northwest of the airfield.

* * * * *

Issued in Fort Worth, TX, on April 22, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–11366 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–7]

Revocation of Class E Airspace; Goffs, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace area at Goffs, CA. A review

of airspace classification has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for the Class E airspace area are otherwise defined by the Bullhead City, CA, Class E airspace area.

EFFECTIVE DATE: 0901 UTC May 22, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On February 12, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by revoking the Class E airspace area at Goffs, CA (62 FR 9396).

This action will revoke the controlled airspace since the purpose and requirements for the Class E airspace area are otherwise defined by the Bullhead, CA, Class E airspace area.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be removed subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class E airspace area at Goffs, CA. A review of airspace classification has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for the Class E airspace area are otherwise defined by the Bullhead City, CA, Class E airspace area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866: (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AWP CA E5 Goffs North, CA [Removed]

AWP CA E5 Goffs South, CA [Removed]

* * * * *

Issued in Los Angeles, California, on April 8, 1997.

Alton D. Scott,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–11365 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–14]

Revision of Class E Airspace; Sacramento, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace area at Sacramento, CA, by removing from the Sacramento E5 airspace area description that portion of airspace defined as a surface area for Sacramento Executive Airport and corresponding references. Deleting this portion of the description, which describes a surface area, conforms to the E5 airspace area standard. This surface area is thoroughly and appropriately described in the Sacramento Executive Airport, CA, Class E2 airspace area. A review of airspace classification and air traffic procedures has made this action necessary. The intended effect of this action is to remove overlapping descriptions of controlled airspace.

EFFECTIVE DATE: 0901 UTC July 17, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On April 3, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by revising the Class E airspace area at Sacramento, CA (62 FR 15863). This action revises the Class E airspace area at Sacramento, CA, by removing that portion of airspace defined as a surface area for Sacramento Executive Airport and corresponding references.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace area at Sacramento, CA, by removing from the Sacramento E5 airspace area description that portion of airspace defined as a surface area for Sacramento Executive Airport and corresponding references. Deleting this portion of the description, which describes a surface area, conforms to the E5 airspace area standard. This surface area is thoroughly and appropriately described in the Sacramento Executive Airport, CA, Class E2 airspace area. A review of airspace classification and air traffic procedures has made this action

necessary. The intended effect of this action is to remove overlapping descriptions of controlled airspace.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AWP CA E5 Sacramento, CA [Revised]

Sacramento VORTAC
(lat. 38°26′37″N, long. 121°33′06″W)

That airspace extending upward from 700 feet above the surface within an 11.3-mile radius of the Sacramento VORTAC and that airspace within a 33-mile radius of the Sacramento VORTAC, bounded on the west by the west edge of V–23, and clockwise along the 33-mile radius to the northeast edge of V–23 and that airspace southwest of Sacramento VORTAC bounded by a line beginning at lat. 38°16′00″N, long. 122°05′04″W; to lat. 38°30′00″N, long. 121°48′04″W; to lat. 38°16′00″N, long. 121°39′04″W; to lat. 38°02′00″N, long. 121°52′04″W, thence via lat. 38°02′00″N, to the west edge of V–195, thence via the west edge of V–195 to lat. 38°16′00″N, thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at the point of intersection of the east edge of V–195 and the south edge of V–200, thence via the south edge of V–200, the west edge of V–23 and lat. 39°00′00″N, to the west edge of V–165, thence via the west edge of V–165 to the north edge of V–244, thence via the north edge of V–244 to long. 120°04′04″W, thence via long.120°04′04″W, to lat. 38°07′00″N, thence via lat. 38°07′00″N, to long. 121°37′04″W, thence via long. 121°37′04″W, to lat. 38°02′00″N, thence via lat. 38°02′00″N, to the east edge of V–195, thence via the east edge of V–195 to the point of beginning.

* * * * *

Issued in Los Angeles, California, on April 17, 1997.

Sabra W. Kaulia,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–11376 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 7637]

Income Tax; Taxable Years Beginning After December 31, 1953: Consolidated Return Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 7637), which were published in the **Federal Register** on Thursday, August 9, 1979 (44 FR 46838) relating to consolidated returns. The regulations provide the public with guidance needed to comply with the Tax Reform Act of 1969 and affect corporations that file consolidated returns.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Edward Cohen, (202) 622–7760, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 7637) contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correcting Amendment to Regulations

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

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

§ 1.1502–5 [Corrected]

Par. 2. In § 1.1502–5 (b)(5), the language ''1552 and § 1.1502(d)(2).'' is removed and the language ''1552 and § 1.1502–33 (d)(2).'' is added in its place.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–11378 Filed 4–30–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part O

[AG Order No. 2078–97]

Merger of the Office of Special Counsel for Immigration Related Unfair Employment Practices Into the Civil Rights Division

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order will amend part O of Title 28 of the Code of Federal Regulations to reflect the merger of the Office of Special Counsel for Immigration Related Unfair Employment Practices into the Civil Rights Division. This merger and the related changes included in this order will enhance operational effectiveness and efficiency in the Division.

EFFECTIVE DATE: April 16, 1997.

FOR FURTHER INFORMATION CONTACT: DeDe Greene, Executive Officer, Civil Rights Division, United States Department of Justice, Washington, D.C. 20530, telephone (202) 514–4224.

SUPPLEMENTARY INFORMATION: This order is a matter of internal Department management. It is not required to be, and has not been, published in proposed form for comment under 5 U.S.C. 153(b).

The Department of Justice has determined that this order is not a

''significant regulatory action'' under E.O. 12866 because it imposes no new requirements. Therefore, this order has not been reviewed by the Office of Management and Budget.

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this order and by approving it certifies that this order will not have a significant economic impact on a substantial number of small entities.

This order will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this order does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Part O

Authority delegations (Government agencies), Organization and functions (Government agencies).

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509 and 510, part O of title 28 of the Code of Federal Regulations is amended as follows:

PART O—[AMENDED]

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

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.50 is amended by adding a new paragraph (m), to read as follows:

§ 0.50 General functions.

* * * * *

(m) Community education, enforcement, and investigatory activities under section 102 of the Immigration Reform and Control Act of 1986, as amended.

3. A new section 0.53 is added to subpart J, to read as follows:

§ 0.53 Office of Special Counsel for Immigration Related Unfair Employment Practices.

(a) The Office of Special Counsel for Immigration Related Unfair Employment Practices shall be headed by a Special Counsel for Immigration Related Unfair Employment Practices (''Special Counsel''). The Special Counsel shall be appointed by the President for a term of four years, by and with the advice and consent of the Senate, pursuant to section 102 of the Immigration Reform and Control Act of 1986, as amended. The Office of Special Counsel shall be part of the Civil Rights Division of the Department of Justice, and the Special Counsel shall report directly to the Assistant Attorney General, Civil Rights Division.

(b) In carrying out his or her responsibilities under the Immigration Reform and Control Act of 1986, as amended, the Special Counsel is authorized to:

(1) Investigate charges of immigration-related unfair employment practices filed with the Office of Special Counsel and, when appropriate, file complaints with respect to those practices before specially designated administrative law judges within the Office of the Chief Administrative Hearing Officer, U.S. Department of Justice;

(2) Intervene in proceedings involving complaints of immigration-related unfair employment practices that are brought directly before such administrative law judges by parties other than the Special Counsel;

(3) Conduct, on his or her own initiative, investigations of immigration-related unfair employment practices and, where appropriate, file complaints with respect to those practices before such administrative law judges;

(4) Conduct, handle, and supervise litigation in U.S. District Courts for judicial enforcement of orders of administrative law judges regarding immigration-related unfair employment practices;

(5) Initiate, conduct, and oversee activities relating to the dissemination of information to employers, employees, and the general public concerning immigration-related unfair employment practices;

(6) Establish such regional offices as may be necessary;

(7) Perform such other functions as the Assistant Attorney General, Civil Rights Division shall direct; and

(8) Delegate to any of his or her subordinates any of the authority, functions, or duties vested in him or her.

4. Subpart V–2 (§§ 0.129–0.129b) is removed.

Dated: April 16, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–11268 Filed 4–30–97; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS CARDINAL (MHC 60) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia, 22332–2400, Telephone Number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS CARDINAL (MHC 60) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(f), pertaining to the display of all-round lights by a vessel engaged in mineclearance operations; and Annex I, paragraph 9(b), prescribing that all-round lights be located as not to be obscured by masts, topmasts or structures within angular sectors of more than six degrees. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment

for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Section 706.2 is amended by adding, in numerical order, the following entry for USS CARDINAL (MHC 60) to Table Four, paragraph 18:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obscured angles relative to ship's heading	
		Port	STBD
* * * *	*	*	*
CARDINAL	MHC 60	65.0° to 75.6°	284.1° to 294.6°
* * * *	*	*	*

Dated: April 15, 1997.

R. R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 97–11335 Filed 4–30–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–97–003]

RIN–AE94

Puget Sound and Adjacent Waters, WA-regulated Navigation Area

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: By this direct final rule, the Coast Guard is permanently amending a local regulation governing navigation in Puget Sound and adjacent waters, Washington. This amendment corrects an administrative error which unintentionally omitted the District Commander's authority to grant waivers from the rule excluding tankers over 125,000 dead weight tons from operating in Puget Sound, Puget Sound Vessel Traffic Service's (VTS) authority to grant deviations from the requirement that vessels keep the center of the precautionary areas to port, and emergency authority for masters, pilots, and others to deviate from the requirement that vessels keep the center of the precautionary areas to port. This deviation authority was inadvertently omitted when the Vessel Traffic Service regulations were amended in 1994.

DATES: This rule is effective on July 30, 1997, unless the Coast Guard receives written adverse comments or written notice of intent to submit adverse comments on or before June 30, 1997. If the Coast Guard receives written adverse comment or written notice of intent to submit adverse comments, the Coast Guard will publish a timely withdrawal of all or part of this direct final rule.

ADDRESSES: Comments may be mailed or delivered to U.S. Coast Guard, Thirteenth Coast Guard District, Marine Safety Division, 915 Second Avenue, room 3506, Seattle, WA 98174–1067. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The Marine Safety Division maintains the public docket for this rule making. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant T. G. Favreau, Compliance Branch Chief, U.S. Coast Guard, Thirteenth Coast Guard District, Marine Safety Division, telephone (206) 220–7224.

SUPPLEMENTARY INFORMATION:

Request for Comments

Any comments must identify the names and address of the person submitting the comment, specify the rule making docket (CGD 13–97–003) and the specific section of this rule to which each comment applies, and give the reason for each specific comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no adverse comments are anticipated. If no adverse comments or any written notice of intent to submit adverse comment are received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days prior to the effective date, the Coast Guard will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives written adverse comment or written notice of intent to submit adverse comment, the Coast Guard will publish a document announcing withdrawal of all or part of this direct final rule. If adverse comments apply to only part of this rule, and it is possible to remove that part without defeating the purpose, the Coast Guard may adopt as final those parts of this rule for which no adverse comments were received. The part of this rule that was the subject of adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate Notice of Proposed Rule Making (NPRM) will be published and a new opportunity for comment provided.

A comment is considered ''adverse'' if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

By this direct final rule, the Coast Guard is amending 33 CFR part 165 to

correct a drafting error which inadvertently omitted (1) the District Commander's authority to grant waivers from the rule excluding tankers over 125,000 dead weight tons from operating in Puget Sound, (2) Puget Sound Vessel Traffic Service's (VTS) authority to grant deviations from the requirement that vessels keep the center of the precautionary areas to port, and (3) emergency authority for masters, pilots, and others to deviate from the requirement that vessels keep the center of the precautionary areas to port. When the requirements of 33 CFR 161.143 and 33 CFR 161.152(b) were combined into 33 CFR 165.1303, the deviation authority previously contained in 33 CFR 161.108 and 33 CFR 161.110 was inadvertently omitted. (*See* CGD 90–020, 59 FR 36335, July 15, 1994.) This amendment merely reinstates that deviation authority originally granted to the Thirteenth Coast Guard District Commander and to the Puget Sound VTS.

As amended in 1994, the current regulations do not allow for tank vessels over 125,000 dead weight tons to enter Puget Sound and adjacent waters. This direct final rule permanently amends 33 CFR 165.1303 to allow the Thirteenth Coast Guard District Commander to grant waivers for such tank vessels in the regulated navigation area if the proposed deviation from the rules provides an adequate level of safety. Under this amendment, the Coast Guard expects that tank vessels in this category would be allowed to enter Puget Sound only for cleaning or repair with a tug escort.

This amendment also allows the VTS to authorize deviation from the requirements to keep the center of the precautionary areas to port when operating in a precautionary area in Puget Sound. Such deviations are occasionally needed in order to prevent collisions and groundings and to protect the navigable waters of the VTS Area from environmental harm resulting from collisions and groundings.

Finally, this amendment allows the master, pilot, and others directing the movement of vessel to deviate from the requirement to keep the center of the precautionary area to port in an emergency situation, if such emergency deviation is immediately reported to the Vessel Traffic Center.

Discussion of Rules

The Coast Guard is permanently amending 33 CFR 165.1303—Puget Sound and adjacent waters, WA-regulated navigation area. Section 165.1303 is amended by revising paragraph (b)(2) and adding new paragraphs (c)(1), (c)(2), and (c)(3).

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that full Regulatory Evaluation under paragraph 10.e of the regulatory policies and procedures of DOT is unnecessary, because an ability to deviate will not create any economic impact. This conclusion is based on the fact that this direct final rule only reinstates and clarifies what was inadvertently omitted when 33 CFR 161.108 was merged into 33 CFR 165.1303. It also provides the potential for greater flexibility for the operation of tank vessels in Puget Sound.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rule making is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Reinstatement of this section will have no economic impact on small entities because it merely restores the deviation authority originally in place for operation of tank vessels larger than 125,000 deadweight tons in a regulatory navigation area and allows for greater flexibility in vessel operations in the VTS Area. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this change will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e.34(g) of Commandant Instruction M1675.1B (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. Section 2.B.2.e.34(g) of that instruction requires an Environmental Analysis Checklist and a Categorical Exclusion Determination to be prepared for regulatory activity of this type. Both the Environmental Analysis Checklist and the Categorical Exclusion Determination are available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR 165.1303 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46.

2. In § 165.1303, paragraph (b)(2) is revised and paragraph (c) is added to read as follows:

§ 165.1303 Puget Sound and adjacent waters, WA-regulated navigation area.

* * * * *

(b) * * *

(2) Commander, Thirteenth Coast Guard District may, upon written request, issue an authorization to deviate from paragraph (b)(1) of this section if it is determined that such deviation provides an adequate level of safety. Any application for authorization must state the need and fully describe the proposed procedure.

(c) *Precautionary Area Regulations.*

(1) A vessel in a precautionary area which is depicted on National Oceanic and Atmospheric Administration (NOAA) nautical charts, except precautionary ''RB'' (a circular area of 2,500 yards radius centered at 48–26′24″ N., 122–45′12″ W.), must keep the center of the precautionary area to port.

Note: The center of precautionary area ''RB'' is not marked by a buoy.

(2) The Puget Sound Vessel Traffic Service (PSVTS) may, upon verbal

request, authorize a onetime deviation from paragraph (c)(1) of this section for a voyage, or part of a voyage, if the proposed deviation provides a level of safety equivalent to or beyond that provided by the required procedure. The deviation request must be made well in advance to allow the requesting vessel and the Vessel Traffic Center (VTC) sufficient time to assess the safety of the proposed deviation. Discussions between the requesting vessel and the VTC should include, but are not limited to, information on the vessel handling characteristics, traffic density, radar contacts, and environmental conditions.

(3) In an emergency, the master, pilot, or person directing the movement of the vessel may deviate from paragraph (c)(1) of this section to the extent necessary to avoid endangering persons, property, or the environment, and shall report the deviation to the VTC as soon as possible.

Dated: April 14, 1997.

J. David Spade,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 97–11210 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 1 and 8

[Docket No. OST–96–1427]

RIN: 2105–AC51

Classified Information

AGENCY: Office of the Secretary, DOT

ACTION: Final rule.

SUMMARY: DOT revises its regulations regarding classification and declassification of, and access to, classified information, and delegates to the Assistant Secretary for Administration authority to ensure compliance within DOT with the regulations and the underlying Executive Orders. This action is taken in response to the President's Regulatory Reinvention Initiative and in order to implement recent Executive Orders.

DATES: This rule takes effect June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION: In 1995, the President of the United States issued two Executive Orders making substantial revisions to the rules under which agencies of the Executive Branch, such as DOT, manage information that requires special treatment in the interest of national security. Briefly stated, Executive Order 12958 of April 17, 1995, Classified National Security Information, requires that less information be classified; and Executive Order 12968 of August 2, 1995, Access to Classified Information, requires agencies to provide administrative review of decisions to deny access to classified information. This amendment seeks to implement both Orders. To foster uniform administration within DOT, authority to ensure compliance is being delegated to the Assistant Secretary for Administration.

Public comment was invited (61 FR 3886; July 1, 1996), but none was received. The proposal is being promulgated without substantive change.

Analysis of regulatory impacts. This amendment is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this amendment will not have a significant economic impact on a substantial number of small entities.

This amendment does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the amendment does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1980.

List of Subjects

49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

49 CFR Part 8

Classified information. In accordance with the above, DOT amends 49 CFR, as follows:

PART 1 [AMENDED]

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

Authority: 49 U.S.C. 322.

2. In § 1.59, a new paragraph (e) is added to read as follows:

§ 1.59 Delegations to the Assistant Secretary for Administration.

* * * * *

(e) * * *

(9) Ensure Department-wide compliance with Executive Orders 10450, 12829, 12958, 12968, and related regulations and issuances.

* * * * *

3. Part 8 is revised, to read as follows:

PART 8—CLASSIFIED INFORMATION: CLASSIFICATION/ DECLASSIFICATION/ACCESS

Subpart A—General

Sec.
8.1 Scope.
8.3 Applicability.
8.5 Definitions.
8.7 Spheres of responsibility.

Subpart B—Classification/Declassification of Information

8.9 Information Security Review Committee.
8.11 Authority to classify information.
8.13 Authority to downgrade or declassify.
8.15 Mandatory review for classification.
8.17 Classification challenges.
8.19 Procedures for submitting and processing requests for classification reviews.
8.21 Burden of proof.
8.23 Classified information transferred to the Department of Transportation.

Subpart C—Access to Information

8.25 Personnel Security Review Board.
8.27 Public availability of declassified information.
8.29 Access by historical researchers and former Presidential appointees.
8.31 Industrial security.

Authority: E. O. 10450, 3 CFR, 1949–1953 Comp., p. 936; E. O. 12829, 3 CFR, 1993 Comp., p. 570; E. O. 12958, 3 CFR, 1995 Comp., p. 333; E. O. 12968, 3 CFR, 1995 Comp., p. 391.

Subpart A—General

§ 8.1 Scope.

This part sets forth procedures for the classification, declassification, and availability of information that must be protected in the interest of national security, in implementation of Executive Order 12958 of April 17, 1995, ''Classified National Security Information;'' and for the review of decisions to revoke, or not to issue, national security information clearances, or to deny access to

classified information, under Executive Order 12968 of August 2, 1995, ''Access to National Security Information''.

§ 8.3 Applicability.

This part applies to all elements of the Department of Transportation.

§ 8.5 Definitions.

As used in this part:

Classification means the act or process by which information is determined to be classified information.

Classification levels means the following three levels at which information may be classified:

(a) Top secret. Information that requires the highest degree of protection, and the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(b) Secret. Information that requires a substantial degree of protection, and the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(c) Confidential. Information that requires protection and the unauthorized disclosure of which could reasonably be expected to cause damage to the national security that the original classification authority is able to identify or describe.

Classified information or ''classified national security information'' means information that has been determined under Executive Order 12958, or any predecessor or successor order, to require protection against unauthorized disclosure, and is marked to indicate its classified status when in documentary form.

Clearance means that an individual is eligible, under the standards of Executive Orders 10450 and 12968 and appropriate DOT regulations, for access to classified information.

Damage to the national security means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value, and utility of that information.

Declassification means the authorized change in the status of information from classified information to unclassified information.

Downgrading means a determination by a declassification authority that information classified and safeguarded at a specific level shall be classified and safeguarded at a lower level.

Information means any knowledge that can be communicated, or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government. ''Control'' means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

Mandatory declassification review means the review for declassification of classified information in response to a request for declassification that qualifies under Section 3.6 of Executive Order 12958.

Original classification means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

Original classification authority means an individual authorized in writing, either by the President or by agency heads or other officials designated by the President, to classify information in the first instance.

§ 8.7 Spheres of responsibility.

(a) Pursuant to Section 5.6(c) of Executive Order 12958, and to section 6.1 of Executive Order 12968, the Assistant Secretary for Administration is hereby designated as the senior agency official of the Department of Transportation with assigned responsibilities to assure effective compliance with and implementation of Executive Order 12958, Executive Order 12968, Office of Management and Budget Directives, the regulations in this part, and related issuances.

(b) In the discharge of these responsibilities, the Assistant Secretary for Administration will be assisted by the Director of Security and Administrative Management, who, in addition to other actions directed by this part, will evaluate the overall application of and adherence to the security policies and requirements prescribed in this part and who will report his/her findings and recommendations to the Assistant Secretary for Administration, heads of Departmental elements, and, as appropriate, to the Secretary.

(c) Secretarial Officers and heads of Departmental elements will assure that the provisions in this part are effectively administered, that adequate personnel and funding are provided for this purpose, and that corrective actions that may be warranted are taken promptly.

Subpart B—Classification/ Declassification of Information

§ 8.9 Information Security Review Committee.

(a) There is hereby established a Department of Transportation Information Security Review Committee, which will have authority to:

(1) Act on all suggestions and complaints not otherwise resolved with respect to the Department's administration of Executive Order 12958 and implementing directives, including those regarding overclassification, failure to declassify, or delay in declassifying;

(2) Act on appeals of requests for classification reviews, and appeals of requests for records under 5 U.S.C. 552 (Freedom of Information Act) when the initial, and proposed final, denials are based on continued classification of the record; and

(3) Recommend to the Secretary, when necessary, appropriate administrative action to correct abuse or violation of any provision of Executive Order 12598 and implementing directives.

(b) The Information Security Review Committee will be composed of the Assistant Secretary for Administration, who will serve as Chair; the General Counsel; and the Director of Security and Administrative Management. When matters affecting a particular Departmental agency are at issue, the Associate Administrator for Administration for that agency, or the Chief of Staff for the U.S. Coast Guard, as the case may be, will participate as an ad hoc member, together with the Chief Counsel of that agency. Any regular member may designate a representative with full power to serve in his/her place.

(c) In carrying out its responsibilities to review decisions to revoke or not to issue clearances, or to deny access to classified information, the Committee will establish whatever procedures it deems fit.

§ 8.11 Authority to classify information.

(a) Executive Order 12958 confers upon the Secretary of Transportation the authority to originally classify information as SECRET or CONFIDENTIAL with further authorization to delegate this authority.

(b) The following delegations of authority originally to classify information as ''Secret'' or ''Confidential'', which may not be redelegated, are hereby made:

(1) *Office of the Secretary of Transportation.* The Deputy Secretary; Assistant Secretary for Administration; Director of Intelligence and Security; Director of Security and Administrative Management.

(2) *United States Coast Guard.* Commandant; Chief, Office of Law Enforcement and Defense Operations.

(3) *Federal Aviation Administration.* Administrator; Assistant Administrator for Civil Aviation Security.

(4) *Maritime Administration.* Administrator.

(c) Although the delegations of authority set out in paragraph (b) of this section are expressed in terms of positions, the authority is personal and is invested only in the individual occupying the position. The authority may not be exercised ''by direction of'' a designated official. The formal appointment or assignment of an individual to one of the identified positions or a designation in writing to act in the absence of one of these officials, however, conveys the authority originally to classify information as ''SECRET''.

(d) Previous delegations and redelegations of authority within the Department of Transportation originally to classify information are hereby rescinded.

§ 8.13 Authority to downgrade or declassify.

Information originally classified by the Department may be specifically downgraded or declassified by either the official authorizing the original classification, if that official is still serving in the same position, the originator's current successor in function, a supervisory official of either, officials delegated declassification authority in writing by the Secretary, or by the Departmental Information Security Review Committee.

§ 8.15 Mandatory review for classification.

(a) All information classified by the Department of Transportation under Executive Order 12958 or predecessor orders shall be subject to a review for declassification if:

(1) the request for review describes the information with sufficient specificity to enable its location with a reasonable amount of effort; and

(2) the information has not been reviewed for declassification within the prior two years. If the information has been reviewed within the prior two years, or the information is the subject of pending litigation, the requestor will be informed of this fact, and of the Department's decision not to declassify the information and of his/her right to appeal the Department's decision not to declassify the information to the Interagency Security Classification Appeals Panel.

(b) All information reviewed for declassification because of a mandatory review will be declassified if it does not meet the standards for classification in Executive Order 12958. The information will then be released unless withholding is otherwise authorized and warranted under applicable law.

§ 8.17 Classification challenges.

(a) Authorized holders of information classified by the Department of Transportation who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information before the Departmental Information Security Review Committee.

(1) No individual will be subject to retribution for bringing such a challenge; and

(2) Each individual whose challenge is denied will be advised that he/she may appeal to the Interagency Security Classification Appeals Panel established by section 5.4 of Executive Order 12958.

(b) This classification challenge provision is not intended to prevent an authorized holder of information classified by the Department of Transportation from informally questioning the classification status of particular information. Such information inquiries should be encouraged as means to resolve classification concerns and reduce the administrative burden of formal challenges.

§ 8.19 Procedures for submitting and processing requests for classification reviews.

(a) The Director of Security and Administrative Management is hereby designated as the official to whom a member of the public or another department or agency should submit a request for a classification review of classified information produced by or under the primary cognizance of the Department. Elements of the Department that receive a request directly will immediately notify the Director.

(b) If the request for classification review involves material produced by or under the cognizance of the U.S. Coast Guard or the Federal Aviation Administration, the Director will forward the request to the headquarters security staff of the element concerned for action. If the request involves material produced by other Departmental elements, the Director will serve as the office acting on the request.

(c) The office acting on the request will:

(1) Immediately acknowledge receipt of the request and provide a copy of the correspondence to the Director. If a fee for search of records is involved pursuant to 49 CFR Part 7, the requester will be so notified;

(2) Conduct a security review, which will include consultation with the office that produced the material and with source authorities when the classification, or exemption of material from automatic declassification, was based upon determinations by an original classifying authority; and

(3) Assure that the requester is notified of the determination within 30 calendar days or given an explanation as to why further time is necessary, and provide a copy of the notification to the Director.

(d) If the determination reached is that continued classification is required, the notification to the requester will include, whenever possible, a brief statement as to why the requested material cannot be declassified. The notification will also advise the requester of the right to appeal the determination to the Departmental Information Security Review Committee. A requester who wishes to appeal a classification review decision, or who has not been notified of a decision after 60 calendar days, may submit an appeal to the Departmental Information Security Review Committee.

(e) If the determination reached is that continued classification is not required, the information will be declassified and the material remarked accordingly. The office acting on the request will then refer the request to the office originating the material or higher authority to determine if it is otherwise withholdable from public release under the Freedom of Information Act (5 U.S.C. 552) and the Department's implementing regulations (49 CFR Part 7).

(1) If the material is available under the Freedom of Information Act, the requester will be advised that the material has been declassified and is available. If the request involves the furnishing of copies and a fee is to be collected, the requester will be so advised pursuant to 49 CFR Part 7, Departmental regulations implementing the Freedom of Information Act.

(2) If the material is not available under the Freedom of Information Act, the requester will be advised that the material has been declassified but that the record is unavailable pursuant to the Freedom of Information Act, and that the provisions concerning procedures for reconsidering decisions not to disclose records, contained in 49 CFR Part 7, apply.

(f) Upon receipt of an appeal from a classification review determination based upon continued classification, the Departmental Information Security Review Committee will acknowledge

receipt immediately and act on the matter within 30 calendar days. With respect to information originally classified by or under the primary cognizance of the Department, the Committee, acting for the Secretary, has authority to overrule previous determinations in whole or in part when, in its judgment, continued protection in the interest of national security is no longer required. When the classification of the material produced in the Department is based upon a classification determination made by another department or agency, the Committee will immediately consult with its counterpart committee for that department or agency.

(1) If it is determined that the material produced in the Department requires continued classification, the requester will be so notified and advised of the right to appeal the decision to the Interagency Classification Review Committee.

(2) If it is determined that the material no longer requires classification, it will be declassified and remarked. The Committee will refer the request to the General Counsel, or to the head of the Departmental agency concerned, as the case may be, to determine if the material is otherwise withholdable from the public under the Freedom of Information Act (5 U.S.C. 552) and Departmental regulations, (49 CFR Part 7), and paragraphs (f)(1) and (2) of this section will be followed. A copy of the response to the requester will be provided to the Committee.

(g) Requests for a classification review of material more than 25 years old will be referred directly to the Archivist of the United States and the requester will be notified of the referral. In this event, the provisions of this section apply.

(h) Whenever a request is insufficient in the description of the record sought, the requester will be asked to limit his request to records that are reasonably obtainable. If, in spite of these steps, the requester does not describe the records with sufficient particularity, or the record requested cannot be obtained with a reasonable amount of effort, the requester will be notified of the reasons why the request is denied and of his/her right to appeal the determination to the Departmental Information Security Review Committee.

§ 8.21 Burden of proof.

For the purpose of determinations to be made under §§ 8.13, 8.15, and 8.17, the burden of proof is on the originating Departmental agency to show that continued classification is warranted.

§ 8.23 Classified information transferred to the Department of Transportation.

(a) Classified information officially transferred to the Department in conjunction with a transfer of function, and not merely for storage purposes, will be considered to have been originated by the Department.

(b) Classified information in the custody of the Department originated by a department or agency that has ceased to exist and for whom there is no successor agency will be deemed to have been originated by the Department. This information may be declassified or downgraded by the Department after consultation with any other agency that has an interest in the subject matter of the information. Such agency will be allowed 30 calendar days in which to express an objection, if it so desires, before action is taken. A difference of opinion that cannot be resolved will be referred to the Departmental Information Security Review Committee, which will consult with its counterpart committee for the other agency.

(c) Classified information transferred to the National Archives and Records Administration (NARA) will be declassified or downgraded by the Archivist of the United States in accordance with Executive Order 12958, Departmental classification guides, and any existing procedural agreement between NARA and the Department. The Department will take all reasonable steps to declassify information contained in records determined to have permanent historical value before they are accessioned in NARA.

(d) To the extent practicable, the Department will adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified under the provisions of this part for automatic declassification. To the maximum extent possible without destroying the integrity of the Department's files, all such material will be segregated or set aside for public release upon request. The Department will cooperate with the Archivist in efforts to establish a Government-wide database of information that has been declassified.

Subpart C—Access to Information

§ 8.25 Personnel Security Review Board.

(a) There is hereby established a Department of Transportation Personnel Security Review Board, which will, on behalf of the Secretary of Transportation (except in any case in which the Secretary personally makes the decision), make the administratively final decision on an appeal arising in any part of the Department from:

(1) A decision not to grant access to classified information;

(2) A decision to revoke access to classified information; or

(3) A decision under § 8.29 to deny access to classified information.

(b) The Personnel Security Review Board will be composed of:

(1) two persons appointed by the Assistant Secretary for Administration: one from the Office of Personnel and Training, and one, familiar with personnel security adjudication, from the Office of Security and Administrative Management, who will serve as Chair;

(2) one person appointed by the General Counsel, who, in addition to serving as a member of the Board, will provide to the Board whatever legal services it may require; and

(3) one person appointed by each of the Commandant of the Coast Guard and the Federal Aviation Administrator.

(4) Any member may designate a representative, meeting the same criteria as the member, with full power to serve in his/her place.

(c) In carrying out its responsibilities to review final decisions to revoke or deny access to classified information, the Board will establish whatever procedures it deems fit.

§ 8.27 Public availability of declassified information.

(a) It is a fundamental policy of the Department to make information available to the public to the maximum extent permitted by law. Information that is declassified for any reason loses its status as material protected in the interest of national security. Accordingly, declassified information will be handled in every respect on the same basis as all other unclassified information. Declassified information is subject to the Departmental public information policies and procedures, with particular reference to the Freedom of Information Act (5 U.S.C. 552) and implementing Departmental regulations (49 CFR Part 7).

(b) In furtherance of this policy, all classified material produced after June 1, 1972 that is of sufficient historical or other value to warrant preservation as permanent records in accordance with appropriate records administrative standards, and that becomes declassified, will be systematically reviewed prior to the end of each calendar year for the purpose of making the material publicly available. To the maximum extent possible without destroying the integrity of the Department's files, all such material will

be segregated or set aside for public release upon request.

§ 8.29 Access by historical researchers and former Presidential appointees.

(a) *Historical researchers.* (1) Persons outside the executive branch who are engaged in historical research projects may have access to classified information provided that:

(i) Access to the information is clearly consistent with the interests of national security; and

(ii) The person to be granted access is trustworthy.

(2) The provisions of this paragraph apply only to persons who are conducting historical research as private individuals or under private sponsorship and do not apply to research conducted under Government contract or sponsorship. The provisions are applicable only to situations where the classified information concerned, or any part of it, was originated by the Department or its contractors, or where the information, if originated elsewhere, is in the sole custody of the Department. Any person requesting access to material originated in another agency or to information under the exclusive jurisdiction of the National Archives and Records Administration (NARA) will be referred to the other agency or to NARA, as appropriate.

(3) When a request for access to classified information for historical research is received, it will be referred to the appropriate local security office. That office will obtain from the applicant completed Standard Form 86, Questionnaire for National Security Positions, in triplicate, and Standard Form 87, Fingerprint Chart; a statement in detail to justify access, including identification of the kind of information desired and the organization or organizations, if any, sponsoring the research; and a written statement (signed, dated, and witnessed) with respect to the following:

(i) That the applicant will abide by regulations of the Department:

(A) To safeguard classified information; and

(B) To protect information that has been determined to be proprietary or privileged and is therefore not eligible for public dissemination.

(ii) That the applicant understands that any classified information that the applicant receives affects the security of the United States.

(iii) That the applicant acknowledges an obligation to safeguard classified information or privileged information of which the applicant gains possession or knowledge as a result of the applicant's access to files of the Department.

(iv) That the applicant agrees not to reveal to any person or agency any classified information or privileged information obtained as a result of the applicant's access except as specifically authorized in writing by the Department, and further agrees that the applicant shall not use the information for purposes other than those set forth in the applicant's application.

(v) That the applicant agrees to authorize a review of the applicant's notes and manuscript for the sole purpose of determining that no classified information or material is contained therein.

(vi) That the applicant understands that failure to abide by conditions of this statement will constitute sufficient cause for canceling the applicant's access to classified information and for denying the applicant any future access, and may subject the applicant to criminal provisions of Federal law as referred to in this statement.

(vii) That the applicant is aware and fully understands that title 18, United States Code, Crimes and Criminal Procedures, and the Internal Security Act of 1950, as amended, title 50, United States Code, prescribe, under certain circumstances, criminal penalties for the unauthorized disclosure of information respecting the national security, and for loss, destruction, or compromise of such information.

(viii) That this statement is made to the U.S. Government to enable it to exercise its responsibilities for the protection of information affecting the national security.

(ix) That the applicant understands that any material false statement that the applicant makes knowingly and willfully will subject the applicant to the penalties of 18 U.S.C. 1001.

(4) The security office will process the forms in the same manner as specified for a preappointment national agency check for a critical-sensitive position. Upon receipt of the completed national agency check, the security office, if warranted, may determine that access by the applicant to the information will be clearly consistent with the interests of national security and the person to be granted access is trustworthy. If deemed necessary, before making its determination, the office may conduct or request further investigation. Before access is denied in any case, the matter will be referred through channels to the Director of Security and Administrative Management for review and submission to the Personnel Security Review Board for final review.

(5) If access to TOP SECRET or intelligence or communications security information is involved a special background investigation is required. However, this investigation will not be requested until the matter has been referred through channels to the Director of Security and Administrative Management for determination as to adequacy of the justification and the consent of other agencies as required.

(6) When it is indicated that an applicant's research may extend to material originating in the records of another agency, approval must be obtained from the other agency prior to the grant of access.

(7) Approvals for access will be valid for the duration of the current research project but no longer than 2 years from the date of issuance, unless renewed. If a subsequent request for similar access is made by the individual within one year from the date of completion of the current project, access may again be granted without obtaining a new National Agency Check. If more than one year has elapsed, a new National Agency Check must be obtained. The local security office will promptly advise its headquarters security staff of all approvals of access granted under the provisions of this section.

(8) An applicant may be given access only to that classified information that is directly pertinent to the applicant's approved project. The applicant may review files or records containing classified information only in offices under the control of the Department. Procedures must be established to identify classified material to which the applicant is given access. The applicant must be briefed on local procedures established to prevent unauthorized access to the classified material while in the applicant's custody, for the return of the material for secure storage at the end of the daily working period, and for the control of the applicant's notes until they have been reviewed. In addition to the security review of the applicant's manuscript, the manuscript must be reviewed by appropriate offices to assure that it is technically accurate insofar as material obtained from the Department is concerned, and is consistent with the Department's public release policies.

(b) *Former Presidential appointees.* Persons who previously occupied policymaking positions to which they were appointed by the President may be granted access to classified information or material that they originated, reviewed, signed, or received, while in public office, provided that:

(1) It is determined that such access is clearly consistent with the interests of national security; and

(2) The person agrees to safeguard the information, to authorize a review of the person's notes to assure that classified information is not contained therein, and that the classified information will not be further disseminated or published.

§ 8.31 Industrial security.

(a) *Background.* The National Industrial Security Program was established by Executive Order 12829 of January 6, 1993 for the protection of information classified pursuant to Executive Order 12356 of April 2, 1982, National Security Information, or its predecessor or successor orders, and the Atomic Energy Act of 1954, as amended. The Secretary of Defense serves as the Executive Agent for inspecting and monitoring contractors, licensees, grantees, and certificate holders that require or will require access to, or that store or will store, classified information, and for determining the eligibility for access to classified information of contractors, licensees, certificate holders, and grantees, and their respective employees.

(b) *Implementing regulations.* The Secretary of Transportation has entered into agreement for the Secretary of Defense to render industrial security services for the Department of Transportation. Regulations prescribed by the Secretary of Defense to fulfill the provisions of Executive Order 12829 have been extended to protect release of classified information for which the Secretary of Transportation is responsible. Specifically, this regulation is DOD 5220.22–M, National Industrial Security Program Operating Manual. This regulation is effective within the Department of Transportation, which functions as a User Agency as prescribed in the regulation. Appropriate security staffs, project personnel, and contracting officers assure that actions required by the regulation are taken.

Issued in Washington, DC, on March 24, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–9787 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

RIN 2105–AC57

Maintenance of and Access to Records Pertaining to Individuals

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: DOT revises its regulations in implementing the Privacy Act, 5 U.S.C. 552a. This revision updates organizational changes since the last revision and streamlines the regulations in order to make the regulations more useful.

DATES: This rule is effective June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Dorothy A. Chambers, Office of the General Counsel, C–12, Department of Transportation, Washington, DC 20590, telephone (202) 366–4542, FAX (202) 366–7152.

SUPPLEMENTARY INFORMATION: The President instituted a Regulatory Review initiative, for the reinvention of regulations by eliminating duplicate, redundant or unnecessary language and revising regulations to meet the need of users. In response to this initiative, we reviewed Part 10 and proposed to revise this section to update and streamline information on maintenance and access to records pertaining to individuals. The main revision is to remove from the Code of Federal Regulations Appendices B through J to this part and remove references to the appendices throughout the Part. These appendices contain information that is available through the Notice of Records Systems published by the **Federal Register**, National Archives and Records Administration, which describes the systems of records maintained by all Federal agencies, including the Department and its components. Therefore, it is unnecessary to repeat this information in the regulations. Several other housekeeping corrections were also made. Public comment was invited (61 FR 29522; June 11, 1996), but none was received. Upon review, we have decided to issue the proposal without change, except to reflect that the Inspector General has the same authority under this part as does any Administrator; and that the Surface Transportation Board (STB), a successor to the Interstate Commerce Commission within DOT, is not covered by these Privacy Act regulations, but, rather, by its own, except to the extent that any system of records notice provides otherwise. That is, if the STB is included in a DOT system of records, then these regulations apply to that system, including STB's participation in it.

Analysis of Regulatory Impacts.

This amendment is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

Under the Regulatory Flexibility Act, the only group of persons who will be directly affected by this amendment are those members of the public who are the subjects of any of our Privacy Act systems of records. These qualify as small entities and will have burdens lessened by this amendment, as the effect of the amendment will be to make our Privacy Act regulations easier to understand; however, it is not likely that any such burden reduction will be large nor that it will be convertible into economic equivalents. Hence, I certify that this amendment will not have a significant economic impact on a substantial number of small entities.

This amendment does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the amendment does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act, as amended.

List of Subjects in 49 CFR Part 10

Privacy.

In accordance with the above, DOT amends 49 CFR Part 10 as follows:

PART 10—[AMENDED]

1. The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

§ 10.1 [Amended]

2. Section 10.1 is amended by deleting paragraphs (b), (c), and (d), and by removing the paragraph designation ''(a)'' from the remaining text.

3. In § 10.5, within the definition of Department, the introductory text and paragraph (f) are revised, and a new paragraph (i) is added at the end to read as follows:

§ 10.5 Definitions.

* * * * *

Department means the Department of Transportation, including the Office of the Secretary, the Office of Inspector General, and the following operating administrations: This definition specifically excludes the Surface Transportation Board, which has its own Privacy Act regulations (49 CFR Part 1007), except to the extent that any system of records notice provides otherwise.

* * * * *

(f) Federal Transit Administration.

* * * * *

(i) Bureau of Transportation Statistics.

4. In § 10.11, the first sentence is revised to read as follows:

§ 10.11 Administration of part.

Authority to administer this part in connection with the records of the Office of the Secretary is delegated to the Assistant Secretary for Administration.

* * * * *

5. In § 10.23 the introductory text is revised to read as follows:

§ 10.23 Accounting of disclosures.

Each operating administration, the Office of Inspector General, and the Office of the Secretary, with respect to each system of records under its control:

* * * * *

6. In § 10.31, paragraph (a) is revised to read as follows:

§ 10.31 Requests for records.

(a) Ordinarily, each person desiring to determine whether a record pertaining to him/her is contained in a system of records covered by this part or desiring access to a record covered by this part, or to obtain a copy of such a record, shall make a request in writing addressed to the system manager. The ''Privacy Act Issuances'' published by the Office of the **Federal Register**, National Archives and Records Administration, describes the systems of records maintained by all Federal agencies, including the Department and its components. In exceptional cases oral requests are accepted. A description of DOT Privacy Act systems notices is available through the Internet free of charge at http://www.access.gpo.gov/su—docs/aces/PrivacyAct.shtml?desc015.html. See § 10.13(b) regarding inquiries concerning Privacy Act matters or requests for assistance.

* * * * *

7. In § 10.35, paragraph (a) introductory text is revised and paragraph (a)(12) is added to read as follows:

§ 10.35 Conditions of disclosure.

(a) No record that is contained within a system of records of the Department is disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

* * * * *

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

* * * * *

8. In § 10.37, the last sentence is revised to read as follows:

§ 10.37 Identification of individual making request.

* * * * *

In such cases, these additional requirements are listed in the public notice for the system.

9. Section 10.39 is revised to read as follows:

§ 10.39 Location of records.

Each record made available under this subpart is available for inspection and copying during regular working hours at the place where it is located, or, upon reasonable notice, at the document inspection facilities of the Office of the Secretary or each administration. Original records may be copied but may not be released from custody. Upon payment of the appropriate fee, copies are mailed to the requester.

10. Section 10.41 is revised to read as follows:

§ 10.41 Requests for correction of records.

Any person who desires to have a record pertaining to that person corrected shall submit a written request detailing the correction and the reasons the record should be so corrected. Requests for correction of records shall be submitted to the System Manager.

11. In § 10.51, paragraphs (c) and (h) are revised, to read as follows:

§ 10.51 General.

* * * * *

(c) Each application for review must be made in writing and must include all information and arguments relied upon by the person making the request, and be submitted within 30 days of the date of the initial denial; exceptions to this time period are permitted for good reason.

* * * * *

(h) Any final decision by an Administrator or his/her delegate not to grant access to or amend a record under this part is subject to concurrence by the General Counsel or his or her delegate.

12. In § 10.63 introductory text is revised to read as follows:

§ 10.63 Specific exemptions.

The Secretary or his or her delegee, in the case of the Office of the Secretary; or the Administrator or his or deluge, in the case of an operating administration; or the Inspector General or his or her deluge, in the case of the Office of Inspector General, may exempt any system of records that is maintained by the Office of the Secretary, an operating administration, or the Office of Inspector General, as the case may be, from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Act and implementing §§ 10.23(c); 10.35(b); 10.41; 10.43; 10.45; 10.21(a) and 10.21(d)(6), (7), and (8), under the following conditions:

* * * * *

13. ''Appendix A to part 10'' is redesignated as ''Appendix to part 10''.

14. Appendices B through J are removed.

Issued in Washington, DC, on March 24, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–11305 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970410085–7085–01; I.D. 022197E]

RIN 0648–AJ72

Procedures Governing Establishment and Operation of Fishery Negotiation Panels

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

ACTION: Final rule.

SUMMARY: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) directs the Secretary of Commerce (Secretary) to implement regulations providing for the optional use of ''fishery negotiation

panels'' (FNPs) and negotiated rulemaking techniques in the development of fishery conservation and management measures. The Magnuson-Stevens Act requires the Secretary to establish procedures for the operation of FNPs comparable to those set out in the Negotiated Rulemaking Act (NRA). The following regulations are intended to implement these requirements.

EFFECTIVE DATE: May 1, 1997.

ADDRESSES: Comments should be submitted to the Highly Migratory Species Division, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION:

Background

Section 110 of Public Law No. 104–297, the Sustainable Fisheries Act of 1996, amended section 305 of the Magnuson-Stevens Act, by adding a new section (g) that authorizes both the Secretary and the Fishery Management Councils (Councils) to establish FNPs to assist in the development of conservation and management measures for a fishery under its authority 16 U.S.C. 1855(g). The same section requires NMFS to prepare regulations specifying the procedures for the establishment and operation of FNPs. Section 305(g) further specifies that the procedures are to be comparable to the procedures of the NRA (5 U.S.C. 561 *et seq*.). NMFS was also required to develop these regulations in cooperation with the Administrative Conference of the United States (ACUS), which had extensive experience with the NRA and had published in 1995 a Negotiated Rulemaking Sourcebook. Although the ACUS has since been disbanded, NMFS was able to use the ACUS Negotiated Rulemaking Sourcebook for guidance in preparing this rule.

Both the Councils and NMFS already have extensive procedures regarding the preparation of fishery conservation and management measures and rule publication. However, in the case of Councils, there may be certain, specific circumstances where the use of FNPs may assist a Council with specific fisheries under its authority. Development of a report and identification of areas of consensus among interests on a contentious issue may assist Council debate and voting on a controversial measure if the Council has this information available before its regular meetings.

In the case of the Secretary, section 305(g) of the Magnuson-Stevens Act states that an FNP may be established to assist in the development of specific conservation and management measures in three specific areas. The first area involves rebuilding of fisheries under section 304(e)(5). This section requires the Secretary to prepare a fishery management plan (FMP) or plan amendment and regulations to stop overfishing and rebuild affected stocks of fish within a 9-month timeframe. The second area where an FNP may be used by the Secretary involves the management of highly migratory species (HMS) under section 304(g). Finally, the Secretary may establish and use an FNP for any other fishery with the approval of the appropriate Council.

Establishment of an FNP

Traditionally, negotiated rulemaking provides an opportunity for those with a stake in the potential rulemaking—including the agency—to attempt to reach a consensus on the features of a rule *before* it is proposed by the agency. Following careful identification of the interests that would be significantly affected by the rule, an advisory committee is established on which the various interests are represented through direct representation or through coalitions formed for this purpose.

The NRA established a statutory framework for conduct of negotiated rulemaking. This framework includes convening and determination of need for a negotiated rulemaking committee, publication of notice for applications for membership on the committee, establishment of the committee in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix, and operation of the committee with the use of a facilitator.

This rule requires a Council or NMFS to, effectively, follow the elements of the NRA throughout the establishment and operation of an FNP and thus modifies the NRA procedures to meet the requirements of section 305(g). The intent is to create a committee, comprised of a balanced and representative set of all interests in a negotiation, that can achieve a consensus on all issues involved.

The decision to establish an FNP under section 305(g) also requires consideration of other relevant procedures of the Magnuson-Stevens Act. For example, the decision to establish an FNP for situations involving rebuilding of fisheries also requires determinations regarding the relevant procedures of section 304(e)(5) of the Magnuson-Stevens Act. In this case, establishing an FNP, following the required FACA charter process, convening the FNP, conducting negotiations, publishing the FNP's report in the **Federal Register**, considering the report, considering public comments on the report, and making appropriate determinations would likely render the 9-month deadline under section 304(e)(5) difficult to meet. Thus, it may be impractical to utilize the FNP process in a setting as time-sensitive as rebuilding overfished fisheries.

FNPs may also be established to assist with HMS management under section 304(g). However, under section 302(g)(2) the Secretary is mandated to establish Fishery Advisory Panels for FMPs prepared for HMS. Therefore, in addition to the mandatory Fishery Advisory Panel, the Secretary may choose to establish an FNP to assist the Fishery Advisory Panel in the development of conservation and management measures. A decision to establish an FNP, in addition to the mandatory Fishery Advisory Panel, would have to weigh practical considerations of two groups, working on substantially similar issues, that may be comprised of the same individuals. As there is no limitation of the Secretary's ability to utilize the procedures of the NRA, the Secretary may choose to utilize the procedures of the NRA for the mandatory Fishery Advisory Panel. This rule in no way affects the ability of a Council to establish an advisory panel under section 302(g)(2) of the Magnuson-Stevens Act.

Finally, the Secretary may establish and use FNPs for any other fishery with the approval of the appropriate Council. In these cases, a Council would choose to have NMFS take the lead on creating and operating an FNP, although the Council would still participate as a member of the FNP, and still have the responsibility for submitting any FMP amendment or regulation to the Secretary for review under the Magnuson-Stevens Act.

Operation of an FNP

The intent of this rule is to specify that the following procedures apply to the operation of an FNP, if either the Council or NMFS exercises its authority to establish one. The FNP is chaired by a trained mediator or facilitator. Representatives from one or more Councils (as appropriate) and NMFS are members of the FNP, each representing the Council's and NMFS' own unique set of interests in the outcome. The facilitator oversees the process by focusing the members on the identification of issues and concerns and assisting them to consider ways in

which these can be addressed. The facilitator can also guide discussions between the negotiators and the parties they represent. Meetings are open to the public, in accordance with FACA, and, thus, all interested parties who are not members of the committee may observe the proceedings and participate during public comment periods. The process set out in this rule is thus a method of alternative dispute resolution in which an impartial neutral party is used to facilitate settlement of disputes about the terms of a potential conservation and management measure among the interests that would be significantly affected thereby.

In addition, there are two critical features to this rule: (1) The entire process, if used, must take place *prior* to the beginning of the statutory requirements for implementing FMPs or regulations. However, the Council or NMFS has discretion prior to this point when to use this process. (2) Results and recommendations of the FNP are *advisory* in nature and neither the Council nor the Secretary is obligated to use any or all of the results of an FNP in implementing a rule. If used, an FNP's report could help resolve controversial areas of fish management before these areas are addressed by a Council or NMFS through Magnuson-Stevens Act rulemaking procedures.

Report and Results of FNP Procedures

For the purposes of this rule, and consistent with section 305(g) of the Magnuson-Stevens Act, an FNP is intended only to negotiate conservation and management measures rather than to develop a proposed rule. Thus, this rule modifies the procedures of the NRA to refer to conservation and management measures rather than rules or regulations.

At the conclusion of its negotiations, an FNP may submit a report that would specify all the areas where consensus was reached by the panel, including, if appropriate, proposed conservation and management measures, as well as any other information submitted by members of the FNP. Once NMFS receives the report, the report will be published in the **Federal Register** for public comment. Finally, the FNP's report may be used by the Council or NMFS in the development of any regulation, FMP, or plan amendment.

Classification

Under 5 U.S.C. 553(b)(A), prior notice and an opportunity for public comment are not required to be provided for this rule as this is a rule of procedure. Further, because prior notice and an opportunity for public comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Finally, because this rule is not substantive, it is not subject to the 30-day delay in effective date required of substantive rules under 5 U.S.C. 553(d). This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing.

Dated: April 25, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON ACT PROVISIONS

1. The authority citation for part 600 is revised to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. A new subpart I is added to read as follows:

Subpart I—Fishery Negotiation Panels

600.750 Definitions.
600.751 Determination of need for a fishery negotiation panel.
600.752 Use of conveners and facilitators.
600.753 Notice of intent to establish a fishery negotiation panel.
600.754 Decision to establish a fishery negotiation panel.
600.755 Establishment of a fishery negotiation panel.
600.756 Conduct and operation of a fishery negotiation panel.
600.757 Operational protocols.
600.758 Preparation of report.
600.759 Use of report.
600.760 Fishery Negotiation Panel lifetime.

Subpart I—Fishery Negotiation Panels

§ 600.750 Definitions.

Consensus means unanimous concurrence among the members on a Fishery Negotiation Panel established under this rule, unless such Panel:

(1) Agrees to define such term to mean a general but not unanimous concurrence; or

(2) agrees upon another specified definition.

Fishery negotiation panel (FNP) means an advisory committee established by one or more Councils or the Secretary in accordance with these regulations to assist in the development of fishery conservation and management measures.

Interest means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

Report means a document submitted by an FNP in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

§ 600.751 Determination of need for a fishery negotiation panel.

A Council or NMFS may establish an FNP to assist in the development of specific fishery conservation and management measures. In determining whether to establish an FNP, NMFS or the Council, as appropriate, shall consider whether:

(a) There is a need for specific fishery conservation and management measures.

(b) There are a limited number of identifiable interests that will be significantly affected by the conservation and management measure.

(c) There is a reasonable likelihood that an FNP can be convened with a balanced representation of persons who:

(1) Can adequately represent the interests identified under paragraph (b) of this section.

(2) Are willing to negotiate in good faith to reach a consensus on a report regarding the issues presented.

(d) There is a reasonable likelihood that an FNP will reach

a consensus on a report regarding the issues presented within 1 year from date of establishment of the FNP.

(e) The use of an FNP will not unreasonably delay Council or NMFS fishery management plan development or rulemaking procedures.

(f) The costs of establishment and operation of an FNP are reasonable when compared to fishery management plan development or rulemaking procedures that do not use FNP procedures.

(g) The Council or NMFS has adequate resources and is willing to commit such resources, including technical assistance, to an FNP.

(h) The use of an FNP is in the public interest.

§ 600.752 Use of conveners and facilitators.

(a) *Purposes of conveners.* A Council or NMFS may use the services of a trained convener to assist the Council or NMFS in: (1) Conducting discussions to identify the issues of concern, and to ascertain whether the establishment of an FNP regarding such matter is feasible and appropriate.

(2) Identifying persons who will be significantly affected by the issues

presented in paragraph (a)(1) of this section.

(b) *Duties of conveners.* The convener shall report findings under paragraph (a)(2) of this section and shall make recommendations to the Council or NMFS. Upon request of the Council or NMFS, the convener shall ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the potential conservation and management measures relevant to the issues to be negotiated. The report and any recommendations of the convener shall be made available to the public upon request.

(c) *Selection of facilitator.* Notwithstanding section 10(e) of the Federal Advisory Committee Act (FACA), a Council or NMFS may nominate a person trained in facilitation either from the Federal Government or from outside the Federal Government to serve as an impartial, neutral facilitator for the negotiations of the FNP, subject to the approval of the FNP, by consensus. The facilitator may be the same person as the convener used under paragraph (a) of this section. If the FNP does not approve the nominee of the Council or NMFS for facilitator, the FNP shall submit a substitute nomination. If an FNP does not approve any nominee of the Council or NMFS for facilitator, the FNP shall select, by consensus, a person to serve as facilitator. A person designated to represent the Council or NMFS in substantive issues may not serve as facilitator or otherwise chair the FNP.

(d) *Roles and duties of facilitator.* A facilitator shall:

(1) Chair the meetings of the FNP in an impartial manner.

(2) Impartially assist the members of the FNP in conducting discussions and negotiations.

(3) Manage the keeping of minutes and records as required under section 10(b) and (c) of FACA.

§ 600.753 Notice of intent to establish a fishery negotiation panel.

(a) *Publication of notice.* If, after considering the report of a convener or conducting its own assessment, a Council or NMFS decides to establish an FNP, NMFS shall publish in the **Federal Register** and, as appropriate, in trade or other specialized publications, a document that shall include:

(1) An announcement that the Council or NMFS intends to establish an FNP to negotiate and develop a report concerning specific conservation and management measures.

(2) A description of the subject and scope of the conservation and management measure, and the issues to be considered.

(3) A list of the interests that are likely to be significantly affected by the conservation and management measure.

(4) A list of the persons proposed to represent such interests and the person or persons proposed to represent the Council or NMFS.

(5) A proposed agenda and schedule for completing the work of the FNP.

(6) A description of administrative support for the FNP to be provided by the Council or NMFS, including technical assistance.

(7) A solicitation for comments on the proposal to establish the FNP, and the proposed membership of the FNP.

(8) An explanation of how a person may apply or nominate another person for membership on the FNP, as provided under paragraph (b) of this section.

(b) *Nomination of members and public comment.* Persons who may be significantly affected by the development of conservation and management measure and who believe that their interests will not be adequately represented by any person specified in a document under paragraph (a)(4) of this section may apply for, or nominate another person for, membership on the FNP to represent such interests. Each application or nomination shall include:

(1) The name of the applicant or nominee and a description of the interests such person shall represent.

(2) Evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent.

(3) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the conservation and management measure under consideration.

(4) The reasons that the persons specified in the document under paragraph (a)(4) of this section do not adequately represent the interests of the person submitting the application or nomination.

(c) *Public comment.* The Council or NMFS shall provide at least 30 calendar days for the submission of comments and applications under this section.

§ 600.754 Decision to establish a fishery negotiation panel.

(a) *Determination to establish an FNP.* If, after considering comments and applications submitted under § 600.753, the Council or NMFS determines that an FNP can adequately represent the interests that will be significantly affected and that it is feasible and appropriate in the particular case, the Council or NMFS may establish an FNP.

(b) *Determination not to establish FNP.* If, after considering such comments and applications, the Council or NMFS decides not to establish an FNP, the Council or NMFS shall promptly publish notification of such decision and the reasons therefor in the **Federal Register** and, as appropriate, in trade or other specialized publications, a copy of which shall be sent to any person who applied for, or nominated another person for membership on the FNP to represent such interests with respect to the issues of concern.

§ 600.755 Establishment of a fishery negotiation panel.

(a) *General authority.* (1) A Council may establish an FNP to assist in the development of specific conservation and management measures for a fishery under its authority.

(2) NMFS may establish an FNP to assist in the development of specific conservation and management measures required for:

(i) A fishery for which the Secretary has authority under section 304(e)(5) of the Magnuson-Stevens Act, regarding rebuilding of overfished fisheries;

(ii) A fishery for which the Secretary has authority under 16 U.S.C. section 304(g), regarding highly migratory species; or

(iii) Any fishery with the approval of the appropriate Council.

(b) *Federal Advisory Committee Act (FACA)* In establishing and administering such an FNP, the Council or NMFS shall comply with the FACA with respect to such FNP.

(c) *Balance.* Each potentially affected organization or individual does not necessarily have to have its own representative, but each interest must be adequately represented. The intent is to have a group that as a whole reflects a proper balance and mix of interests. Representatives must agree, in writing, to negotiate in good faith.

(d) *Membership.* The Council or NMFS shall limit membership on an FNP to no more than 25 members, unless the Council or NMFS determines that a greater number of members is necessary for the functioning of the FNP or to achieve balanced membership. Each FNP shall include at least one person representing the Council in addition to at least one person representing NMFS.

§ 600.756 Conduct and operation of a fishery negotiation panel.

(a) *Roles and duties of an FNP.* Each FNP shall consider the issue proposed by the Council or NMFS for consideration and shall attempt to reach a consensus concerning a report to assist

in the development of a conservation and management measure with respect to such matter and any other matter the FNP determines is relevant to the development of a conservation and management measure. An FNP may adopt procedures for the operation of the FNP.

(b) *Roles and duties of representative of the council or NMFS.* The person or persons representing the Council or NMFS on an FNP shall participate in the deliberations and activities of the FNP with the same rights and responsibilities as other members of the FNP, and shall be authorized to fully represent the Council or NMFS in the discussions and negotiations of the FNP.

§ 600.757 Operational protocols.

(a) *Services of conveners and facilitators.* A Council or NMFS may employ or enter into contracts for the services of an individual or organization to serve as a convener or facilitator for an FNP established under § 600.755, or may use the services of a government employee to act as a convener or a facilitator for such an FNP.

(b) *Councils.* For an FNP proposed and established by one or more Councils approved expenses shall be paid out of the Council's operating budget.

(c) *Expenses of FNP members.* Members of an FNP shall be responsible for their own expenses of participation in such an FNP, except that NMFS or the Council may, in accordance with section 7(d) of FACA, pay for a member's reasonable travel and per diem expenses, and a reasonable rate of compensation, if:

(1) Such member certifies a lack of adequate financial resources to participate in the FNP.

(2) The Council or NMFS determines that such member's participation in the FNP is necessary to assure an adequate representation of the member's interest.

(d) *Administrative support.* The Council or NMFS shall provide appropriate administrative support to an FNP including technical assistance.

§ 600.758 Preparation of report.

(a) At the conclusion of the negotiations, an FNP may submit a report. Such report shall specify:

(1) All the areas where consensus was reached by the FNP, including, if appropriate, proposed conservation and management measures.

(2) Any other information submitted by members of the FNP.

(b) Upon receipt of the report, the Council or NMFS shall publish such report in the **Federal Register** for public comment.

§ 600.759 Use of report.

A Council or NMFS may, at its discretion, use all or a part of a report prepared in accordance with § 600.758 in the development of conservation and management measures. Neither a Council nor NMFS, whichever is appropriate, is required to use such report.

§ 600.760 Fishery Negotiation Panel lifetime.

(a) An FNP shall terminate upon either:

(1) Submission of a report prepared in accordance with § 600.758; or

(2) Submission of a written statement from the FNP to the Council or NMFS that no consensus can be reached.

(b) In no event shall an FNP exist for longer than 1 year from the date of establishment unless granted an extension. Upon written request by the FNP to the Council or NMFS, and written authorization from the Council or NMFS (whichever is appropriate), the Secretary may authorize an extension for a period not to exceed 6 months. No more than one extension may be granted per FNP.

[FR Doc. 97–11353 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 110196D]

RIN 0648–AI13

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications

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

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS issues this rule to reduce the commercial quotas for Atlantic group king and Spanish mackerel, revise the trip limits for Atlantic group Spanish mackerel, reduce the commercial quota for Gulf group Spanish mackerel, revise the commercial trip limits in the eastern zone for Gulf group king mackerel, and establish a zero bag limit for Gulf group king mackerel for captains and crews of charter vessels and headboats. The intended effects of this rule are to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by important commercial and recreational fisheries.

EFFECTIVE DATE: June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622 under the Magnuson-Stevens Fishery. Conservation and Management Act (Magnuson-Stevens Act).

In accordance with the framework procedures of the FMP, the Councils recommended, and NMFS published, a proposed rule to implement, for the 1996/97 fishing year, the following measures: For Atlantic migratory groups, reduced commercial quotas for king and Spanish mackerel and modified commercial trip limits for Spanish mackerel; and, for Gulf migratory groups, reduced commercial quota for Spanish mackerel and revised commercial trip limits and recreational bag limit for king mackerel (61 FR 66008, December 16, 1996). That proposed rule described the FMP's framework procedures through which the Councils recommended the changes and explained the need and rationale for them. Those descriptions are not repeated here.

The 1996/97 fishing year for commercial fisheries for Gulf migratory group king mackerel ends June 30; for all other groups of Spanish and king mackerel, the fishing year ended March 31. The quotas and trip limits adopted here, however, will continue into the 1997/98 fishing year until superseded by future specifications. The zero bag limit for Gulf group king mackerel for captains and crews of charter vessels and headboats will likewise continue until superseded.

Comments and Responses

Eight comments were received during the comment period, all pertaining to changes proposed for Gulf group king mackerel. Two charter boat associations, two charter boat captains, and a marine extension agent opposed approval/implementation of the zero bag limit for captain and crew on charter and

headboat vessels. The other 3 comments, 2 from commercial fishermen and a petition signed by 23 commercial fishermen and charter boat captains, expressed opposition to the revised commercial trip limits proposed for Florida's east and west coast fisheries. A summary of the specific comments with agency responses follows.

Zero Bag Limit for Captain/Crew on Charter Vessel or Headboat

Comment: Two commenters recommended disapproval of the zero bag limit proposal because they believe that the process by which it was considered and selected by the Gulf Council violated section 302(i)(6) of the Magnuson-Stevens Act and the FMP framework procedure for the annual adjustment of catch specifications (framework procedure). Specifically, they believe the Gulf Council did not allow ample time for affected fishermen or Council advisory committees to review and comment on a NMFS report on landings reduction options for the Gulf recreational king mackerel fishery that was presented to the Council one day prior to its making a final decision on the zero bag limit proposal. They also believe that the NMFS report was based on flawed data. They consider this report to be new information and, thus, subject to section 302(i)(6) of the Magnuson-Stevens Act, which requires that:

> At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

Response: NMFS finds the Gulf Council's procedures and deliberation process in recommending the zero bag limit proposal to be consistent with all provisions of the Magnuson-Stevens Act and the FMP framework procedure. The public was provided opportunity to comment on the NMFS report at a public hearing (July 17, 1997) held by the Gulf Council just before making the decision to select the zero bag limit option. As required by the FMP framework process for the annual adjustment of catch specifications, this public hearing was held at the time and place where the Gulf Council considered the reports of the Mackerel Stock Assessment Panel (MSAP), and before it made final decisions on management changes for the 1996/97 fishing year. At similar meetings in previous years, the Councils also considered supplemental reports providing projected landings reductions for various bag limit options. Moreover, public comments on the NMFS report and the Gulf Council's decisions were accepted through December 31, 1996, the end of the comment period for the published proposed rule (61 FR 66008; December 16, 1996) announcing the zero bag limit proposal.

The Marine Recreational Fishery Statistics Survey (MRFSS) data used in the NMFS report in question was reviewed by the MSAP and used in its 1996 reports about the status of the stocks. Those reports subsequently were reviewed by the Gulf Council's Mackerel Advisory Panel and Scientific and Statistical Committee, which considered them the best scientific information available. Data used in the NMFS report also were presented to the Gulf Council's Socioeconomic Panel.

Comment: One commenter maintains that the zero bag limit proposal is based on flawed data from NMFS' MRFSS. He believes that MRFSS recreational catch estimate data contain excessive variability and, therefore, are not sufficiently accurate for stock assessments. Further, he believes that the MRFSS overestimates the number of days charter boats operate in the Florida Keys and target king mackerel.

Response: As stated in the previous response, the NMFS report referenced by the commenters was based on the best available information (i.e., estimates of the recreational landings of king mackerel by the MRFSS, the NMFS Headboat Survey, and the Texas Parks and Wildlife Survey). The estimates from these sources are statistically reliable and are the only available comprehensive, region-wide, catch and effort data for recreational mackerel fisheries. The MRFSS does not estimate the number of days charter boats operate, nor did the NMFS report incorporate such estimates.

Comment: Two charter boat captains believe that the zero bag limit for charter boat captains and crews is an unnecessary measure that would severely and adversely impact the charter boat industry in the Florida Keys and in northwest Florida (i.e., the panhandle area). One suggested that the Gulf Council acted prematurely to reduce recreational harvest because preliminary catch estimates for the 1995/96 fishing year did not indicate an overrun of the recreational allocation.

Response: NMFS believes that the zero bag limit for captain and crew on for-hire vessels is an appropriate and necessary measure to reduce the recreational harvest of Gulf group king mackerel. The latest available recreational catch estimates for the 1995/96 fishing year indicate an overrun of the recreational allocation that corresponds reasonably with the recreational catch reduction projected for the zero bag limit proposal. The catch estimates also indicate that a substantial portion of recent overruns of the recreational allocation for Gulf group king mackerel are attributable to increased landings by the charter vessel and headboat industry.

The Gulf Council selected the zero bag limit option as the least burdensome measure to curtail recreational landings of Gulf group king mackerel. The Gulf Council's regulatory impact review (RIR) of the measure indicated no expectation for forcing any charter operation to cease business. The RIR estimated that the measure would reduce charter gross revenues by 3 to 6 percent, possibly changing the cost structure and profitability of some charter operations, but not substantially. It also projected minimal effects on production and compliance costs and estimated a 5 to 7 percent reduction in the crew's gross income.

Comment: A charter boat captain who represents a Mississippi charter boat organization commented that the zero bag limit proposal is an inappropriate restriction on the recreational fishery. He cited information that suggested Mississippi's recreational fishery is more valuable and less destructive than the commercial fishery, which he believes will eventually destroy the resource. He recommended that, if the zero bag limit proposal is approved, the commercial quota be reduced by an amount equivalent to the pounds of king mackerel that would have been landed and sold by charter vessels and headboats and, hence, would have contributed to filling the commercial quota.

Response: The only actions available to NMFS under the FMP framework procedure are to approve or to disapprove the measures proposed by the Councils. Any changes in size limits, seasonal or areal closures, quotas, or bag limits must first be proposed by the Councils through the framework procedure. The division of total allowable catch (TAC) between the recreational and commercial sectors in the form of allocations and quotas, respectively, is prescribed by the FMP and can be changed only through an FMP amendment. NMFS believes those allocations, based on historical landings, represent a fair and equitable distribution of TAC among all resource users.

Comment: A charter boat captain from central west Florida commented that the zero bag limit was discriminatory and inconsistent with the Magnuson-Stevens Act and the laws of the United States. He believes that denying a king mackerel bag limit to charter vessel and headboat captains and crews is inconsistent with national standard four of the Magnuson-Stevens Act. He finds the proposal to be unfair to such captains and crew considering, in his view, that shrimp trawlers are not prohibited by Federal regulations from taking a huge bycatch of juvenile king mackerel.

Response: NMFS does not find the zero bag limit measure to be discriminatory or inconsistent with national standard four of the Magnuson-Stevens Act or any other applicable Federal law. National standard four requires that any allocation or assignment of fishing privileges among various U.S. fishermen be fair and equitable to all such fishermen, reasonably calculated to promote conservation, and carried out so that no particular individual, corporation, or entity acquires an excessive share of such privileges. Regarding the allocation or assignment of fishing privileges, NMFS finds that the measure is fair and equitable to all affected fishermen, reasonably calculated to promote conservation, and will help assure that no particular individual, corporation, or other entity acquires an excessive share of the privilege to harvest Gulf group king mackerel. Recreational catch estimates for the 1995/96 fishing year indicate an overrun of the recreational allocation that corresponds reasonably with the recreational catch reduction projected for the zero bag limit measure. The catch estimates also indicate that a substantial portion of recent overruns of the recreational allocation for Gulf group king mackerel are attributable to increased landings by the charter vessel and headboat industry.

NMFS believes that the subsequent reduction of recreational harvest under the zero bag limit measure will provide conservation benefits by eliminating or minimizing overrun of the recreational allocation of Gulf group king mackerel. Also, the zero retention of Gulf group king mackerel for captain and crew while under charter will help maintain or restore equity between the private and for-hire sectors in their respective harvests under the recreational allocation. Recreational catch estimates indicate frequent overrun of the recreational allocation in addition to a recent substantial increase in landings by the charter vessel and headboat industry.

Commercial Gulf Group King Mackerel Trip Limits: Florida East Coast Subzone

Comment: Two commenters opposed approval of the revisions to the trip limits for Gulf group king mackerel harvested in the Florida east coast subzone. They believe the revisions were not based on the best available scientific information and, if implemented, would lead to early closure of the fishery, thus resulting in an inequitable geographic distribution of the quota within the subzone, potential exclusion of fishermen within the subzone from more lucrative markets during the Lenten season, and subsequent economic hardships for some fishermen in the subzone. They requested continuation of the status quo to allow more time for the Councils to evaluate landings data and revise the trip limits for next season, suggesting that a trip limit in the 400 pound vicinity would be more appropriate.

Response: In converting king mackerel trip limits from numbers of fish to pounds of fish, the Gulf Council based its selection of the 10–lb (4.5–kg) conversion factor (weight of average-sized fish) on previous decisions and length-weight information available to it at the time of its final action. MRFSS data for Gulf group king mackerel supported its decision. Moreover, as part of a recent action implementing commercial trip limits for Atlantic group king mackerel, the Councils, before submitting the proposals for agency review, converted the south Florida trip limits from numbers of fish to pounds of fish based on an average-sized fish of 10 lb (4.5 kg) (61 FR 48848; September 17, 1996). The Councils' selection of an appropriate trip limit to optimize the benefits of the quota (e.g., a trip limit that will maximize economic returns to fishermen by maintaining an open fishery through the Lenten season when ex-vessel prices for fish are strong) is a predictive process based on historical data and advice from advisory panels and fishermen. NMFS supports and approves the Councils' trip limit proposal for the Florida east coast subzone as a reasonable measure that will increase the opportunity to harvest the quota completely, address socioeconomic needs of participants, and protect the resource by curbing the waste of fish from the practice of high-grading.

Commercial King Mackerel Trip Limits: Florida West Coast Subzone

Comment: Twenty-three charter boat and commercial fishermen from the Florida Keys opposed approval of the trip limit revisions for the Florida west coast subzone (i.e., conversion from numbers of fish to pounds of fish). They believe the trip limit changes would decrease enforceability, shorten the harvest season, depress king mackerel market value, and not preclude high-grading. They requested continuation of the current trip limit (125 fish per vessel per day) in the belief it would produce a longer harvest season, higher quality fish, and higher and more stable prices for fishermen.

Response: NMFS does not believe that enforcement of the daily trip limit will be compromised by the conversion from numbers of fish to pounds of fish. The Gulf Council's intention to reduce the waste of high-grading was the primary reason for converting trip limits from numbers of fish to pounds of fish. However, before taking final action, the Council did consider enforcement information indicating that at-sea enforcement of either trip limit was equally difficult. The Council considered that the inspection time required to unpack fish from ice storage, ascertain aggregate number or weight, and repack could cause prolonged exposure of the product at ambient temperature leading to degraded fish quality. Therefore, dockside enforcement appeared the more practical method to enforce trip limits, particularly if state regulations were compatible. Florida implemented the 1,250–lb (567–kg) trip limit on January 1, 1997.

Although the revised trip limits based on poundage may not preclude high-grading entirely, NMFS believes that they will be more effective in minimizing waste and cryptic mortality than limits based on numbers. Regarding the issues of a potential shortened harvest season and depressed market prices for mackerel, as explained above under a response to comments about the changes in the trip limits for the Florida east coast subzone, NMFS does not believe that the conversion from numbers to pounds for the trip limits for the Florida west coast subzone will have these effects. In fact, NMFS believes that the trip limit change here should increase the opportunity to harvest the entire annual quota and, therefore, bring economic benefits to fishermen. For these reasons, NMFS approved this measure.

Miscellaneous Comments

Comment: One commenter remarked that the July 1 start of the fishing year and the Florida west coast subzone quota system for Gulf group king mackerel are unfair and discriminatory to fishermen in the central area of Florida's west coast. He stated that the

inability of fishermen in this area to harvest king mackerel during spring makes it difficult for them to meet qualifying income requirements for state or Federal permits. He believes the establishment of a separate subzone quota for Gulf group king mackerel for the central west Florida area would be more equitable under the Magnuson-Steven Act.

Response: NMFS offers no response to these comments which are outside the scope of this action. However, in developing FMP Amendment 9, the Councils are considering changes to the Florida west coast quota system for Gulf group king mackerel.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (61 FR 66008, December 16, 1996) and are not repeated here. No comments were received that would change the basis for this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 25, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(ii) Gulf migratory group king mackerel—2, except that for an operator or member of the crew of a charter vessel or headboat, the bag limit is 0.

* * * * *

3. In § 622.42, paragraphs (c)(1)(ii) and (c)(2) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of king mackerel is 2.52 million lb (1.14 million kg). No more than 0.4 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel*—(i) *Gulf migratory group*. The quota for the Gulf migratory group of Spanish mackerel is 3.99 million lb (1.81 million kg).

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of Spanish mackerel is 3.50 million lb (1.59 million kg).

* * * * *

4. In § 622.44, paragraphs (a)(2)(i)(A) and (B); (a)(2)(ii)(B)(*1*) and (*2*); (b)(1)(ii)(A), (B), and (C); and (b)(2) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(A) From November 1 each fishing year, until 75 percent of the subzone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 750 lb (340 kg) per day.

(B) From the date that 75 percent of the subzone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast subzone has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day. However, if 75 percent of the subzone's quota has not been harvested by February 15, the vessel limit remains at 750 lb (340 kg) per day until the subzone's quota is filled or until March 31, whichever occurs first.

(ii) * * *

(B) * * *

(*1*) From July 1 each fishing year, until 75 percent of the subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(*2*) From the date that 75 percent of the subzone's hook-and-line gear quota has been harvested, until a closure of the west coast subzone's fishery for vessels fishing with hook-and-line gear has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) From April 1 through October 31, in amounts exceeding 1,500 lb (680 kg).

(B) From November 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(*1*) Mondays, Wednesdays, and Fridays—unlimited.

(*2*) Tuesdays, Thursdays, Saturdays, and Sundays—not exceeding 1,500 lb (680 kg).

(C) After 75 percent of the adjusted quota is taken until 100 percent of the adjusted quota is taken, in amounts not exceeding 1,500 lb (680 kg).

* * * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.25 million lb (1.47 million kg). The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or is projected to be reached.

* * * * *

[FR Doc. 97–11362 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 84
Thursday, May 1, 1997

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

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations, Canning and Processing Bean Endorsement; and Common Crop Insurance Regulations, Processing Bean Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of processing beans. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current canning and processing bean crop insurance endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current canning and processing bean crop insurance endorsement to the 1997 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business June 2, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

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

Paperwork Reduction Act of 1995

The amendments set forth in this proposed rule contain information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Processing Bean Crop Insurance Provisions.'' The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of processing beans that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. For the crop insurance program as a whole, the reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a

claim for indemnity. The insured must also annually certify to the number of acres and the previous years production, if adequate records are available to support the certification, or receive a transitional yield. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

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

National Performance Review

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

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.155, Processing Bean Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring processing beans found at 7 CFR 401.118 (Canning and Processing Bean Endorsement). FCIC also proposes to amend 7 CFR 401.118 to limit its effect to the 1997 and prior crop years.

This rule makes minor editorial and format changes to improve the Canning and Processing Bean Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring processing beans as follows:

1. Remove the words ''Canning and'' from the title of the policy. ''Canning and processing'' is redundant because ''processing'' includes those beans that are processed for canning.

2. Section 1—Add definitions for the terms ''base contract price,'' ''bypassed acreage,'' ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''planted acreage,'' ''practical to replant,'' ''processor,'' ''processor contract,'' ''production guarantee (per acre),'' ''replanting,'' ''timely planted,'' ''ton,'' and ''written agreement'' for clarification.

3. Section 2—Describe the requirements for dividing basic units into optional units. Also, subsection 2(f)(4)(ii) clarifies unit division for non-irrigated corners of center-pivot irrigation systems.

4. Section 3—Specify that the producer may select only one price election for all the processing beans in the county insured under the policy unless the Special Provisions provide different price elections by type, in which case the producer may select one price election for each processing bean type designated. The price election chosen for each type must have the same percentage relationship to the maximum price available.

5. Section 4—Change the contract change date from December 31 to November 30, to allow adequate time for producers to become aware of contract changes and make informed choices before the sales closing date, which was moved back 30 days to comply with the Federal Crop Insurance Reform Act of 1994.

6. Section 5—Change the cancellation and termination dates from April 15 to March 15, to coincide with the statutory change in the sales closing date.

7. Section 6—Require the insured to provide a copy of the processor contract to the insurance provider on or before the acreage reporting date to establish liability and insurability before a loss is likely to occur.

8. Section 7(a)—Specify that the crop insured will be processing beans that are grown under a processor contract executed before the acreage reporting date.

9. Section 7(a)(4)—Permit consideration for requests for a written agreement to insure processing beans that are interplanted with another crop or planted into an established grass or legume. This provision makes insurance available, on a case-by-case basis (written agreement), for processing beans grown with a production practice that is not normally followed in an area.

10. Section 7(b)—Specify that a producer will be considered to have a share in the insured crop, if under the processor contract, the producer retains possession of the acreage on which the processing beans are grown, is at risk of loss, and the processor contract provides for delivery of the processing beans under specified conditions and at a stipulated base contract price.

11. Section 7(c)—Specify that a commercial bean producer who is also a processor may establish an insurable interest if certain requirements are met. This provision is added to other processor policies.

12. Section 8(a)—Require that any acreage damaged prior to the final planting date must be replanted unless the insurance provider agrees that replanting is not practical.

13. Section 8(b)—Require that rotation requirements shown on the Special Provisions be met for acreage to be insured.

14. Section 9—Add a provision for the insurance to end when the processing beans should have been harvested or when the amount of processing beans delivered to the processor fulfills the producer's processing contract. Also, specify that October 30 is the calendar date for the end of insurance period for Arkansas.

15. Section 10(a)(1)—Clarify that loss of production due to adverse weather conditions is an insurable cause of loss when (1) excessive moisture prevents harvesting equipment from entering the field or prevents timely operation of harvesting equipment, and (2) abnormally hot or cold temperatures cause the insured acreage to be bypassed.

16. Section 10(a)(3)—Clarify that insect damage as an insurable cause of loss does not include damage due to insufficient or improper application of pest control measures.

17. Section 10(a)(4)—Clarify that plant disease as an insurable cause of loss does not include damage due to

insufficient or improper application of disease control measures.

18. Section 10(b)—Clarify that the insurance provider does not cover loss of production due to: (1) bypassed acreage if the acreage is bypassed due to the breakdown or non-operation of equipment or facilities; (2) bypassed acreage if acreage to be bypassed is selected based on the availability of a crop insurance payment; (3) beans not being timely harvested, unless the delay in harvesting is directly due to an insured cause of loss; (4) failure to follow the requirements contained in the processor contract; and (5) damage that occurs to unharvested production after the producer delivers the production required by the processor contract.

19. Section 11—Require that the producer give notice of loss within 3 days of the date harvest should have begun on any acreage that will not be harvested, and document why the acreage was bypassed. Failure to provide such information may result in the insurance provider's determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested, the producer must leave representative samples of the unharvested crop for the insurance provider's inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit and must not be destroyed until the earlier of the insurance provider's inspection or 15 days after notice of loss is given.

20. Section 12(a)—Clarify actions to be taken when acceptable records of production are not provided regarding optional and basic units.

21. Section 12(c)—Clarify that the total production to count will include bypassed acreage unless adequate evidence is provided to show the acreage was bypassed for insurable reasons.

22. Section 12(d)—Clarify determination of production to count for acreage that is not timely harvested due to an uninsured cause of loss.

23. Section 14—Add provisions for providing insurance coverage by written agreement. FCIC has a long-standing policy of permitting certain modification of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for, and duration of, written agreements.

Good cause is shown to allow 30 days for comments after this rule is published in the **Federal Register**. This rule improves processing bean crop insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. Although the contract change date is December 31, 1997, the final rule must be published by July 7, 1997. Publication is required by this date to achieve revision and timely distribution of the actuarial documents thereby allowing the reinsured companies and insureds sufficient time to implement the new provisions. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Canning and processing beans, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

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

2. The introductory text of Section 401.118 is revised to read as follows:

§ 401.118 Canning and processing bean endorsement.

The provisions of the Canning and processing bean endorsement for the 1988 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

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

Authority: 7 U.S.C. 1506(1), 1506(p).

4. Section 457.155 is added to read as follows:

§ 457.155 Processing bean crop insurance provisions.

The Processing Bean Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Processing Bean Crop Insurance Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Base contract price. The price stipulated in the contract executed between you and the processor for the grade factor or sieve size that is designated in the Special Provisions without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but is not harvested. Bypassed acreage upon which an indemnity is payable will be considered to have a zero yield for Actual Production History (APH) purposes.

Days. Calendar days.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the bean processor contract with the processing company and recognized by the Cooperative State Research, Education, and Extension Service, as compatible with agronomic and weather conditions in the county.

Harvest. The mechanical picking of bean pods from the vines.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Planted acreage. Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Processing beans must initially be placed in rows far enough apart to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant. In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability,

condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the processor contract.

Processor. Any business enterprise regularly engaged in processing beans for human consumption, that possesses all licenses and permits for processing beans required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted beans within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow processing beans, and to deliver the bean production to the processor;

(b) The processor's commitment to purchase all the production stated in the contract; and

(c) A base contract price.

Production guarantee (per acre). The number of tons determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Replanting. Performing the cultural practices necessary to prepare the land to replace the processing bean seed and then replacing the bean seed in the insured acreage with the expectation of growing a successful crop.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Ton. Two thousand (2000) pounds avoirdupois.

Written agreement. A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division

(a) In addition to the criteria stated in the definition of unit in section 1 (Definitions) of the Basic Provisions (§ 457.8), and if provided for in the Special Provisions, snap type beans will form a basic unit and lima type beans will form a basic unit.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists. Basic units may not be divided into optional units on any basis other than as described in this section.

(c) Optional units will be available only if the processor contract stipulates the number of acres that are under contract and not a specific amount of production. This provision may not be changed by written agreement.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(e) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must meet one or more of the following criteria as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage and non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. Non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all other requirements of this section are met.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the processing beans in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each processing bean type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must choose 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the processing beans in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are planted for harvest to be canned or frozen;

(3) That are grown under and in accordance with the requirements of a processor contract executed on or before the acreage reporting date and are not excluded from the processor contract at any time during the crop year; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain possession of the acreage on which the processing beans are grown, you are at risk of loss, and the processor contract provides for delivery of the processing beans under specified conditions and at a stipulated base contract price per unit of delivery.

(c) A commercial bean producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The processor must meet the requirements as defined in these crop provisions;

(2) The Board of Directors, or officers of the processor, must have executed a resolution

that sets forth essentially the same terms as a processor contract. Such resolution will be considered a contract under the terms of the processing bean crop insurance policy; and

(3) Our inspection of the processing facilities determines that they satisfy the definition of a processor contained in these crop provisions.

8. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions.

9. Insurance Period

In lieu of the provisions contained in section 11 (Insurance Period) of the Basic Provisions (§ 457.8), regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the processing beans:

(1) Were destroyed;

(2) Should have been harvested;

(3) Were abandoned; or

(4) Were harvested;

(b) The date you harvested sufficient production to fulfill your processor contract;

(c) Final adjustment of a loss; or

(d) The date for the end of the insurance period in the calendar year in which the processing beans would normally be harvested, unless otherwise agreed to in writing, as follows:

(1) October 30 for all processing beans in the state of Arkansas;

(2) October 15 for all processing beans in the states of Delaware, Maryland, and New Jersey;

(3) September 30 for fresh snap beans in the state of New York;

(4) September 20 for fresh snap beans in all other states; or

(5) October 5 for fresh lima beans in all other states.

10. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8):

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including but not limited to:

(i) Excessive moisture that prevents the harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures, as determined by us, that causes insured acreage to be bypassed because of an unexpected number of acres over a large producing area are ready for harvest at the same time, and the total production is beyond the normal capacity of the processor to timely harvest or process;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease on acreage not planted to the processing beans the previous crop year, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to an insured cause of loss referred to in section 10(a)(1) through (7), above, that occurs during the insurance period; or

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we do not insure any loss of production:

(1) On bypassed acreage if the acreage is bypassed due to the breakdown or non-operation of equipment or facilities;

(2) On bypassed acreage if acreage to be bypassed is selected based on the availability of a crop insurance payment;

(3) Due to processing beans not being timely harvested unless such delay in harvesting is solely and directly due to an insured cause of loss;

(4) Due to your failure to follow the requirements contained in the processor contract; or

(5) Due to damage that occurs to unharvested production after you deliver the production required by the processor contract.

11. Duties In The Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the processing beans on the unit; or

(2) Discontinuance of harvest on a unit;

(b) Within 3 days of the date harvest should have started on any acreage that will not be harvested and document why the acreage was bypassed. Failure to provide such information will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in each unit and must not be destroyed until the earlier of our inspection or 15 days after notice is given to us.

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during harvest, so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You do not have to delay harvest if notification is timely given.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result in section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 12(c)) by the respective price election;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the results in section 12(b)(5) from the results in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count, specified in tons, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) For which you fail to provide production records that are acceptable to us; or

(E) That is bypassed unless the acreage was bypassed due to a cause of loss stated in section 10(a).

(ii) Production lost due to uninsured causes;

(iii) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested processing bean production from the insurable acreage. The

amount of such production will be determined by dividing the dollar amount as required by the contract for the quality and quantity of the processing beans delivered to the processor by the base contract price per ton.

(d) If any acreage is not timely harvested due to an uninsured cause of loss but is later harvested, the production to count will be the greater of:

(1) The harvested amount of production with no adjustment for quality; or

(2) The amount determined by dividing the dollar amount as required by the contract for the quality and quantity of the processing beans delivered to the processor by the base contract price per ton.

13. Late Planting

Late planting provisions are not applicable to processing beans.

14. Written Agreement

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on April 25, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–11250 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 416 and 457

Pea Crop Insurance Regulations; and Common Crop Insurance Regulations, Green Pea Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of green peas. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, separate green peas and dry peas into separate crop insurance provisions, include the current pea crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current pea crop insurance regulations to the 1997 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business June 2, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

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

Paperwork Reduction Act of 1995

The amendments set forth in this proposed rule contain information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Green Pea Crop Insurance Provisions.'' The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of green peas that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. For the crop insurance program as a whole, the reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the number of acres and the previous years production, if adequate records are available to support the certification, or receive a transitional yield. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

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

National Performance Review

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

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.137, Green Pea Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supercede the current provisions for insuring green peas found at 7 CFR part 416 (Pea Crop Insurance Regulations). FCIC also proposes to amend 7 CFR part 416 to limit its effect to the 1997 and prior crop years.

This rule makes minor editorial and format changes to improve the Pea Crop Insurance Regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring green peas as follows:

1. Provisions were added to make pod type peas insurable if authorized in the Special Provisions.

2. Section 1—Add definitions for ''base contract price,'' ''bypassed acreage,'' ''days,'' ''dry peas,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''green pea,'' ''interplanted,'' ''irrigated practice,'' ''nurse crop (companion crop),'' ''planted acreage,'' ''pod type,'' ''practical to replant,'' ''price election,'' ''processor,'' ''processor contract,'' ''production guarantee (per acre),'' ''replanting,'' ''shell type,'' ''timely planted,'' and ''written agreement'' for clarification. The definition of ''bypassed acreage'' provides that loss because of bypass will be factored in the Actual Production History as zero production. Also revise the definitions for ''combining,'' ''harvest,'' and ''peas'' for clarification.

3. Section 2—Eliminate unit division by green pea type to remove the inequity between regions and producers. Also, shell peas and pod peas will qualify for separate basic units if specified in the Special Provisions.

4. Section 3—Specify that the insured may select only one price election for all the green peas in the county insured under the policy, unless the Special Provisions provide different price elections by type, in which case the producer may select one price election for each green pea type designated in the Special Provisions. The price election the producer chooses for each type must have the same percentage relationship to the maximum price available. Also, add a provision requiring shell type peas to be weighed after the peas are shelled for the purpose of establishing the approved APH yield, insurance guarantee, and production to count.

5. Section 4—Change the contract change date from December 31 to November 30 to allow adequate time for producers to become aware of contract changes and make informed choices before the sales closing date, which was moved back 30 days to comply with the Federal Crop Insurance Reform Act of 1994.

6. Section 5—Change the cancellation and termination dates from April 15 to February 15 for Delaware and Maryland and from April 15 to March 15 for all other states to coincide with the statutory movement of the sales closing date.

7. Section 6—Require the producer to provide a copy of the processor contract to the insurance provider on or before the acreage reporting date to establish liability and insurability before a loss is likely to occur.

8. Section 7—Specify that peas interplanted with another crop are not insurable unless allowed by the Special Provisions or by written agreement. Specify that a producer will be considered to have a share in the insured crop if under the processor contract the producer retains possession of the acreage on which the peas are grown, is at risk of loss, and the processor contract provides for delivery of the peas under specified conditions and at a stipulated base contract price per unit of delivery. Also specify the requirements under which a green pea producer who is also a processor may establish an insurable interest in the insured crop.

9. Section 8—Require that any acreage damaged prior to the final planting date must be replanted unless the insurance provider agrees that replanting is not practical. The current policy does not specify that the damage must occur prior to the final planting date. Also, require that rotation requirements shown on the Special Provisions be met for acreage to be insured.

10. Section 9—Add a provision for the insurance period to end when the amount of green peas delivered to the processor fulfills the producer's processor contract. This change is consistent with other policies for crops under a processor contract. Also, extend the date for the end of the insurance period to September 30 if the producer provides timely notice of the intent to harvest the crop as dry peas.

11. Section 10(a)—Clarify that loss of production due to adverse weather conditions is an insurable cause of loss when excessive moisture prevents harvesting equipment from entering the field or prevents the timely operation of harvesting equipment; and when abnormally hot or cold temperatures causes insured acreage to be bypassed because an unexpected number of acres over a large producing area are ready for harvest at the same time, and the total production is beyond the normal capacity of the processor to timely harvest or process. Clarify that insect damage is an insurable cause of loss if sufficient and proper applications of pest control measures are used. Clarify that plant disease on acreage not planted to peas the previous crop year is an insurable cause of loss if sufficient and proper applications of disease control measures are used.

12. Section 10(b)—Clarify that the insurance provider will not cover loss of production due to: (1) bypassed acreage if the acreage is bypassed due to the breakdown or non-operation of equipment or facilities; (2) bypassed acreage if acreage to be bypassed is selected based on the availability of a crop insurance payment; (3) peas not being timely harvested, unless the delay in harvesting is directly due to an insured cause of loss; (4) failure to follow the requirements contained in the processor contract; and (5) damage that occurs to unharvested production after the producer delivers the production required by the processor contract.

13. Section 11—Require that the producer give notice of loss within 3 days of the date harvest should have started on any acreage that will not be harvested and document why the acreage was bypassed. Failure to provide such information may result in the insurance provider's determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested, the producer must leave representative samples of the unharvested crop for the insurance provider's inspection. The samples must be at least 10 feet wide and extend the entire length of each field in each unit and must not be destroyed until the earlier of the insurance provider's inspection or 15 days after notice of loss is given. The producer must also give notice prior to the time the green peas would normally be harvested if the producer wants to harvest green peas as dry peas.

14. Section 12—Clarify that the total production to count will include bypassed acreage unless adequate evidence is provided to show the acreage was bypassed for reasons specified in section 10(a). Change the way the green pea equivalent is determined when the peas are harvested as dry peas so that the converted amount of production would reflect any loss that may have occurred. The amount of production to count will be calculated by multiplying all the dry pea production by 1.667 for shell type peas and by 3.000 for pod type peas. Previously the green pea equivalent was calculated by reducing the guarantee by 40 percent. Also, clarify how production to count is determined for acreage that is not timely harvested due to an uninsured cause of loss.

15. Section 13—Clarify that a late planting provision, which provides a reduced production guarantee on acreage initially planted after the final planting date, is not available in these crop provisions. A Late Planting Agreement Option was previously offered on green peas; however, green peas must be grown under a processor contract to be insurable. The processor may specify dates when the green peas are to be planted so the processor can maintain a coordinated planting and harvest schedule for all growers. Therefore, offering a late planting period may affect the processor's ability to timely harvest and process the green peas.

16. Section 14—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for, and duration of, written agreements.

Good cause is shown to allow 30 days for comments after this rule is published in the **Federal Register**. This rule improves green pea crop insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. Although, the contract change date is December 31, 1997, the final rule must be published by July 7, 1997. Publication is required by this date to achieve revision and timely distribution of the actuarial documents thereby allowing the reinsured companies and insureds sufficient time to implement the new provisions. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 416 and 457

Crop insurance, Green peas, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 416 and 457 as follows:

PART 416—PEA CROP INSURANCE REGULATIONS FOR THE 1986 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 416 continues to read as follows:

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

2. The part heading is revised to read as set forth above.

3. Subpart heading ''Subpart—Regulations for the 1986 and Succeeding Crop Years'' is removed.

4. Section 416.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 416.7 The application and policy.

* * * * *

(d) The application for the 1986 through 1997 crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Pea Insurance Policy for the 1986 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

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

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

5. Section 457.137 is added to read as follows:

§ 457.137 Green pea crop insurance provisions.

The Green Pea Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Green Pea Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Base contract price. The price stipulated in the contract executed between you and the processor for the tenderometer reading, grade factor, or sieve size that is designated in the Special Provisions without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but is not harvested. Bypassed acreage upon which an indemnity is payable will be considered to have a zero yield for Actual Production History (APH) purposes.

Combining (vining). Separating pods from the vines and in the case of shell peas separating the peas from the pod for delivery to the canner or processor.

Days. Calendar days.

Dry peas. Peas of the following types:

(a) Spring-planted smooth green and yellow varieties of commercial dry edible peas, and peas that are grown for the purpose of producing seed to be planted at a future date;

(b) Fall-planted varieties of Austrian Winter Peas;

(c) Spring-planted varieties of lentils; and

(d) Spring-planted varieties of contract seed peas.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the green pea processor contract with the processing company, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Green pea. Shell type and pod type peas that are grown under a processor contract to be canned or frozen and sold for human consumption.

Harvest. Combining (vining) of the peas.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

Peas. Either shell or pod type peas.

Planted acreage. Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Peas must initially be placed in rows. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Pod type. Peas genetically developed to be eaten without shelling (*e.g.,* snap peas, snow peas, and Chinese peas).

Practical to replant. In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the processor contract.

Price election. In lieu of the definition of ''Price election'' contained in section 1 of the Basic Provisions (§ 457.8), price election is defined as the price per pound stated in the processor contract (contracted price) for the tenderometer reading, grade factor, or sieve size contained in the Special Provisions; or a percentage of such price if you elect less than 100 percent of the price in the processor contract.

Processor. Any business enterprise regularly engaged in processing peas for human consumption, that possesses all licenses and permits for processing peas required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted peas within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow peas, and to deliver the pea production to the processor;

(b) The processor's commitment to purchase all the production stated in the contract; and

(c) A base contract price.

Production guarantee (per acre). The number of pounds determined by multiplying the approved APH yield per acre by the coverage level percentage you elect. For shell type peas the weight will be determined after shelling.

Replanting. Performing the cultural practices necessary to prepare the land to replace the pea seed and then replacing the pea seed in the insured acreage with the expectation of growing a successful crop.

Shell type. Peas that were genetically developed to be shelled prior to eating, canning or freezing.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Written Agreement. A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division

(a) In addition to the criteria stated in the definition of unit in section 1 (Definitions) of the Basic Provisions (§ 457.8), and if provided for in the Special Provisions shell type peas will form a basic unit and pod type peas will form a basic unit.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists. Basic units may not be divided into optional units on any basis other than as described in this section.

(c) Optional units will be available only if the processor contract stipulates the number of acres that are under contract and not a specific amount of production. This provision may not be changed by written agreement.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(e) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must meet one or more of the following criteria as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia

Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. However, non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all requirements of this section are met.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the green peas in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each green pea type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types; and

(b) For the purpose of establishing the approved APH yield, insurance guarantee, and production to count, the weight of the shell type peas will be determined after the peas are shelled.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

Cancellation and Termination
State and Dates
Delaware and Maryland—February 15
All other states—March 15

6. Report of Acreage.

In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the shell type or pod type green peas in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are planted for harvest to be canned or frozen;

(3) That are grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and not excluded from the processor contract at any time during the crop year; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain possession of the acreage on which the green peas are grown, you are at risk of loss, and the processor contract provides for delivery of green peas under specified conditions and at a stipulated base contract price per unit of delivery.

(c) A commercial green pea producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The processor must meet the requirements as defined in these crop provisions;

(2) The Board of Directors or officers of the processor must have executed a resolution that sets forth essentially the same terms as a processor contract. Such resolution will be considered a contract under the terms of the green pea crop insurance policy; and

(3) Our inspection of the processing facilities determines that they satisfy the definition of a processor contained in these crop provisions.

8. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions.

9. Insurance Period

In lieu of the provisions contained in section 11 (Insurance Period) of the Basic Provisions (§ 457.8), regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the green peas:

(1) Were destroyed;

(2) Should have been harvested;

(3) Were abandoned; or

(4) Were harvested;

(b) The date you harvested sufficient production to fulfill your processor contract;

(c) Final adjustment of a loss;

(d) September 15 of the calendar year in which the insured green peas would normally be harvested; or

(e) September 30 of the calendar year in which the insured peas would normally be harvested if you provide notice to us in accordance with section 11(d) that the insured crop will be harvested as dry peas.

10. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8):

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including but not limited to:

(i) Excessive moisture that prevents harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures as determined by us that cause insured acreage to be bypassed because an unexpected number of acres over a large producing area are ready for harvest at the same time, and the total production is beyond the normal capacity of the processor to timely harvest or process;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease on acreage not planted to peas the previous crop year, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss referred to in section 10(a)(1) through (7) above that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure any loss of production:

(1) On bypassed acreage if the acreage is bypassed due to the breakdown or non-operation of equipment or facilities;

(2) On bypassed acreage if acreage to be bypassed is selected based on the availability of a crop insurance payment;

(3) Due to green peas not being timely harvested unless such delay in harvesting is solely and directly due to an insured cause of loss;

(4) Due to your failure to follow the requirements contained in the processor contract; or

(5) Due to damage that occurs to unharvested production after you deliver the production required by the processor contract.

11. Duties In The Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the green peas on the unit; or

(2) Discontinuance of harvest on a unit.

(b) Within 3 days of the date harvest should have started on any acreage that will not be harvested and document why the acreage was bypassed. Failure to provide such information will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in each unit and must not be destroyed until the earlier of our inspection or 15 days after notice is given to us;

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit or immediately if damage is discovered during harvest so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You do not have to delay harvest if notification is timely given; and

(d) Prior to the time the green peas would normally be harvested if you want to harvest green peas as dry peas.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result in section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 12(c)) by the respective price election;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the results in section 12(b)(5) from the results in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count, specified in pounds, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) For which you fail to provide production records that are acceptable to us; or

(E) That is bypassed unless the acreage was bypassed due to a cause of loss stated in section 10(a).

(ii) Production lost due to uninsured causes;

(iii) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested;

(2) All harvested green pea production from the insurable acreage. The amount of such production will be determined by dividing the dollar amount as required by the contract for the quality and quantity of the peas delivered to the processor by the base contract price per pound; and

(3) All dry pea production from the insurable acreage if we have given consent for any acreage to be harvested as dry peas. The harvested or appraised dry pea production will be multiplied by 1.667 for shell types and 3.000 for pod types to determine the green pea production equivalent. No adjustment for quality deficiencies will be allowed for such production.

(d) If any acreage is not timely harvested due to an uninsured cause of loss but is later harvested, the production to count will be the greater of:

(1) The harvested amount of production with no adjustment for quality; or

(2) The amount determined by dividing the dollar amount as required by the contract for the quality and quantity of the peas delivered to the processor by the base contract price per pound.

13. Late Planting

Late planting provisions are not applicable to green peas.

14. Written Agreement

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on April 25, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–11255 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 425 and 457

Peanut Crop Insurance Regulations; and Common Crop Insurance Regulations, Peanut Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of peanuts. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current peanut crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and restrict the effect of the current peanut crop insurance regulations to the 1997 and prior crop years.

DATES: Written comments on this proposed rule will be accepted until close of business June 2, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development Division, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

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

Paperwork Reduction Act of 1995

The amendments set forth in this proposed rule contain information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Peanut Crop Insurance Provisions.'' The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of peanuts that are eligible for Federal crop insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

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

National Performance Review

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

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.134, Peanut Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring peanuts found at 7 CFR part 425 (Peanut Crop Insurance Regulations). FCIC also proposes to amend 7 CFR part 425 to limit its effect to the 1997 and prior crop years.

This rule makes minor editorial and format changes to improve the Peanut Crop Insurance Regulations compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring peanuts as follows:

1. Section 1—Add definitions for ''CCC'', ''farmer's stock peanuts,'' ''final planting date,'' ''FSA,'' ''good farming practices,'' ''green peanuts,'' ''Inspection Certificate and Sales Memorandum,'' ''interplanted,'' ''irrigated practice,'' ''non-quota peanuts,'' ''planted acreage,'' ''practical to replant,'' ''production guarantee (per acre),'' ''quota peanuts,'' ''Segregation I, II, and III,'' ''timely planted,'' ''USDA,'' and ''written agreement,'' for clarification purposes. Amend the definition of ''county'' contained in the Basic Provisions (§ 457.8) to include any land identified by an FSA farm serial number for such county but physically located in another county.

2. Section 2—Define basic units in which the insured has 100 percent share or which are owned by one person and operated by another specific person on a share basis; and for optional units by FSA Farm Serial Number. Current provisions define basic units by FSA Farm Serial Number. This change is consistent with provisions of other crop policies, and will increase premium cost for some producers.

3. Section 3(a)—Clarify that the insured may select one price election for quota peanuts and non-quota peanuts; however, the price election the insured chooses must have the same relationship to the maximum price offered by the insurance provider. This will help simplify the administration of the program.

4. Section 3(b)—Limit the use of the quota price election to the lesser of the insured effective poundage marketing quota or the insured acreage multiplied by the production guarantee. If the insured acres multiplied by the production guarantee exceeds the insured effective poundage marketing quota, the difference will be insured at the non-quota peanut price election.

5. Section 3(c)—Allows the use of actual production history to determine the yield for insurance purposes. Guarantees are based on production records and not necessarily on sales or quota records. In some instances the yields may be the same. Therefore, the proper use for yield under the program is the insured's records of production.

6. Section 4—The contract change date has been changed to November 30 for all counties to maintain an adequate time period between this date and the revised cancellation dates.

7. Section 5—All cancellation and termination dates have been moved 30 days earlier than currently established by 7 CFR part 425. In most crop policies, including peanuts, the cancellation and termination date correspond to the sales closing date. This change is necessary to conform with the requirement of the Federal Crop Insurance Reform Act of 1994 to move spring planted crop sales closing dates 30 days earlier.

8. Section 7—Clarify the method used to determine the annual premium for peanuts.

9. Section 8(d)—Clarify that peanuts intended to be harvested for use as green peanuts are not insurable.

10. Section 9(a)(1)—Acreage grown using no-till or minimum tillage farming methods is uninsurable unless allowed by a written agreement. Although no-till and minimum tillage farming methods are recognized as acceptable farming practices by the Cooperative State Research, Education and Extension Service for other annual crops, the methods are not acceptable for growing peanuts. The methods delay peanuts from maturing on time resulting in a yield that is less than the yield used to determine the production guarantee.

11. Section 10—The end of insurance period has been changed from November 30 to December 31 in Duval and LaSalle counties, Texas. This change makes the date consistent in all Texas counties.

12. Section 11—Clarify that insufficient or improper application of pest or disease control measures are not an insured cause of loss.

13. Section 12(b)—Clarify the maximum replanting payment amount for peanuts.

14. Section 14(c)—Clarify how the settlement of a claim will be determined on any unit when the producer has both quota and non-quota peanuts.

15. Section 15—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment will extend this practice to peanuts and will allow FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the application for, and duration of, written agreements.

Good cause is shown to allow 30 days for comments after this rule is published in the **Federal Register**. This rule improves peanut crop insurance coverage and brings it under the Common Crop Insurance Policy Provisions for consistency among policies. Although, the contract change date is December 31, 1997, the final rule must be published by July 7, 1997. Publication is required by this date to achieve revision and timely distribution of the actuarial documents thereby allowing the reinsured companies and insureds sufficient time to implement the new provisions. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 425 and 457

Crop insurance, Reporting and recordkeeping requirements, Peanuts.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 425 and 457, as follows:

PART 425—PEANUT CROP INSURANCE REGULATIONS FOR THE 1993 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 425 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The part heading is revised to read as set forth above.

3. Subpart heading ''Subpart—Regulations for the 1993 and Succeeding Crop Years'' is removed.

§ 425.7 [Amended]

4. Section 425.7 is amended by revising the introductory text of paragraph (d) to read as follows:

* * * * *

(d) The application for the 1993 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Peanut Insurance Policy for the 1993 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

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

Authority: 7 U.S.C. 1506(1), 1506(p).

5. Section 457.134 is added to read as follows:

§ 457.134 Peanut crop insurance provisions.

The Peanut Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Peanut Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions.

Average price per pound:

(1) The average CCC support price per pound, by type, for Segregation I peanuts and Segregation II and III peanuts eligible to be valued and insured as quota peanuts; or

(2) The highest non-quota price election contained in the Special Provisions for all non-quota and Segregation II and III peanuts not eligible to be valued and insured as quota peanuts.

Average support price per pound. The average price per pound for each type of quota peanuts announced by the USDA under the peanut price support program.

CCC. Commodity Credit Corporation, a wholly owned government corporation within USDA.

County. In addition to the definition contained in the Basic Provisions (§ 457.8), ''county'' also includes any land identified by an FSA farm serial number for such county but physically located in another county.

Days. Calendar days.

Effective poundage marketing quota. The number of pounds reported on the acreage report as eligible for the average support price per pound, not to exceed the Marketing Quota established by FSA for the farm serial number.

Farmers' stock peanuts. Peanuts customarily marketed by producers, produced in the United States, and which are not shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which peanuts are harvested.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

FSA. Farm Service Agency, an agency of USDA or a successor agency.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Green peanuts. Peanuts that are harvested and marketed prior to maturity without drying or removal of moisture either by natural or artificial means. They are marketed for human consumption exclusively as boiled peanuts (freshly dug, unshelled peanuts that have been boiled in salt water).

Harvest. Combining or threshing of peanuts. Digging of peanuts prior to combining or threshing is not considered harvesting.

Inspection Certificate and Sales Memorandum. A USDA form that records the inspection grading results and marketing record for the net weight of peanuts delivered to a buyer.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Non-quota peanuts. Peanuts other than quota peanuts.

Planted acreage. Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Peanuts must initially be planted in rows wide enough to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant. In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

Production guarantee (per acre). The number of pounds determined by multiplying the farm yield per acre by the coverage level percentage you elect.

Quota peanuts. Peanuts that are marketed for domestic edible use, seed, or other related uses, which are eligible to be valued at the average support price per pound.

Replanting. Performing the cultural practices necessary to replace the peanut seed and then replacing the peanut seed in the insured acreage with the expectation of growing a successful crop.

Segregation I, II, or III. Grades designated and defined for peanuts by the Agricultural Marketing Service of USDA.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

USDA. The United States Department of Agriculture.

Value per pound. A price determined by USDA as shown on the USDA ''Inspection Certificate and Sales Memorandum'' or other record accepted by us.

Written agreement. A written document that alters designated terms of this policy in accordance with section 15.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8) (basic unit), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, or planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) For each crop year, records of marketed production or measurement of stored production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(f) We may reject or modify any FSA reconstitution for the purpose of the unit definition, if we determine the reconstitution was done in whole or in part to defeat the purpose of the Federal crop insurance

program or to gain a disproportionate advantage under this policy.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) The price elections you choose for the quota and non-quota peanuts must have the same percentage relationship to the maximum price election offered by us for quota and non-quota peanuts. For example, if you choose 100 percent of the maximum quota peanut price election, you must also choose 100 percent of the maximum non-quota election.

(b) The maximum pounds that may be insured at the quota price election are the lesser of:

(1) The effective poundage marketing quota; or

(2) The insured acreage multiplied by the production guarantee. If the insured acres multiplied by the production guarantee exceeds the effective poundage marketing quota, the difference will be insured at the non-quota peanut price election.

(c) You may be required to file an annual production report to us, if required by the Special Provisions, to establish an approved yield in lieu of the approved yield published in the actuarial table. If we require you to file an annual production report, you must do so in accordance to section 3(c) (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8).

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

Cancellation and Termination
State, County, and Dates
Jackson, Victoria, Golliad, Bee, Live Oak, Mullen, La Salle, and Dimmit Counties, Texas and all Texas Counties lying south thereof.—January 15
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties south and east thereof; and all other states.—February 28
New Mexico; Oklahoma; and all other Texas counties.—March 15

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the effective poundage marketing quota, if any, that is applicable to each unit for the current crop year.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7(c) (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium will be determined by:

(a) Multiplying the insured effective poundage marketing quota by the price election for quota peanuts;

(b) Multiplying the insured pounds of non-quota peanuts by the price election for non-quota peanuts;

(c) Totaling the results of section 7(a) and 7(b);

(d) Multiplying the total of section 7(c) by the applicable premium rate stated in the actuarial table; and

(e) Multiplying the result of section 7(d) by your share.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the peanuts in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are planted for the purpose of marketing as farmers' stock peanuts;

(c) That are a type of peanut designated in the Special Provisions as being insurable; and

(d) That are not (unless allowed by the Special Provisions or by written agreement):

(1) Harvested for use as green peanuts;

(2) Interplanted with another crop; or

(3) Planted into an established grass or legume.

9. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(a) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical.

(b) We will not insure any acreage:

(1) On which peanuts are grown using no-till or minimum tillage farming methods unless a written agreement allows otherwise; or

(2) Which does not meet the rotation requirements contained in the Special Provisions.

10. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is the date immediately following planting as follows:

(1) November 30 in all states except New Mexico, Oklahoma, and Texas; and

(2) December 31 in New Mexico, Oklahoma, and Texas.

(b) In addition to the events contained in section 11 (Insurance Period) of the Basic Provisions (§ 457.8) the insurance period ends when the peanuts are removed from the field.

11. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

12. Replanting Payments

(a) In accordance with section 13 (Replanting Payments) of the Basic Provisions (§ 457.8):

(1) A replanting payment is allowed if the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(2) The maximum amount of the replanting payment for the unit will be the lesser of:

(i) Eighty dollars ($80.00) per acre; or

(ii) The actual cost of replanting per acre multiplied by the number of acres replanted and by your insured share; or

(iii) Twenty-percent of the production guarantee multiplied by your price election, multiplied by the number of acres replanted, multiplied by your insured share.

(b) When peanuts are replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

13. Duties In The Event of Damage or Loss

In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

14. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) When settling your claim, the effective poundage marketing quota for each unit will be limited to the lesser of:

(1) The amount of quota reported on the acreage report; or

(2) The amount of the FSA effective poundage marketing quota minus fall transfers of the FSA effective poundage marketing quota to another FSA Farm Serial Number; or

(3) The amount determined at the final settlement of your claim.

(c) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for the unit by the production guarantee per acre;

(2) Subtract the insured effective poundage marketing quota from the result of section 14(c)(1) to determine the insured non-quota peanuts;

(3) Multiply the insured quota and non-quota peanuts by their respective price election for quota and/or non-quota peanuts;

(4) Total the results of section 14(c)(3);

(5) Multiply the quota and non-quota production to count (see section 14(d)) by their respective price election for quota and/or non-quota peanuts;

(6) Total the results of section 14(c)(5);

(7) Subtract the result of section 14(c)(6) from section 14(c)(4); and

(8) Multiply the result by your share.

(d) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised and harvested production.

(2) All appraised production will include:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 14(e)); and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us, (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(3) All harvested production from the insurable acreage.

(e) Mature peanut production that is damaged by insurable causes and for which the value per pound is less than the average support price per pound for the type will be adjusted by:

(1) Dividing the value per pound for the insured types of peanuts by the applicable average price per pound; and

(2) Multiplying this result by the number of pounds of such production.

(f) To enable us to determine the net weight and quality of production of any peanuts for which a ''Inspection Certificate and Sales Memorandum'' has not been issued, we must be given the opportunity to have such peanuts inspected and graded before you dispose of them. If you dispose of any production without giving us the opportunity to have the peanuts inspected and graded, the gross weight of such production will be used in determining total production to count unless you submit a marketing record satisfactory to us which clearly shows the net weight and quality of such peanuts.

15. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each agreement no later than the sales closing date, except as provided in section 15(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved by us, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy; and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy provisions.

Signed in Washington, D.C., on April 25, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–11249 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 437 and 457

Sweet Corn Insurance Regulations; and Common Crop Insurance Regulations, Processing Sweet Corn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of processing sweet corn. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current sweet corn crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current sweet corn crop insurance regulations to the 1997 and prior crop year.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business June 2, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No.12866

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

Paperwork Reduction Act of 1995

The amendments set forth in this proposed rule contain information collections that require clearance by OMB under the provisions of 44 USC chapter 35.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Processing Sweet Corn Crop Insurance Provisions.'' The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of sweet corn that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. For the crop insurance program as a whole, the reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the number of acres and the previous years production, if adequate records are available to support the certification, or receive a transitional yield. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 USC 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

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

National Performance Review

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

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR § 457.154, Processing Sweet Corn Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring sweet corn found at 7 CFR part 437 (Sweet Corn Crop Insurance Regulations). FCIC also proposes to amend 7 CFR part 437 to limit its effect to the 1997 and prior crop years.

This rule makes minor editorial and format changes to improve the Sweet Corn Crop Insurance regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring sweet corn as follows:

1. Add the word ''processing'' to the title of this policy to eliminate confusion with the fresh market sweet corn policy.

2. Section 1—Add definitions for the terms '' base contract price,'' ''bypassed acreage,'' ''days,'' ''FSA,'' ''final planting date,'' ''good farming practice,'' ''interplanted,'' ''irrigated practice,'' ''planted acreage,'' ''practical to replant,'' ''processor,'' ''processor contract,'' ''production guarantee (per acre),'' ''replanting,'' ''timely planted,'' ''ton,'' ''unhusked ear weight,'' and ''written agreement'' for clarification. The definition of ''bypassed acreage'' provides that loss because of bypass will be factored in the Actual Production History as zero production.

3. Section 2—Describe the guidelines under which basic units may be divided into optional units to be consistent with most other crop provisions.

4. Section 3(a)—Specify that the insured may select only one price election for all the processing sweet corn in the county insured under the policy, unless the Special Provisions provide different price elections by type, in which case the producer may select one price election for each sweet corn type designated in the Special Provisions.

The price election the producer chooses for each type must have the same percentage relationship to the maximum price available.

5. Section 3(b)—Clarify that the insurance guarantee is expressed as unhusked ear weight.

6. Section 4—Change the contract change date from December 31 to November 30 to allow adequate time for producers to become aware of contract changes and make informed decisions before the sales closing date which has been moved up 30 days to comply with the Federal Crop Insurance Reform Act of 1994.

7. Section 5—Change the cancellation and termination dates of April 15 to March 15 to coincide with the statutorily required movement of the sales closing date.

8. Section 6—Require the producer to provide a copy of the processor contract to the insurance provider on or before the acreage reporting date to establish liability and insurability before a loss is likely to occur.

9. Section 7(a)(3)—Specify that the crop insured will be sweet corn that is grown under a processor contract executed before the acreage reporting date since only that portion of the crop grown under a processor contract is marketable.

10. Section 7(a)(4)—Permit consideration for requests for a written agreement to insure sweet corn that is interplanted with another crop or planted into an established grass or legume when this practice would not adversely affect the yield and would permit coverage of acreage that would otherwise be covered under the noninsured crop disaster assistance program (NAP).

11. Section 7(b)—Specify that a processor contract under which the insured is at risk of loss and retains control on the acreage on which the sweet corn is grown and which provides for delivery of the sweet corn under certain conditions and at a stipulated price will be treated as a contract under which the insured has a share.

12. Section 7(c)—Specify the requirements under which a sweet corn producer who is also a processor may establish an insurable interest in the insured crop.

13. Section 8—Require that any acreage damaged prior to the final planting date must be replanted unless the insurance provider agrees that replanting is not practical. The current policy does not specify that the damage must occur prior to the final planting date. Also require that rotation requirements shown in the Special Provisions be met for acreage to be insured.

14. Section 9(b)—Add provisions for the insurance period to end when the amount of sweet corn delivered to the processor fulfills the producer's processor contract. This requirement is consistent with other crops produced under processor contracts.

15. Section 9(c)—Change the calendar date for the end of the insurance period for Malheur County, Oregon, all Idaho counties, and all Iowa counties to September 30 and all Washington and other Oregon counties to October 20 to recognize extended contracting periods in those areas.

16. Section 10(a)(1)—Clarify that insurable adverse weather conditions include, but are not limited to: (1) excessive moisture that prevents harvesting equipment from entering the field or that prevents timely operation of harvesting equipment; and (2) abnormally hot or cold temperatures that cause a large number of acres to be ready for harvest at the same time when total production is beyond the normal capacity of the processor to timely harvest or process.

17. Section 10(a)(3)—Clarify that insect damage as a cause of loss does not include damage due to insufficient or improper application of pest control measures.

18. Section 10(a)(4)—Clarify that plant disease as a cause of loss does not include damage due to insufficient or improper application of disease control measures.

19. Section 10(b)—Clarify that the insurance provider will not cover loss of production: (1) on bypassed acreage if the acreage is bypassed due to the breakdown or non-operation of equipment or facilities; (2) on bypassed acreage if acreage to be bypassed is selected based on the availability of a crop insurance payment; (3) due to sweet corn not being timely harvested, unless the delay in harvesting is directly due to an insured cause of loss; (4) due to failure to follow the requirements contained in the processor contract; and (5) due to damage that occurs to unharvested production after the producer delivers the production required by the processor contract.

20. Section 11—Require that the producer give us notice within 3 days of the date harvest should have started on any acreage that will not be harvested and leave a representative sample of the unharvested crop for our inspection, or at least 15 days prior to the beginning of harvest if damage is discovered or immediately if damage is discovered during harvest.

21. Section 12(a)—Clarify actions to be taken when acceptable records of production are not provided regarding optional and basic units to be consistent with other crop provisions.

22. Section 12(c)(1)(i)(E)—Clarify that total production to count will include bypassed acreage unless adequate evidence is provided to show the acreage was bypassed for insurable reasons.

23. Section 12(c)(2)—Clarify that the amount of production for harvested acreage will be determined by dividing the dollar amount received from the processor for the quality and quantity of the sweet corn received by the processor by the base contract price per ton, and production to count of harvested production will be expressed as unhusked ear weight.

24. Section 12(d)—Clarify determination of production to count for acreage that is not timely harvested due to an uninsured cause of loss.

25. Section 13—Clarify that a late planting provision, which provides a reduced production guarantee on acreage initially planted after the final planting date, is not available in these crop provisions. A Late Planting Agreement Option was previously offered on sweet corn; however, sweet corn must be grown under a processor contract to be insurable. The processor may specify dates when the sweet corn is to be planted to maintain a coordinated planting and harvest schedule for all growers under contract. Therefore, offering a late planting period may affect the processor's ability to timely harvest and process the sweet corn.

26. Section 14—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contracts by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for, and duration of, written agreements.

Good cause is shown to allow 30 days for comments after this rule is published in the **Federal Register**. This rule improves processing sweet corn crop insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. Although the contract change date is December 31, 1997, the final rule must be published by July 7, 1997. Publication is required by this date to achieve revision and timely distribution of the actuarial documents thereby allowing the reinsured companies and insureds sufficient time to implement the new provisions. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 437 and 457

Crop insurance, Corn, Reporting and recordkeeping.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 437 and 457 as follows:

PART 437—SWEET CORN CROP INSURANCE REGULATIONS FOR THE 1985 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 437 continues to read as follows:

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

2. The part heading is revised to read as set forth above.

3. Subpart heading ''Subpart—Regulations for the 1985 through 1997 Crop Years'' is removed.

3. Section 437.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 437.7 The application and policy.

* * * * *

(d) The application for the 1985 through 1997 crop years is found at subpart D of part 400-General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Sweet Corn Insurance Policy for the

1985 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

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

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

5. Section 457.154 is added to read as follows:

§ 457.154 Processing Sweet Corn Crop Insurance Provisions.

The Processing Sweet Corn Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

Department of Argibulture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Processing Sweet Corn Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Base contract price. The price stipulated on the contract executed between you and the processor without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but is not harvested. Bypassed acreage on which an indemnity is payable will be considered to have a zero yield for Actual Production History (APH) purposes.

Days. Calendar days.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the sweet corn processor contract with the processing company and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The removal of the ears from the stalks for the purpose of delivery to the processor.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Planted acreage. Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Sweet corn must initially be placed in rows far enough apart to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant. In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the processor contract.

Processor. Any business enterprise regularly engaged in processing sweet corn for human consumption, that possesses all licenses and permits for processing sweet corn required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted sweet corn within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow sweet corn, and to deliver the sweet corn production to the processor;

(b) The processor's commitment to purchase all the production stated in the contract; and

(c) A base contract price.

Production guarantee (per acre). The number of tons determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Replanting. Performing the cultural practices necessary to prepare the land to replace the sweet corn seed and then replacing the sweet corn seed in the insured acreage with the expectation of growing a successful crop.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Ton. Two thousand (2,000) pounds avoirdupois.

Unhusked ear weight. Weight of the seed bearing spike of sweet corn including the membranous or green outer envelope.

Written agreement. A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (a basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists. Basic units may not be divided into optional units on any basis other than as described in this section.

(b) Optional units will be available only if the processor contract stipulates the number of acres that are under contract and not a specific amount of production. This provision may not be changed by written agreement.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must meet one or more of the following criteria, as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number.* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices.* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units

may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. However, non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all requirements of this section are met.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the processing sweet corn in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each processing sweet corn type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types; and

(b) The insurance guarantee per acre is expressed as tons of unhusked ears. Any other measured production will be converted to an unhusked ear weight equivalent.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the sweet corn in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That is planted for harvest to be canned or frozen;

(3) That is grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and not excluded from the processor contract at any time during the crop year; and

(4) That is not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain possession of the acreage on which the sweet corn is grown, you are at risk of loss, and the processor contract provides for delivery of sweet corn under specified conditions and at a stipulated base contract price per unit of delivery.

(c) A commercial sweet corn producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The processor must meet the requirements as defined in these crop provisions;

(2) The Board of Directors or officers of the processor must have executed a resolution that sets forth essentially the same terms as a processor contract. Such resolution will be considered a contract under the terms of the processing sweet corn crop insurance policy; and

(3) Our inspection of the processing facilities determines that they satisfy the definition of a processor contained in these crop provisions.

8. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions.

9. Insurance Period

In lieu of the provisions contained in section 11 (Insurance Period) of the Basic Provisions (§ 457.8), regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the sweet corn:

(1) Was destroyed;

(2) Should have been harvested;

(3) Was abandoned; or

(4) Was harvested;

(b) The date you harvested sufficient production to fulfill your processor contract;

(c) Final adjustment of a loss; or

(d) Unless otherwise agreed to in writing, the calendar date for the end of the insurance period in which the sweet corn would normally be harvested as follows:

(1) September 30 in Malheur County, Oregon, all Idaho counties, and all Iowa counties;

(2) October 20 in all other Oregon counties, and in all Washington counties; or

(3) September 20 in all other states.

10. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8):

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including but not limited to:

(i) Excessive moisture that prevents harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures as determined by us that cause insured acreage to be bypassed because an unexpected number of acres over a large producing area are ready for harvest at the same time, and the total production is beyond the normal capacity of the processor to timely harvest or process;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease on acreage not planted to sweet corn the previous crop year, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss referred to in section 10(a) (1) through (7) above that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure any loss of production:

(1) On bypassed acreage if the acreage is bypassed due to the breakdown or non-operation of equipment or facilities;

(2) On bypassed acreage if acreage to be bypassed is selected based on the availability of a crop insurance payment;

(3) Due to processing sweet corn not being timely harvested unless such delay in harvesting is solely and directly due to an insured cause of loss;

(4) Due to your failure to follow the requirements contained in the processor contract; or

(5) Due to damage that occurs to unharvested production after you deliver the production required by the processor contract.

11. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the sweet corn on the unit; or

(2) Discontinuance of harvest on a unit.

(b) Within 3 days of the date harvest should have started on any acreage that will not be harvested and document why the acreage was bypassed. Failure to provide such information will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy

the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in each unit and must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during harvest, so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You do not have to delay harvest if notification is timely given.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result in section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 12(c)) by the respective price election;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the results in section 12(b)(5) from the results in section 12 (b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count, specified in tons of unhusked ear weight, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) For which you fail to provide production records that are acceptable to us; or

(E) That is bypassed unless the acreage was bypassed due to a cause of loss stated in section 10(a).

(ii) Production lost due to uninsured causes;

(iii) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested sweet corn production from the insurable acreage. The amount of such production will be determined by dividing the dollar amount as required by the contract for the quality and quantity of the sweet corn delivered to the processor by the base contract price per ton. The total production to count will be expressed as an unhusked ear weight. Any other measure of production will be converted to an unhusked ear weight equivalent.

(d) If any acreage is not timely harvested due to an uninsured cause of loss but is later harvested, the production to count will be the greater of:

(1) The harvested amount of production with no adjustment for quality; or

(2) The amount determined by dividing the dollar amount as required by the contract for the quality and quantity of the sweet corn delivered to the processor for the production by the base contract price per ton.

13. Late Planting

Late planting provisions are not applicable to processing sweet corn.

14. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on April 25, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–11251 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require replacement of the existing fire, tailpipe, and bleed-air overheat detector control units with new, improved units. This proposal is prompted by reports indicating that false engine and auxiliary power unit (APU) fire warnings were issued from the fire detector control units due to moisture or induced voltages of the detector control unit. The actions specified by the proposed AD are intended to prevent such false fire warnings, which could result in unnecessary diversion of the airplane, and resultant increased risks to the airplane, passengers, and crew, and the potential for an overweight landing.

DATES: Comments must be received by June 12, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–167–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that it has received reports indicating that false engine and auxiliary power unit (APU) fire warnings were issued from the fire detector control units on these airplanes. Investigation has revealed that the false engine and APU fire warnings were caused by moisture or induced voltages of the overheat detector wires, which resulted in false input signals to the fire detector control units. Additionally, the investigation revealed that moisture or induced voltages also caused false warnings of the tailpipe and bleed-air overheat detection control units.

Such moisture or induced voltages of the fire detector control units, if not corrected, could cause false fire warnings of the engine or APU during flight; false fire warnings could result in unnecessary diversion of the airplane, and resultant increased risks to the airplane, passengers, and crew, and the potential for an overweight landing.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–26–002, dated May 9, 1995, which describes procedures for replacement of the fire, tailpipe, and bleed leak detector control units with new, improved units. These new, improved control units contain new software that give fire warnings only when a fire or overheat condition occurs. The LFV classified this service bulletin as mandatory and issued Swedish Airworthiness Directive (SAD) No. 1–073, dated May 10, 1995, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the existing fire, tailpipe, and bleed leak detector control units with new, improved units. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 2 Saab Model SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $360, or $180 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab Aircraft AB: Docket 96–NM–167–AD.

Applicability: Model SAAB 2000 series airplanes having serial numbers 005 through 029 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent false fire warning inputs of the engines and Auxiliary Power Unit (APU), which could result in unnecessary diversion of the airplane, resultant increased risks to the airplane, passengers, and crew, and the potential for an overweight landing; accomplish the following:

(a) Within 4 months after the effective date of this AD, replace the existing fire (engine/APU), tailpipe, and bleed-air overheat detector control units with new, improved control units, in accordance with Saab Service Bulletin 2000–26–002, dated May 9, 1995.

(b) As of the effective date of this AD, no person shall install a fire, tailpipe, or bleed-air detector control unit having part number 25000020–21, 25000021–31, or 25000020–11, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on April 25, 1997.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Dos. 97–11333 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–170–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes. This proposal would require repetitive inspections to detect fatigue cracking in the left and right wings in the area where the top skin attaches to the center spar; and repair or modification of this area, if necessary. This proposal is prompted by a report from the manufacturer indicating that, during full-scale fatigue testing of the airframe, fatigue cracking was detected in this area. The actions specified by the proposed AD are intended to detect and correct this cracking, which could reduce the residual strength of the top skin of the wings, and consequently affect the structural integrity of the airframe.

DATES: Comments must be received by June 12, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–170–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on certain Airbus Model A300–600 series airplanes. The DGAC advises that it has received a report from the manufacturer indicating that, during full-scale fatigue testing of the airframe, fatigue cracking was detected in an area of the wing where the top skin attaches to the center spar between ribs 1 and 7. This cracking originated in clearance fit fastener holes of joints between the skin and the center

spar, and was detected between 33,000 and 49,000 simulated flights.

Initially, it was thought that this cracking was limited to a few airplanes. The manufacturer, however, has found that cracking is more widespread, and is apparently caused by shear stresses resulting from loads on the landing gear.

This fatigue cracking, if not detected and corrected, could reduce the residual strength of the top skin of the wings, and consequently affect the structural integrity of the airframe.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–57–6044, Revision 2, dated September 6, 1995, which describes procedures for conducting repetitive inspections to detect fatigue cracking in the left and right wings in the area where the top skin attaches to the center spar between ribs 1 and 7; and repair or modification of this area, if necessary.

The modification (Airbus Modification 10089) entails reinforcement of this area and is intended to prevent cracking. If that modification has not been installed prior to the initial inspection, operators must inspect using either a detailed visual inspection or a high frequency eddy current (HFEC) technique to detect fatigue cracking, and repair, if necessary. Should cracking exceed 75 mm per rib bay, however, Airbus recommends the installation of the modification. If Airbus Modification 10089 has been installed prior to the initial inspection, operators are to conduct a low frequency eddy current inspection to detect fatigue cracking of the inboard and rear edges of the top skin reinforcing plate.

The Airbus service bulletin references Airbus Service Bulletin A300–57–6041, Revision 4, dated November 16, 1995, as an additional source of service information for installing Airbus Modification 10089.

The DGAC classified Airbus Service Bulletin A300–57–6044 as mandatory and issued French airworthiness directive (C/N) 95–086–180(B) R1, dated December 6, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections to detect fatigue cracking in the left and right wings in the area where the top skin attaches to the center spar between ribs 1 and 7; and repair or modification of this area, if necessary.

Repair of cracking found on airplanes on which Airbus Modification 10089 has been accomplished would be required to be accomplished in accordance with a method approved by the FAA. Other actions would be required to be accomplished in accordance with Airbus Service Bulletin A300–57–6044, described previously.

Cost Impact

The FAA estimates that 35 Airbus Model A300–600 series airplanes of U.S. registry would be affected by this proposed AD.

For airplanes on which Airbus Modification 10089 has not been installed, it would take approximately 2 hours to accomplish each detailed visual inspection or 3 hours to accomplish each HFEC inspection. The average labor rate is $60 per work hour.

Based on these figures, the cost impact of each proposed inspection on U.S. operators is estimated to be either $120 or $180 per airplane, depending on the type of inspection conducted.

For airplanes on which Airbus Modification 10089 has been installed, it would take approximately 3 hours to accomplish each low frequency eddy current inspection.

The average labor rate is $60 per work hour. Based on these figures, the cost impact of each proposed inspection on U.S. operators is estimated to be $180 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 96-NM–170-AD.

Applicability: Model A300–600 series airplanes, on which Airbus Modification 10160 has not been installed during production; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or

repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the left and right wings in the area where the top skin attaches to the center spar, which could reduce the residual strength of this skin, and consequently affect the structural integrity of the airframe, accomplish the following:

(a) For airplanes on which Airbus Modification 10089 has not been installed: Prior to the accumulation of 18,000 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later, conduct either a detailed visual inspection or a high frequency eddy current (HFEC) inspection to detect fatigue cracking in the left and right wings in the area where the top skin attaches to the center spar between ribs 1 and 7, in accordance with Airbus Service Bulletin A300–57–6044, Revision 2, dated September 6, 1995.

(1) If no cracking is detected, conduct repetitive inspections thereafter at the following intervals:

(i) If the immediately preceding inspection was conducted using detailed visual techniques, conduct the next inspection within 5,000 landings.

(ii) If the immediately preceding inspection was conducted using HFEC techniques, conduct the next inspection within 9,500 landings.

(2) If any cracking is detected or suspected during any detailed visual inspection required by paragraph (a), (a)(1), or (a)(3)(i) of this AD, prior to further flight, confirm this finding and the length of this cracking by conducting a HFEC inspection, in accordance with the service bulletin. If no cracking is confirmed during the HFEC inspection, accomplish the repetitive inspection required by paragraph (a)(1)(ii) of this AD at the time specified in that paragraph.

(3) If any cracking is detected or confirmed during any HFEC inspection required by paragraph (a), (a)(1), or (a)(2) of this AD:

(i) If the cracking is 75 mm or less per rib bay, prior to further flight, repair in accordance with the service bulletin. Thereafter, conduct repetitive detailed visual inspections of the repaired area at intervals not to exceed 50 landings, in accordance with the service bulletin.

(ii) If the cracking exceeds 75 mm per rib bay, prior to further flight, install Airbus Modification 10089, in accordance with the service bulletin. Thereafter, conduct a low frequency eddy current inspection in accordance with the requirements of paragraph (b) of this AD.

Note 2: The Airbus service bulletin references Airbus Service Bulletin A300–57–6041, Revision 4, dated November 16, 1995, as an additional source of service information for installing Airbus Modification 10089.

(b) For airplanes on which Airbus Modification 10089 has been installed: Prior to the accumulation of 22,000 total landings after this modification has been installed, or within 1,500 landings after the effective date of this AD, whichever occurs later, conduct a low frequency eddy current inspection to detect fatigue cracking in the inboard and rear edges of the top skin reinforcing plates, in accordance with Airbus Service Bulletin A300–57–6044, Revision 2, dated September 6, 1995.

(1) If no cracking is detected, repeat this inspection thereafter at intervals not to exceed 11,000 landings.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Thereafter, repeat this inspection at intervals not to exceed 11,000 landings.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on April 25, 1997.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–11332 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–20]

Proposed Establishment of Class E Airspace; Davis/Woodlands/Winters, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Davis/Woodland/Winters, CA. The development of a Global Positioning System (GPS) Runway (RWY) 16/34 and a VHF Omnidirectional Range (VOR) RWY 34 Standard Instrument Approach Procedure (SIAP) at Yolo County-Davis/Woodland/Winters Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Yolo County-Davis/Woodland/Winters Airport, Davis/Woodland/Winters, CA.

DATES: Comments must be received on or before June 13, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 97–AWP–20, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard. Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AWP–20.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light

of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Davis/Woodland/Winters, CA. The development of GPS and VOR SIAP at Yolo County-Davis/Woodland/Winters Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 16/34 or VOR RWY 34 SIAP at Yolo County-Davis/Woodland/Winters Airport, Davis/Woodland/Winters, CA. Class E airspace area designations are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AWP CA E5 Davis/Woodland/Winters, CA [New]

Yolo County-Davis/Woodland/Winters Airport, CA
(Lat. 33°34′45″ N, long. 121°51′24″ W)

That airspace extending upward from 700 feet above the surface with a 6.5-mile radius of Yolo County-Davis/Woodland/Winters Airport, excluding the Sacramento, CA, Class C and Class E airspace areas, Davis, CA, Class E airspace area, and Woodland, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on April 15, 1997.

Michael Lammes,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–11380 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–13–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4231

RIN 1212–AA69

Mergers and Transfers Between Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation is proposing to amend its regulation on Mergers and Transfers Between Multiemployer Plans to clarify how the rules are to be applied to plans terminated by mass withdrawal and to make other minor changes and clarifications in the regulation.

DATES: Comments on these proposals must be received by June 30, 1997.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; delivered to that address between 9 a.m. and 4 p.m. on business days; faxed to 202–326–4112; or e-mailed to reg.comments@pbgc.gov. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Background

Under section 4231(a) and (b) of ERISA, a merger, or a transfer of assets and liabilities, between multiemployer plans must satisfy four requirements unless otherwise provided in regulations prescribed by the PBGC:

(1) The PBGC must receive 120 days' advance notice of the transaction;

(2) Accrued benefits must not be reduced;

(3) There must be no reasonable likelihood that benefits will be suspended as a result of plan insolvency; and

(4) An actuarial valuation of each affected plan must have been performed as prescribed in section 4231(b)(4).

The PBGC's regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231 (formerly part 2672)) prescribes procedures for requesting a determination that a merger or transfer satisfies applicable requirements, allows the PBGC to waive the 120-day notice requirement, and sets higher-level and lower-level requirements for ''safe harbor'' plan solvency tests and for valuation standards. Whether the higher-level or lower-level requirements apply depends on whether a ''significant transfer'' is involved.

Terminated Plan Transactions

Transactions involving plans that have been terminated by mass withdrawal under ERISA section 4041A(a)(2) are rare. The current regulation does not make clear whether, and if so how, the merger and transfer rules apply to these cases. Since such plans have no contributing employers, and transactions involving them present more risk than most others, it is important to specify how the merger and transfer rules apply to them.

The amendment clarifies that transactions involving such plans are subject to the merger and transfer rules and (except for ''de minimis'' transactions) are governed by the higher-level valuation standard and ''safe harbor'' solvency test. (Terminated plans, like other plans, could satisfy the plan solvency requirement without recourse to the ''safe harbor'' test by demonstrating that benefits are not likely to be suspended.) The amendment also extends to ''de minimis'' terminated plan transactions the requirement that actuarial valuation reports be submitted to the PBGC.

Significant Transfers

Both plans involved in a significant transfer are currently subject to the higher-level valuation standard and ''safe harbor'' solvency test, even if only one of the plans is significantly affected. The standard for determining whether a plan is ''significantly affected'' is generally the same as the standard for determining whether a transfer is a ''significant transfer'' under the existing regulation. A transferor plan is significantly affected if the assets transferred equal or exceed 15 percent of its pre-transfer assets. A transferee plan is significantly affected if the unfunded accrued benefits transferred equal or exceed 15 percent of its pre-transfer assets.

The amended regulation no longer automatically applies the higher-level valuation standard and safe harbor solvency test to both plans involved in a significant transfer if only one of the plans is significantly affected. Instead, the higher-level standard and test are just applied to the significantly affected plan. (In addition, as discussed above, the higher-level standard and test are applied to any plan that is involved in a non-de minimis terminated plan transaction).

Other Changes

The regulation currently requires that a compliance determination request for a significant transfer include copies of all actuarial valuations performed within the five years preceding the proposed effective date of the transfer. This cannot be done where the last plan year preceding the proposed effective date is in progress when the compliance determination request is filed. The amended regulation calls for the valuations performed within the five years preceding the compliance determination request.

The amendment also modifies the higher-level valuation standard slightly so that the actuarial assumptions and methods used in the pre-merger valuation would be those expected to be used for the surviving plan after the merger.

Under the current regulation, the requirement for 120 days' notice can be waived only if the PBGC is satisfied that failure to complete the transaction in a shorter time will harm participants or beneficiaries. The PBGC typically completes its reviews in 60 to 90 days, and there is usually no reason to wait the full 120 days. The proposed amendment would also permit a merger or transfer to be consummated if (1) the PBGC determines that the transaction complies with ERISA section 4231, or (2) the PBGC completes its review of the transaction.

The PBGC is also making other conforming and clarifying changes.

Paperwork Reduction Act

The collection of information requirements in existing Part 4231 have been approved by the Office of Management and Budget under control number 1212–0022. The PBGC has submitted these requirements, as amended by this proposed rule, to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995.

The PBGC needs the information submitted under Part 4231 by plan sponsors of multiemployer plans that are involved in mergers and transfers in order to monitor compliance with the requirements for mergers and spinoffs of multiemployer plans.

Based on its experience, the PBGC estimates that about 20 submissions will be made each year under the amended regulation, no more than 2 of which will involve spin-offs or significantly affected plans. The PBGC also believes, based on its experience, that virtually all of these submissions will be prepared by outside actuaries, lawyers, and other consultants. The PBGC estimates that it will cost a plan an average of $455 for preparation of a submission that does not involve a spin-off or a significantly affected plan and $705 for preparation of a submission that involves a spin-off or a significantly affected plan. Accordingly, the estimated annual cost burden of the collection of information is $9,600.

Comments on the paperwork provisions of the proposed rule should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, Washington, DC 20503. The PBGC is soliciting public comments to—

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In particular, the PBGC invites suggestions regarding procedures for submitting some or all of the required information electronically.

Compliance With Rulemaking Guidelines

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

The PBGC certifies that the amendment in this proposed rule would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the primary substantive effect of the proposed amendment would be to liberalize certain existing requirements and to clarify the application of existing requirements to a very rare category of transactions, viz., multiemployer mergers and transfers involving plans that have terminated by mass withdrawal. (The PBGC is aware of only two such transactions since § 4231 of ERISA was enacted.) Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, compliance with sections 603 and 604 of the Regulatory Flexibility Act is not required.

List of Subjects in 29 CFR Part 4231

Pensions, Reporting and recordkeeping requirements.

For the reasons given above, the PBGC proposes to amend 29 CFR part 4231 as follows.

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

1. The authority citation for part 4231 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1411.

2. In § 4231.1, paragraph (a) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 4231.1 Purpose and scope.

(a) Purpose. * * * The collections of information in this part have been approved by the Office of Management and Budget under OMB control number 1212–0022.

3. In § 4231.2, the first sentence is amended by adding the word ''EIN,'' after the word ''chapter:'' and before the word ''ERISA'', by removing the word ''and'', and by adding a comma and the words ''and PN'' after the words ''plan year'' and before the period; the definition of significant transfer is removed; and new definitions of significantly affected plan and unfunded accrued benefits are added to read as follows:

§ 4231.2 Definitions.

* * * * *

Significantly affected plan means a plan that—

(1) Transfers assets that equal or exceed 15 percent of its assets before the transfer,

(2) Receives a transfer of unfunded accrued benefits that equal or exceed 15 percent of its assets before the transfer,

(3) Is created by a spinoff from another plan, or

(4) Engages in a merger or transfer (other than a de minimis merger or transfer) either—

(i) After such plan has terminated under section 4041A(a)(2) of ERISA, or

(ii) With another plan that has so terminated.

* * * * *

Unfunded accrued benefits means the excess of the present value of a plan's accrued benefits over the fair market value of its assets, determined on the basis of the actuarial valuation required under § 4231.5(b).

§ 4231.3 [Amended]

4. In § 4231.3, paragraph (a)(2) is amended by removing the words ''involved in'' and adding in their place the words ''that existed before''; and the introductory text of paragraph (a)(3) is amended by removing the words ''involved in'' and adding in their place the words ''that exists after''. As so revised, paragraph (a)(2) and the introductory text of paragraph (a)(3) of § 4231.3 read as follows:

§ 4231.3 Requirements for mergers and transfers.

(a) *General requirements.* * * *

* * * * *

(2) Actuarial valuations of the plans that existed before the merger or transfer shall have been performed in accordance with § 4231.5.

(3) For each plan that exists after the transaction, an enrolled actuary shall—

* * * * *

§ 4231.3 [Amended]

5. At the end of § 4231.3, the words ''(Approved by the Office of Management and Budget under control number 1212–0022)'' are removed.

6. Section 4231.5 is revised to read as follows:

§ 4231.5 Valuation requirement.

(a) *In general.* For a plan that is not a significantly affected plan, the actuarial valuation requirement under section 4231(b)(4) of ERISA and § 4231.3(a)(2) is satisfied if an actuarial valuation has been performed for the plan based on the plan's assets and liabilities as of a date not more than three years before the date on which the notice of the merger or transfer is filed.

(b) *Significantly affected plans.* (1) The actuarial valuation requirement under section 4231(b)(4) of ERISA and § 4231.3(a)(2) is satisfied for a significantly affected plan only if an actuarial valuation has been performed for the plan based on the plan's assets and liabilities as of a date not earlier than the first day of the last plan year ending before the proposed effective date of the transaction.

(2) In the case of a transfer, the valuation shall separately identify assets, contributions, and liabilities being transferred and shall be based on the actuarial assumptions and methods that are expected to be used for the plan for the first plan year beginning after the transfer.

(3) In the case of a merger involving a plan that has terminated under section 4041A(a)(2) of ERISA, the valuation shall be based on the actuarial assumptions and methods that are expected to be used for the plan resulting from the merger for the first plan year beginning after the merger.

7. In § 4231.6, paragraphs (a) and (b) are redesignated as paragraphs (b) and (a) respectively; the introductory texts of redesignated paragraphs (a) and (b) are revised; and redesignated paragraph (b)(4) and paragraph (c)(1) are revised, to read as follows:

§ 4231.6 Plan solvency tests.

(a) *In general.* For a plan that is not a significantly affected plan, the plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) is satisfied if —

* * * * *

(b) *Significantly affected plans.* The plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) is satisfied for a significantly affected plan if all of the following requirements are met:

* * * * *

(4) Contributions for the amortization period shall equal or exceed unfunded accrued benefits plus expected normal costs. The actuary may select as the amortization period either—

(i) The first 25 plan years beginning on or after the proposed effective date of the transaction, or

(ii) The amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 412(b)(4) of the Code.

(c) *Rules for determinations.* * * *

(1) Expected contributions after a merger or transfer shall be determined by assuming that contributions for each plan year will equal contributions for the last full plan year ending before the date on which the notice of merger or transfer is filed with the PBGC. Contributions shall be adjusted, however, to reflect—

(i) The merger or transfer,

(ii) Any change in the rate of employer contributions that has been negotiated (whether or not in effect), and

(iii) Any trend of changing contribution base units over the preceding five plan years or other period of time that can be demonstrated to be more appropriate.

* * * * *

§ 4231.6 [Amended]

8. In § 4231.6, redesignated paragraph (a)(1) is amended by removing the word ''in'' and adding in its place the word ''for''; redesignated paragraphs (b)(1) through (b)(3) are amended by removing the word ''transfer'' wherever it appears and adding in its place the word ''transaction''; redesignated paragraph (b)(2) is amended by removing the word ''during'' and adding in its place the word ''for''; paragraph (c)(2) is amended by adding the words ''expected to be''

after the words ''and assumptions'' and before the words ''used by the plan'' and by removing the words ''is using'' and adding in their place the word ''uses''; paragraph (c)(4) is amended by removing the words ''to the plan sponsor''; and paragraph (c)(5) is amended by adding the words ''to be'' after the words ''interest assumption'' and before the words ''used for''. As so revised, redesignated paragraphs (a)(1) and (b)(1) through (b)(3) and paragraphs (c)(2), (c)(4), and (c)(5), of § 4231.6 read as follows:

§ 4231.6 Plan solvency tests.

(a) *In general.* * * *

(1) The fair market value of plan assets immediately after the merger or transfer equals or exceeds five times the benefit payments for the last plan year ending before the proposed effective date of the merger or transfer; or

* * * * *

(b) *Significantly affected plans.* * * *

(1) Expected contributions shall equal or exceed the estimated amount necessary to satisfy the minimum funding requirement of section 412(a) of the Code (including reorganization funding, if applicable) for the five plan years beginning on or after the proposed effective date of the transaction.

(2) The fair market value of plan assets immediately after the transaction shall equal or exceed the total amount of expected benefit payments for the first five plan years beginning on or after the proposed effective date of the transaction.

(3) Expected contributions for the first plan year beginning on or after the proposed effective date of the transaction shall equal or exceed expected benefit payments for that plan year.

* * * * *

(c) Rules for determinations * * *

* * * * *

(2) Expected normal costs shall be determined under the funding method and assumptions expected to be used by the plan actuary for purposes of determining the minimum funding requirement under section 412 of the Code (which requires that such assumptions be reasonable in the aggregate). If the plan uses an aggregate funding method, normal costs shall be determined under the entry age normal method.

* * * * *

(4) The fair market value of plan assets immediately after the merger or transfer shall be based on the most recent data available immediately before the date on which the notice is filed.

(5) Expected investment earnings shall be determined using the same interest assumption to be used for determining the minimum funding requirement under section 412 of the Code.

* * * * *

9. In § 4231.7, paragraph (a) is revised, and paragraph (c)(3) is added, to read as follows:

§ 4231.7 De minimis mergers and transfers.

(a) *Special plan solvency rule.* The determination of whether a de minimis merger or transfer satisfies the plan solvency requirement in § 4231.6(a) may be made without regard to any other de minimis mergers or transfers that have occurred since the last actuarial valuation.

* * * * *

(c) De minimis *transfer defined.*

* * *

* * * * *

(3) The transferee plan is not a plan that has terminated under section 4041A(a)(2) of ERISA.

* * * * *

§ 4231.7 [Amended]

10. In § 4231.7, paragraph (c)(1) is amended by removing the word ''and''; paragraph (c)(2) is amended by removing the period and adding in its place a semicolon and the word ''and''; paragraph (d) is amended by removing the words ''merger or transfer'' and adding in their place the word ''transaction'', by adding the word ''actuarial'' after the words ''the most recent'' and before the word ''valuation'', and by removing the words ''performed for purposes of section 412(b) of the Code''; the introductory text of paragraph (e)(2) is amended by adding the words ''de minimis'' after the words ''all previous'' and before the words ''mergers and transfers''; paragraph (e)(2)(i) is amended by removing the words ''from the plan'' and adding in their place the words ''from a plan''; and paragraph (e)(2)(ii) is amended by removing the words ''to the plan'' and adding in their place the words ''to a plan''. As so revised, paragraphs (c)(1), (c)(2), (d), and (e)(2) of § 4231.7 read as follows:

§ 4231.7 De minimis mergers and transfers.

* * * * *

(c) De minimis *transfer defined.*

* * *

(1) The fair market value of the assets transferred, if any, is less than 3 percent of the fair market value of all the assets of the transferor plan;

(2) The present value of the accrued benefits transferred (whether or not vested) is less than 3 percent of the fair market value of all the assets of the transferee plan; and

* * * * *

(d) *Value of assets and benefits.* For purposes of paragraphs (b) and (c) of this section, the value of plan assets and accrued benefits may be determined as of any date prior to the proposed effective date of the transaction, but not earlier than the date of the most recent actuarial valuation.

* * * * *

(e) *Aggregation required.* * * *

* * * * *

(2) A transfer is not de minimis if, when aggregated with all previous de minimis mergers and transfers effective within the same plan year—

(i) The value of all assets transferred from a plan equals or exceeds 3 percent of the value of the plan's assets; or

(ii) The present value of all accrued benefits transferred to a plan equals or exceeds 3 percent of the plan's assets.

11. In § 4231.8, paragraphs (d), (e)(1)(iii), (e)(2), (e)(6), and (f) are revised to read as follows:

§ 4231.8 Notice of merger or transfer.

* * * * *

(d) *Filing date.* For purposes of paragraph (a) of this section, the notice is not considered filed until all of the information required by paragraph (e) of this section has been submitted. Information filed under this part is considered filed—

(1) On the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) The postmark was made by the United States Postal Service; and

(ii) The information was mailed postage prepaid, properly addressed to the PBGC; or

(2) On the date it is received by the PBGC, if the conditions stated in paragraph (d)(1) of this section are not met. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

(e) * * *

(1) * * *

* * * * *

(iii) The plan sponsor's EIN and the plan's PN and, if different, the EIN or PN last filed with the PBGC. If no EIN or PN has been assigned, the notice shall so indicate.

(2) Whether the transaction being reported is a merger or transfer, whether it involves any plan that has terminated under section 4041A(a)(2) of ERISA, whether any significantly affected plan is involved in the transaction (and, if so, identifying each such plan), and whether it is a de minimis transaction

as defined in § 4231.7 (and, if so, including an enrolled actuary's certification to that effect).

* * * * *

(6) For each plan that exists before a transaction (unless the transaction is de minimis and does not involve any plan that has terminated under section 4041A(a)(2) of ERISA), a copy of the most recent actuarial valuation report that satisfies the requirements of § 4231.5.

* * * * *

(f) *Waiver of notice.* The PBGC may waive the notice requirements of this section and section 4231(b)(1) of ERISA if—

(1) A plan sponsor demonstrates to the satisfaction of the PBGC that failure to complete the merger or transfer in less than 120 days after filing the notice will cause harm to participants or beneficiaries of the plans involved in the transaction;

(2) The PBGC determines that the transaction complies with the requirements of section 4231 of ERISA; or

(3) The PBGC completes its review of the transaction.

§ 4231.8 [Amended]

12. In § 4231.8, paragraph (c) is amended by removing the words ''by mail or submitted by hand''; paragraph (e)(3) is amended by removing the words ''merger or transfer'' and adding in their place the word ''transaction''; paragraph (e)(4) is amended by removing the words ''the plan provision'' and adding in their place the words ''each plan provision''; the introductory text of paragraph (e)(5) is amended by removing the word ''One'' and adding in its place the words ''For each plan that exists after the transaction, one''; paragraph (e)(5)(i) is removed and paragraphs (e)(5)(ii) and (e)(5)(iii) are redesignated as paragraphs (e)(5)(i) and (e)(5)(ii) respectively; redesignated paragraph (e)(5)(i) is amended by removing the words ''merger or transfer'' and adding in their place the word ''plan''; the introductory text of paragraph (e)(7) is amended by removing the words ''a significant transfer'' and adding in their place the words ''each significantly affected plan that exists after the transaction'' and by removing the reference ''§ 4231.6(a)'' and adding in its place the reference ''§ 4231.6(b)''; and paragraphs (e)(7)(i) through (e)(7)(v) are amended by removing the word ''each'' wherever it occurs and adding in its place the word ''the'', and by removing the word ''transfer'' wherever it occurs and adding in its place the word ''transaction''. As so revised, paragraphs (c), (e)(3), and (e)(4), the introductory text of paragraph (e)(5), redesignated paragraph (e)(5)(i), and paragraph (e)(7) of § 4231.8 read as follows:

§ 4231.8 Notice of merger or transfer.

* * * * *

(c) *Where to file.* The notice shall be delivered to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

* * * * *

(e) * * *

* * * * *

(3) The proposed effective date of the transaction.

(4) A copy of each plan provision stating that no participant's or beneficiary's accrued benefit will be lower immediately after the merger or transfer than the benefit immediately before the transaction.

(5) For each plan that exists after the transaction, one of the following statements, certified by an enrolled actuary:

(i) A statement that the plan satisfies the applicable plan solvency test set forth in § 4231.6, indicating which is the applicable test.

* * * * *

(7) For each significantly affected plan that exists after the transaction, the following information used in making the plan solvency determination under § 4231.6(b):

(i) The present value of the accrued benefits and fair market value of plan assets under the valuation required by § 4231.5(b), allocable to the plan after the transaction.

(ii) The fair market value of assets in the plan after the transaction (determined in accordance with § 4231.6(c)(4)).

(iii) The expected benefit payments for the plan in the first plan year beginning on or after the proposed effective date of the transaction (determined in accordance with § 4231.6(c)(3)).

(iv) The contribution rates in effect for the plan for the first plan year beginning on or after the proposed effective date of the transaction.

(v) The expected contributions for the plan in the first plan year beginning on or after the proposed effective date of the transaction (determined in accordance with § 4231.6(c)(1)).

* * * * *

§ 4231.8 [Amended]

13. At the end of § 4231.8, the words ''(Approved by the Office of Management and Budget under control number 1212–0022)'' are removed.

14. In § 4231.9, the first sentence of the introductory text of paragraph (a) is removed and a new sentence is added in its place, to read as follows:

§ 4231.9 Request for compliance determination.

(a) *General.* The plan sponsor(s) of one or more plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsor(s), may file a request for a determination that the transaction complies with the requirements of section 4231 of ERISA. * * *

* * * * *

§ 4231.9 [Amended]

15. In § 4231.9, the paragraph heading of paragraph (b) is revised to read ''Contents of request.''; paragraph (b) (other than the paragraph heading), and paragraphs (b)(1), (b)(2), and (b)(3), are redesignated as paragraph (b)(1), and paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii), respectively; redesignated paragraph (b)(1) is amended by adding the paragraph heading ''General.''; the introductory text of redesignated paragraph (b)(1) is amended by removing the words ''de minimus'' and adding in their place the words ''de minimis''; redesignated paragraph (b)(1)(ii) is amended by removing the words ''the certification that'' and adding in their place the words ''each certification that a plan involved in''; redesignated paragraph (b)(1)(iii) is amended by removing the words ''a significant transfer'' and adding in their place the words ''each significantly affected plan'' and by removing the words ''proposed effective date of the transfer'' and adding in their place the words ''date of filing the notice required under § 4231.8''; paragraph (c), and paragraphs (c)(1) and (c)(2), are redesignated as paragraph (b)(2), and paragraphs (b)(2)(i) and (b)(2)(ii), respectively; the introductory text of redesignated paragraph (b)(2) is amended by removing the paragraph heading and adding in its place the heading ''De minimis merger or transfer.'' and by adding the words ''for each plan that exists after the transaction'' after the words ''following statements'' and before the comma; and redesignated paragraph (b)(2)(i) is amended by removing the words ''merger or transfer'' and adding in their place the word ''plan'' and by removing the reference ''§ 4231.6(b)'' and adding in its place the reference ''§ 4231.6(a)''. Therefore, paragraphs (c) introductory text, (c)(1) and (c)(2) are redesignated as paragraphs (b)(2) introductory text,

(b)(2)(i) and (b)(2)(ii), respectively, and the revised paragraph (b) reads as follows:

§ 4231.9 Request for compliance determination.

* * * * *

(b) *Contents of request—*

(1) *General.* A request for a compliance determination concerning a merger or transfer that is not de minimis shall contain —

(i) A copy of the merger or transfer agreement;

(ii) A summary of the required calculations, including a complete description of assumptions and methods, on which the enrolled actuary based each certification that a plan involved in the merger or transfer satisfied a plan solvency test described in § 4231.6; and

(iii) For each significantly affected plan, copies of all actuarial valuations performed within the 5 years preceding the date of filing the notice required under § 4231.8.

(2) De minimis *merger or transfer.* A request for a compliance determination concerning a de minimis merger or transfer shall contain one of the following statements for each plan that exists after the transaction, certified by an enrolled actuary:

(i) A statement that the plan satisfies one of the plan solvency tests set forth in § 4231.6(a), indicating which test is satisfied.

(ii) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including supporting data or calculations, assumptions and methods.

§ 4231.9 [Amended]

16. At the end of § 4231.9, the words ''(Approved by the Office of Management and Budget under control number 1212–0022)'' are removed.

§ 4231.10 [Amended]

17. At the end of § 4231.10, the words ''(Approved by the Office of Management and Budget under control number 1212–0022)'' are removed.

Issued in Washington DC, this 25th day of April, 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–11352 Filed 4–30–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 251

RIN 1010–AC10

Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Reopening of comment period for proposed rule.

SUMMARY: This notice reopens to May 30, 1997, the deadline for the submission of comments on the proposed revision of requirements governing Geological and Geophysical Explorations of the Outer Continental Shelf, that were published February 11, 1997.

DATES: We will consider all comments received by May 30, 1997. We will begin reviewing comments at that time and may not fully consider comments received after May 30, 1997.

ADDRESSES: Mail or hand-carry written comments to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4700; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT:

Kumkum Ray, Engineering and Operations Division, at (703) 787–1600.

SUPPLEMENTARY INFORMATION: MMS has been asked to extend the deadline for respondents to submit comments on the proposed revisions of MMS's requirements governing geological and geophysical explorations of the Outer Continental Shelf that were published February 11, 1997 (62 FR 6149). The request explains that more time is needed to allow respondents time to prepare detailed and comprehensive comments.

Dated: April 22, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–11276 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 96

46 CFR Parts 2, 31, 71, 91, 107, 115, 126, 175, 176, and 189

[CGD 95–073]

RIN 2115–AF44

International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to develop regulations which parallel the international requirements for safety management systems required of companies and their U.S. vessels that are engaged on foreign voyages. This action is mandated by the Coast Guard Authorization Act of 1996. These proposed regulations will allow responsible persons and their U.S. vessel(s) to develop safety management systems to enhance vessel operating safety and reduce pollution incidents in compliance with internationally and nationally mandated deadlines. The proposed regulations will also permit recognized organizations to receive authorization from the U.S. to audit safety management systems and issue international convention certificates.

DATES: Comments must reach the Coast Guard on or before July 30, 1997. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before June 30, 1997.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–073), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between

9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The material proposed for incorporation by reference is available for inspection at room 1210, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), at (202) 267–1053, or fax (202) 267–4570.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 95–073) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

This is the Coast Guard's first ''plain English'' regulation. Clear, more readable regulations are essential for the success of our government's reinvention initiative. We encourage your comments on this new way of writing regulations.

Background and Purpose

This proposed rule is necessary to fulfill the mandates of 46 U.S.C. 3203, as added by section 602 of the Coast Guard Authorization Act of 1996, Pub. L. 104–324, 110 Stat. 3901. The purpose of this rule is to establish a national safety management system and requirements for the development, documentation, auditing, certification and enforcement of responsible persons and vessel safety management systems consistent with the U.S. adopted international regulations of Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) 1974, as amended. Chapter IX of SOLAS, ''Management for the Safe Operation of Ships,'' requires that all vessels to which SOLAS is applicable, and their companies, have effective safety management systems developed to meet the performance elements of the International Safety Management (ISM) Code (International Maritime Organization (IMO) Resolution A.741(18)).

Safety management systems for vessel transportation operations were first formalized in November 1987, in response to the HERALD OF FREE ENTERPRISE disaster, when the IMO adopted Resolution A.596(15), ''Safety of Passenger Ro-Ro Ferries.'' This resolution concluded that vessel safety could be greatly enhanced by establishing improved vessel operating practices. It further requested that the IMO Maritime Safety Committee (MSC) and Marine Environmental Protection Committee (MEPC) develop guidelines for shipboard and shore-based management procedures for safer vessels and pollution prevention.

On October 19, 1989, the MSC and MEPC guidelines for development of enhanced safety management practices were adopted by the IMO as Resolution A.647(16), ''Guidelines on Management for the Safe Operation of Ships and for Pollution Prevention.'' This first set of recommendations provided performance standards for the maritime industry on vessel safety management systems and encouraged continuous improvement in safety management skills within the maritime industry worldwide. It noted that vessel safety could be increased and environmental pollution decreased for all vessels which used documented company and vessel operating management practices. Safe operating practices, implemented through documented procedures and company policies, would provide better results in vessel safety than governments' attempts to regulate operating practices.

IMO Resolution A.647(16) was endorsed by the U.S. and published as an enclosure to Navigation and Vessel Inspection Circular (NVIC) No. 1–90, ''Recommendation Concerning Management Practices for Safe Ship Operation and Pollution Prevention,'' published August 17, 1990. NVIC 1–90 recommendations were intended as guidelines for industry use. These guidelines were intended to document management procedures that increased the levels of safety aboard vessels and reduced pollution incidents. The Coast Guard concluded that operating efficiency and profitability is increased for a vessel, if the owner or managing operator provides effective supervision and plans a safety strategy which anticipates problems and provides direction to manage important day-to-day vessel and shore-based operations. It was also found that the effective use of a safety management system specifically enhances the ability of a company's shore-based personnel to respond to vessel operational needs or emergencies.

Since the adoption of IMO Resolution A.647(16) in 1989, the MSC and MEPC have continued to refine and amend the performance standards and elements required for enhancement of safety management systems. This was because significant marine casualties continued to occur despite engineering and technological innovations. The Coast Guard's analysis of marine casualties over the past 30 years illustrated that the national and international maritime community applied engineering and technological solutions to promote safety and minimize the consequences of marine casualties. In an effort to further reduce casualties, the role of the ''human element'' in the maritime safety equation was evaluated.

Recent casualty studies concluded that in excess of 80 percent of all high consequence marine casualties may be directly or indirectly attributable to the ''human element.''

Consequently, the international maritime community saw the need to emphasize shipboard safety management practices to minimize human errors or omissions. These types of errors play a part in virtually every casualty, including those where structural or equipment failure may be the direct cause.

During the last eight years, two subsequent IMO resolutions were adopted due to work by the MSC and MEPC that incorporated the earlier recommendations and guidelines. These IMO resolutions are:

- IMO Resolution A.681(17), adopted November 6, 1991, ''Procedures for the Control and Operational Requirements Related to the Safety of Ships and Pollution Prevention''; and
- IMO Resolution A.741(18), adopted November 4, 1993, ''The International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code).''

Adoption of these resolutions increased the performance elements required to enhance the marine management skill practices documented as part of the safety management

system. These new performance elements included:

- Written management procedures that document relevant national and international regulations which are applicable to vessel operations;
- Designation of a person within the company who is responsible to oversee and maintain the safety management system. This person has complete communication authority from the lowest employee level to the top management of the company to ensure that vessel operation problems reach all levels of management unobstructed; and
- Internal company auditing and reporting procedures to ensure continuous improvement to the safety management system by owner and managers.

The U.S. has been at the forefront providing input, analysis and direction for MSC and MEPC development of these resolutions. The U.S. recognized that the human element needed to be addressed and initiated the Prevention Through People (PTP) program which examines and defines the critical role that the human element plays in maritime safety. The PTP concept asserts that safe and profitable operations require a systematic approach toward the constant and balanced interaction between the elements of management, the work environment, individual behavior, and appropriate technology. The ISM Code provides this systematic approach to the mariner with the policy and procedures needed to understand their duties and address the human element issues and risks that can prevent casualties from occurring. The voluntary certification of safety management systems by U.S. vessels in domestic trade supports the PTP strategies to bring government and industry together in making cultural change and partnerships to address the human element in maritime operations and pollution prevention.

Accordingly, the Coast Guard endorsed the guidance provided by the ISM Code in IMO Resolution A.741(18), and provided it as a reference in NVIC No. 2–94 published March 15, 1994, ''Guidance Regarding Voluntary Compliance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention.'' NVIC 2–94 canceled the earlier NVIC 1–90.

In May 1994, Chapter IX of SOLAS, ''Management for the Safe Operation of Ships,'' was adopted at the IMO's Conference of Contracting Governments to SOLAS, 1974. Chapter IX of SOLAS mandates that all vessels subject to SOLAS, and their companies, have effective safety management systems developed and in use that conform to the performance elements of the ISM Code (IMO Resolution A.741(18)). Companies whose U.S. flag vessels trade internationally (engaged on a foreign voyage) and are subject to SOLAS, must have their safety management system externally audited and must receive the appropriate international certificates from the U.S. or from a recognized organization authorized to act on behalf of the U.S.

The adoption of Chapter IX of SOLAS will become effective for companies whose vessels are subject to the provisions of SOLAS and are engaged in international trade as follows:

- Beginning July 1, 1998, for vessels transporting more than 12 passengers; and tankers, bulk freight vessels, or high speed freight vessels of at least 500 gross tons; and
- Beginning July 1, 2002, for freight vessels and self-propelled mobile offshore drilling units of at least 500 gross tons.

The ISM Code marks a significant philosophical shift in the maritime community's approach by recognizing the human element's role in preventing marine casualties and ensuring vessels are operated responsibly in accordance with domestic and international standards. The ISM Code is seen as a major contributor to industry's self-evaluation and action to address the human element concerns. It is intended to change the current approach of regulatory compliance from industry's passive defect notification and correction response mode to an aggressive approach to safety. Under this proactive approach, potential discrepancies are resolved by the companies themselves before casualties can occur.

The ISM Code performance elements require the development of safety management systems which document and communicate the owner's policy, chain of authority, and operational and emergency procedures. It also requires management reviews, internal audits and corrections of non-conformities in a company's management procedures. The documentation of a safety management system provides the basis for auditing the employee's knowledge, ashore and afloat, of the company's procedures and policies. It illustrates owner, manager and master responsibilities specifically and ensures that all national and international standards are documented in the system's procedures.

To ensure that the U.S. public and maritime industry understood the mandatory requirements of the ISM Code, the Coast Guard published a notice in the **Federal Register** on October 5, 1995 (60 FR 52143). This notice explained the adoption of the ISM Code by the Contracting Parties of SOLAS, and scheduled four public meetings held at the following times and locations:

- October 30, 1995,—Federal Building, Seattle, Washington;
- November 1, 1995,—Port Authority Building, Long Beach, California;
- November 13, 1995,—Holiday Inn Downtown, New Orleans, Louisiana; and
- November 16, 1995,—Port Authority Building, New York City, New York.

At these public meetings, the Coast Guard received comments on implementation of the international requirements and provided a presentation on the U.S.'s voluntary safety management system guidelines in NVIC 2–94. Comments received at these meetings were audio taped and are a part of this docket.

On January 26, 1996, RADM James C. Card, the Assistant Commandant for Marine Safety and Environmental Protection (G–M), sent a personal letter to each owner of a U.S. vessel required to be certificated by the international requirements of the ISM Code. This was done to ensure that the U.S. flag vessel owners understood that the U.S. had adopted Chapter IX of SOLAS, and the ISM Code would be mandatory for their companies and U.S. vessels.

Discussion of Proposed Rules

The incorporation of the ISM Code's tenets into U.S. regulations is required by section 602 of the Coast Guard Authorization Act of 1996. This section added Chapter 32 ''Management of Vessels'' to Title 46 U.S. Code. The Secretary of Transportation is required by 46 U.S.C. 3203 to prescribe regulations that establish a safety management system for the responsible persons and vessels to which Subtitle II of 46 applies. The safety management system must be consistent with the ISM Code and must include:

- A safety and environmental protection policy;
- Instructions and procedures to ensure safe operation of vessels and protection of the environment in compliance with international and U.S. law;
- Defined levels of authority and lines of communication between, and among, personnel onshore and on the vessel;
- Procedures to report accidents and nonconformities with 46 U.S.C. chapter 32;

• Procedures to prepare for and respond to emergency situations; and

• Procedures for internal audits and management reviews of the system.

The Secretary of Transportation's authority under 46 U.S.C. Chapter 32 and 46 U.S.C. 3103 was delegated to the Commandant of the Coast Guard in title 49, Code of Federal Regulations (CFR), § 1.46 (fff) and (ggg), published as a final rule in the **Federal Register** on April 24, 1997 (62 FR 19935).

Safety Management System

The Coast Guard is implementing the requirements for safety management systems and related requirements to implement the provisions of Chapter IX of SOLAS, in new 33 CFR part 96. To establish safety management system requirements, the Coast Guard is proposing to use existing industry based standards or previously adopted international standards to the greatest extent possible. Under the proposed rules, responsible persons and their U.S. vessels subject to Chapter IX of SOLAS and IMO Resolution A.741(18) will be able to meet these international requirements at the same time they comply with parallel U.S. statutory requirements and regulations. For those vessels or companies that are not subject to the SOLAS requirements and not required to meet these regulations, the proposed § 96.210(c) permits them to voluntarily meet the standards of part 96 and Chapter IX of SOLAS. Proposed §§ 96.220, 96.230, 96.240, and 96.250 establish the safety management system, and detail the specific objectives, functional requirements, documentation and reporting required for consistency with the ISM Code and to comply with Federal law.

46 U.S.C. 3204 requires that responsible persons submit a safety management plan to the Secretary describing how they will comply with the regulations pertaining to the safety management system. The Secretary must review this plan to determine if it is consistent with and will assist in implementing the safety management system. Once compliance is assured, then the Secretary issues a Safety Management Certificate and a Document of Compliance certificate.

Responsible persons are owners of vessels or other persons, organizations or companies who have assumed responsibility for the operation of a vessel from the owner. Responsible persons who are not owners have agreed to take over the duties and responsibilities imposed by the safety management system and the requirements of these proposed rules. To be consistent with these proposed regulations and the elements of the ISM Code, and for ease of understanding by the user of the regulations, the term ''company(nies)'' will be used in the place of responsible person(s) where needed for grammatical correctness and readability of the proposed regulations.

Chapter IX of SOLAS does not contain requirements for, or a definition of, a ''safety management plan.'' SOLAS does require, however, specific documentation as part of an individual vessel's or company's safety management system. The nature of this documentation describes how the vessel or company will comply with the requirements of the ISM Code. Proposed §§ 96.240 and 96.250 adopt SOLAS documentation and reporting requirements, which require the vessel or company to demonstrate how it complies with the ISM Code. As proposed here, the documentation and reporting requirements of proposed §§ 96.240 and 96.250 will suffice as the ''safety management plan'' required by 46 U.S.C. 3204.

Proposed §§ 96.330 and 96.340 set forth requirements for a responsible person or company to obtain a Document of Compliance certificate or Safety Management Certificate. Proposed §§ 96.350 and 96.360 provide criteria for Interim Document of Compliance certificates and Interim Safety Management Certificates. These sections parallel IMO Resolution A.788(19), ''Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations,'' adopted November 23, 1995.

Organizations Acting on Behalf of the U.S.

Section 603 of the Coast Guard Authorization Act of 1996 (46 U.S.C. 3103) permits the Secretary, and the Commandant through authority delegated from the Secretary as noted above, to rely on reports, documents and records of other reliable persons as evidence of compliance with Subtitle II of Title 46, U.S. Code. Under the authority of 46 U.S.C. 3103, this rulemaking will allow organizations previously recognized by the Coast Guard under 46 CFR part 8, to obtain authorization under proposed 33 CFR part 96, subpart D to audit safety management systems and issue Document of Compliance certificates and Safety Management Certificates on behalf of the U.S.

The Coast Guard will only authorize organizations that are recognized in accordance with 46 CFR part 8, subpart B, ''Recognition of a Classification Society.'' Experience within other industries has shown that subject matter expertise is essential for proper functioning of a quality or safety management certification scheme. Use of the criteria in 46 CFR part 8, subpart B, will ensure that the organizations selected to be authorized by these proposed rules will have the expertise and capabilities to properly carry out this function for the U.S.

Because the Coast Guard proposes to authorize recognized organizations to issue safety management system certificates, certification will not be completed directly by the Coast Guard. Coast Guard personnel would require extensive training and resources which already exists in the commercial industry. Commercial organizations recognized under 46 CFR part 8, and authorized under these proposed rules, already have the training and resources available to carry out the auditing requirements consistent with the international guidelines of the ISM Code. By permitting organizations to carry out this function, the Coast Guard will be able to effectively oversee the proper execution of regulatory implementation and certification. The implementation of these proposed regulations will better utilize Coast Guard resources to oversee these and other marine functions carried out by others on behalf of the U.S.

Proposed 33 CFR part 96, subpart D sets the standard for organizations that will be authorized to act on behalf of the Coast Guard for the Flag Administration. This parallels the standards of IMO Resolution A.739(18), ''Guidelines for the Authorization of Organizations Acting on Behalf of the Administration,'' adopted November 4, 1993, and is incorporated by reference into the proposed rules. These international guidelines establish the minimum standards that each organization is reviewed for and must meet in order to complete safety management audits, marine surveys or inspections, and certifications on behalf of a Flag Administration.

The authorization of foreign based classification societies under these proposed rules in subpart D will be subject to the reciprocity requirements of § 96.430(a)(5). This section is based on 46 U.S.C. 3316 as amended by the Coast Guard Authorization Act of 1996. This statute requires reciprocity to the American Bureau of Shipping for certain delegations of authority to foreign based classification societies.

Proposed § 96.440 establishes requirements, consistent with the guidelines in IMO Resolution A.739(18), for organizations seeking authorization to act on behalf of the U.S. Proposed

§§ 96.430, 96.440, and 96.450 establish requirements for authorization requests and agreements of authorization between recognized organizations and the Coast Guard. Following the international guidelines incorporated into these proposed sections will ensure that organizations selected by the Coast Guard to act on behalf of the U.S. have the qualifications acceptable by all parties to SOLAS worldwide.

In order to ensure that authorized organizations maintain the high standards necessary to perform audits and issue certificates on behalf of the U.S., proposed § 96.470 provides for an annual Coast Guard evaluation of an organization's audit procedures. If the organization fails to maintain the standards established in part 96, subpart D, the Coast Guard can terminate the organization's authorization under proposed § 96.470. Certificates issued by that organization will remain valid until the certificate expiration date or the next periodic safety management audit date, whichever occurs first. An organization which has its authorization terminated is required under proposed § 96.490 to provide a written explanation of its loss of authorization and a list of organizations authorized to act on behalf of the U.S. to the responsible persons for companies and vessels certificated by that organization. The organization must explain the status of the companies and vessels, and how certificates can be transferred to another U.S. authorized organization.

Proposed § 96.495 establishes the appeal procedures for a responsible person who does not agree with actions taken by the authorized organizations for their company's or vessel's safety management system. By permitting responsible persons to appeal directly to the Commandant, Coast Guard oversight of actions by authorized organizations is ensured.

Safety Management Audits for U.S. Companies

In order to verify that a vessel or the company represented by a responsible person is in compliance with the requirements of the safety management system established under proposed §§ 96.220, 96.230, 96.240, and 96.250, safety management audits will be performed by the authorized organizations under proposed § 96.320. This requires that audits be performed consistent with IMO Resolution A.788(19).

In addition to safety management audits performed initially to verify compliance with the safety management system, 46 U.S.C. 3205(c) requires periodic reviews to determine continued compliance with the safety management system. The proposed rules require a responsible person to request periodic safety management audits, to be performed in accordance with proposed § 96.320. Periodic audits are defined in proposed §§ 96.330(f) and 96.340(e)(2).

In the event that a responsible person fails to request a periodic audit, or if a major non-conformity is found within a company's or vessel's safety management system during a safety management audit, the Coast Guard may revoke the company's Document of Compliance certificate or a vessel's Safety Management Certificate. If a Document of Compliance certificate is revoked, all Safety Management Certificates issued to the vessel(s) owned and operated by that responsible person, will become invalid under proposed § 96.340(e)(3). This is because, without a valid Document of Compliance certificate, all such vessels are operating under a non-conforming safety management system. After a company resumes operations under a valid Document of Compliance certificate, the responsible person for the company's vessel(s) must request and complete a satisfactory safety management audit prior to receiving a valid Safety Management Certificate.

Compliance and Enforcement

To ensure compliance with the ISM Code requirements by vessels in U.S. waters, proposed § 96.380 permits the Coast Guard to board U.S. and foreign vessels to determine if the safety management system is being observed and practiced during vessel operations. During this process, the Coast Guard will also verify that a valid copy of the company's Document of Compliance certificate and a valid vessel Safety Management Certificate are on board. A vessel may be detained under authority of this proposed section, if its personnel are not following its safety management system or if the vessel is not carrying the appropriate certificates. Proposed § 96.390 authorizes the Coast Guard to deny entry of a vessel into a port or terminal under the authority of 46 U.S.C. 3204(c).

For vessels from a country not a party to Chapter IX of SOLAS, proposed § 96.370 requires those vessels to have evidence of a safety management system consistent with the ISM Code. Failure to comply will subject these vessels to the compliance and enforcement procedures of proposed § 96.380.

Amendments to Existing Regulations

A second category of proposed rules will amend existing general SOLAS certification regulations to incorporate the requirements for safety management systems in various parts of 46 CFR for specific vessel types. These regulatory amendments will expand upon current applicability of SOLAS certification and the safety management certification for each U.S. vessel type engaged in international trade, and are referenced to 33 CFR part 96 as follows:

- Vessel Inspections, International Convention for the Safety of Life at Sea, 1974. (46 CFR 2.01–25);
- Tank vessel, Safety Management Certificate (46 CFR 31.40–30);
- Passenger vessel, Safety Management Certificate (46 CFR 71.75–13);
- Freight vessel, Safety Management Certificate (46 CFR 91.60–30);
- Self-propelled mobile offshore drilling unit, Safety Management Certificate (46 CFR 107.415);
- Small passenger vessel, Safety Management Certificate (46 CFR 115.925);
- Offshore supply vessel, Safety Management Certificate (46 CFR 126.480);
- Small passenger vessel, Safety Management Certificate (46 CFR 176.925); and
- Oceanographic research vessel, Safety Management Certificate (46 CFR 189.60–30).

The third category of proposed rules specifically involves safety management system certification for approximately 72 U.S. small passenger vessels and their responsible persons. These U.S. small passenger vessels involved in international trade are divided into two categories:

- Small passenger vessels which must meet 46 CFR, subchapter T, parts 175 through 185 (known in the U.S. marine industry as ''T boats''); and
- Small passenger vessels which must meet 46 CFR, subchapter K, parts 114 through 122 (known in the U.S. marine industry as ''K vessels'').

The Coast Guard reviewed the management strategies used by U.S. small passenger vessels (less than 100 gross tons) certificated under SOLAS for international trade. The Coast Guard's G–M Business Plan requires that there be a recognition between different types of passenger vessels to determine the types of risks and management strategies affecting their operations. Of the 72 U.S. small passenger vessels potentially affected by this proposed rulemaking, approximately 54 vessels fall into the ''T boat'' category. This review showed that T boats which carry less than 49 passengers overnight and not more than 150 passengers, and operate on routes less than 20 miles

from shore in international trade, are typically manned and operated by small companies made up of one to five employees. In these cases, the responsible person for the vessel is usually the vessel's operator or master, who is involved in every decision and action related to the management and operation of that vessel. In light of the nature of these vessels' operations, and the fact that the owner oversees the vessels everyday, a safety management system meeting the requirements of these proposed rules could be seen as overwhelming for a small company with limited resources.

Historical vessel casualty information on these small passenger vessels was reviewed to determine any basis of risk. The review did not indicate a larger than normal risk when compared to other T boats in operation within U.S. domestic waters only. This review of historical casualty information included only vessel incidents involving groundings, allisions, collisions, propulsion equipment failures, pollution incidents, fires and navigational errors. This review of casualty information did not include incidents which occurred on these vessels that were reported as marine casualties, which included only personal injuries, such as: Diving accidents; slips and falls; passenger medical ailments; passenger illnesses; or other such non-vessel related mishaps to passengers.

Other factors determined from this review support the concept of hands-on, responsible person management of T boats. They include: Vessel employees with long tenures of employment (a number of these vessels are family owned and operated); vessels operate on short routes, close to shore on protected waters; a low number of passengers are carried; and a short amount of time is spent underway from shore or from the vessel's home dock.

This review reinforced our belief that the existing oversight management strategies and hands-on operation of T boats by their responsible persons, can be considered equivalent to providing safety management systems for these specific 54 small passenger vessels.

Small passenger vessels subject to the requirements of 46 CFR subchapter T have traditionally been allowed equivalencies to SOLAS requirements in accordance with Chapter I, Regulation 5 of SOLAS. This is allowed, if the equivalence is at least as effective as that required by the regulations. The existing SOLAS equivalency provision for these small passenger vessels is found at 46 CFR 176.930. Because equivalencies for ''T boats'' are currently allowed, the Coast Guard proposes to amend 46 CFR 176.930 to allow ''T boat'' owners to apply for an equivalence to the requirements of 33 CFR part 96, at their option. The Coast Guard plans on partnering with the responsible persons of this limited number of T boats to develop safety management systems that are equivalent to manage the risks these vessels see in their limited operations. Specific actions for equivalence applications will be provided by the Coast Guard as a separate directive from this rulemaking action, if the proposed revision to § 176.930 is incorporated in the final rule.

The remaining 18 small passenger vessels applicable to these proposed rules are regulated under subchapter K. ''K vessels'' are normally owned and operated by larger companies with similar management issues associated to those of deep draft fleets, such as: large number of passengers carried; large number of persons employed, onshore and onboard the vessels; unrestricted international routes with overnight underway capability; day to weekly underway operations from shore; and the responsible persons reliance on a management company to oversee and manage the day to day operation of the vessel. Furthermore, due to the complexity of the operation of these vessels, the crews require a higher level of training and management by the company.

A historical vessel casualty review showed that K vessels in international trade had a higher risk of casualties than vessels of similar size in operation within U.S. domestic waters. The casualties reviewed for this determination were also vessel related casualties and did not include passenger injury or illness related incidents.

Small passenger vessel owners not wishing to apply for an equivalence allowed for T boats or, whose vessels must comply with 46 CFR subchapter K, must meet the safety management system requirements of the proposed regulations in 33 CFR part 96. Comments on this proposal are specifically requested.

Incorporation by Reference

Material that would be incorporated by reference is listed in § 96.130. The material is available for inspection where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 96.130.

Before publishing a binding rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the Evaluation follows:

The Coast Guard estimates that the proposed regulations will affect approximately 370 U.S. vessels registered for international trade, which are owned by approximately 153 different owners. Of these owners, approximately 96 own 190 U.S. vessels which will be required to comply with these proposed rules by July 1, 1998. Of the remaining 180 U.S. vessels, 57 owners must comply by July 1, 2002. The proposed regulations will also affect any owners or vessels that voluntarily opt to meet the requirements of proposed 33 CFR part 96.

The Coast Guard expects that the total costs for ISM Code implementation falls into two categories for each company affected. The first category involves costs incurred by the responsible persons to have their company and vessel(s) safety management system externally audited and certificated. The second category involves the development and training costs for safety management systems.

Audit and Certification Costs

The Coast Guard surveyed a small representative group of companies that operate U.S. vessels and the three organizations (American Bureau of Shipping (ABS), Det Norske Veritas (DNV), and Lloyd's Register of Shipping (LRS)), that had been accepted to complete the voluntary auditing and certification of safety management systems in accordance with NVIC 2–94. Because actual audit and certification costs are internal to the company's profit and loss determinations, and therefore proprietary, the companies surveyed provided cost estimates only. The three organizations provided cost estimates for services involving initial audits and certification for companies and their vessel(s). All cost data provided varied widely due to the size of the company, number of personnel, type of vessels and the number of

vessels owned and engaged in international trade.

To clearly describe the costs of audit and certification, companies have been separated into three categories of large, medium and small sized companies, based on the number of personnel required to operate a company and the number of vessels a company operates.

Large size companies. Included here are 71 companies which own approximately 275 U.S. vessels that must meet the requirements of these proposed rules. These companies operate deep draft tankers (liquid and gas carriers), freight vessels (container, roll-on/roll-off (RO-RO), combination, break bulk carriers), bulk vessels (ore and grain carriers), and self-propelled mobile offshore drilling units.

It is estimated that the external audit and certification cost for these companies are:

- Initial audit and certification of company=$7,000.
- Company periodic certificate audit (4)=approx. $7,000 per audit.
- Initial audit and certification of vessel=$5,000.
- Vessel intermediate certificate audit (1)=approx. $5,000.

The costs for initial audit and certification of 71 large companies, plus 4 yearly periodic audits during the life of each certificate, is estimated at $497,000 annually. [(number of companies) × 5 (certification + audits) × cost / 5 (years) = $ total cost per year] The costs for audit and certification of 275 vessels owned by large companies, plus one intermediate audit during the life of each certificate, is estimated at $550,000 annually. [(number of vessels) × 2 (certification + audit) × cost / 5 (years) = $ total cost per year] The total cost per year for the certification of large size companies and their vessels is estimated at $1,047,000 per year after July 1, 2002.

Between July 1, 1998, and July 1, 2002, 40 of these large size companies and 157 of their vessels will not be required to be certificated due to the later effective date of the proposed rules for freight vessels and self-propelled mobile drilling units. Between July 1, 1998, and July 1, 2002, cost estimates for certification of safety management systems per year would be reduced to $217,000 for companies and $236,000 for vessels. A total cost is estimated at $453,000 annually from July 1, 1998, to July 1, 2002.

Medium size companies. These include 17 companies with 23 U.S. vessels. These companies operate oceangoing tugs, industrial support vessels (offshore supply service vessels, cable laying vessels, etc.), and research vessels.

It is estimated that the audit and certification cost for these companies are:

- Initial audit and certification of company=$5,000.
- Company periodic certificate audit (4)=approx. $5,000 per audit.
- Initial audit and certification of vessel=$3,000.
- Vessel intermediate certificate audit (1)=approx. $3,000.

Therefore, the cost for audit and certification of 17 medium size companies, plus four yearly periodic audits per the life of each certificate, is estimated at $85,000 annually. The cost for audit and certification of 23 vessels owned by medium size companies, plus one intermediate audit per life of certificate, is estimated at $27,600 annually. A total cost per year for certification actions of all medium size companies owning U.S. vessels is estimated at $112,600 per year. It must be remembered that due to the type of vessels that fall into this size company category, the effective date for implementation of safety management systems for all medium size companies would be July 1, 2002.

Small size companies. These include 65 companies, which own 72 U.S. vessels. These companies own U.S. passenger vessels engaged in a foreign voyage while carrying 12 or more passengers. The proposed rules will become effective for all passenger vessels on July 1, 1998. Small size companies include T boats and K vessels.

It is estimated that the average audit and certification costs for these companies are:

- Initial audit and certification of company=$1,000.
- Company periodic certificate audit (4)=$500 per audit.
- Initial audit and certification of vessel=$800.
- Vessel intermediate certificate audit (1)=$500.

The cost for initial audit and certification of 65 small size companies, plus 4 yearly periodic audits per the life of each certificate, is estimated at $39,000 annually. The cost for initial audit and certification of 72 vessels owned by small size companies, plus 1 intermediate audit per the life of each certificate, is estimated at $18,720 annually. The total estimated cost per year for certification actions of all small size companies owning U.S. vessels equals $57,720.

However, this proposed rule provides an alternative to alleviate the costs imposed on some of these small companies. It is proposed that T boats, be provided with an equivalence to Chapter IX of SOLAS under their inspection for certification by the U.S. This equivalence would cover the 53 owners of the 54 U.S. small passenger vessels (1 owner owns 2 vessels). If that occurs, no further cost for certification would be incurred by these small passenger vessels, as this examination of the vessel and company's safety management systems would be completed as part of the Coast Guard's examination for issuance of the Certificate of Inspection (COI). This is already covered under the vessel's user fee.

Of the K vessels not covered by the SOLAS equivalence proposed in this rulemaking, the 12 owners of the 18 U.S. vessels would be required to develop and have their company and vessel(s) safety management systems audited and certificated by July 1, 1998.

Total audit and certification cost. The total cost for audit and certification is estimated at $514,780 annually for the period July 1, 1998, through June 30, 2002. On July 1, 2002, the cost will increase to an estimated $1,217,280 annually. This is because additional U.S. vessels and companies will be required to comply with Chapter IX of SOLAS and 46 U.S.C. 3203(a). This cost may increase or decrease after that time due to the fluctuation in the number of companies and U.S. vessels which are registered to be engaged in international trade. The Coast Guard encourages the maritime industry and the general public to submit comments on these estimated costs.

Safety Management System Development and Employee Training Costs

To ascertain the costs to develop safety management systems and to train employees to use these systems, the Coast Guard surveyed a small representative group of U.S. vessel owners and operators that developed safety management systems consistent with IMO resolutions. Some of those surveyed voluntarily certificated their company and vessel(s) safety management systems in accordance with Coast Guard NVIC 2–94.

When surveyed on the specific costs required to develop a safety management system, the general response was that the companies could not provide a detailed or accurate cost assessment until they had seen the proposed regulations. Some indicated that their company had already developed and certificated quality assurance programs as part of, or prior to, development of a safety management

system, and could not provide data on initial development costs. In those cases, their internal costs were marginal to meet the ISM Code requirements, as compared to the companies who must develop safety management systems under these proposed rules. Others indicated that the development of quality assurance and safety management systems are a component of the cost of doing business because these systems are required by contractual agreements. Consequently, they were unable to attribute specific costs to safety management system development.

Overall, it is difficult to determine the incremental costs incurred by these companies to develop safety management systems. This is because these systems are developed for companies that can range in size from the operation of one small passenger vessel by its owner, who is the vessel's master, to a U.S. oceangoing container vessel company with thousands of employees and 37 deep draft vessels. Development costs will also depend on whether a company internally develops its safety management system or hires an outside consultant to do it. The various types of vessels, companies, and the requirements necessary to run any one of them, will affect development costs. Therefore, it is requested that comments, data, and documentation on the costs to develop a safety management system be submitted by vessel owners, operators, the maritime industry and the general public.

Training costs include the instruction of personnel in the new safety management systems, both ashore and aboard vessels, and the documentation of training in the company's safety management systems to meet the ISM Code. These costs can include on-the-job reading, classroom training provided by the company to its employees, consultant training programs completed in house, and on-the-job demonstration and training drills.

Training costs will also vary due to the wide range of companies required to comply with these regulations. For example, training costs for a company that has 5,000 employees will be much higher than the training costs of a company with 5 employees.

Training costs are also effected by the fact that many shipboard personnel of U.S. vessels engaged in international trade have received training regarding the performance elements of the ISM Code through the implementation of the 1995 Amendments to the International Convention of Training, Certification, and Watchkeeping for Seafarers (STCW), 1978. Thus, a substantial portion of these training costs may be related to STCW implementation, and not to ISM Code implementation.

When surveyed on the costs involved to train employees on the use of safety management systems, cost estimates ranged from $10,000 for larger companies with deep draft vessels, to $0 for companies who had integrated their training costs into their normal safety training budget. So little information was received and the differences in estimates was such, that a valid estimate of training costs could not be made. It is believed that different factors, including those training costs of the STCW requirements, were combined into these cost statements. Due to the variation of the types of companies and vessels that will be subject to these proposed rules, the Coast Guard is requesting that the maritime industry and general public submit comments, data, and documentation on training costs expected to be incurred by companies and vessels of all sizes and varied organizational structure.

Benefits

The Coast Guard expects that the proposed rule will have economic benefits and the potential to reduce marine casualties. With the development of safety management systems, a reduction in costs attributable to shipboard personnel injuries and liability is likely. A reduction of risk due to fewer vessel casualties and liabilities is also expected. Because safety management systems include pollution prevention procedures, the Coast Guard expects a reduction in pollution incidents which could result in environmental damage. It also expects reduced company and vessel liability and regulatory fines due to these incidents. Delays in vessel operation and scheduling can be eliminated or significantly reduced because the lines of authority and communication will be defined between personnel onshore and on the vessel. With fewer marine casualties, costs associated with insurance claims and vessel insurance premiums should also decrease.

As with other industries, it is anticipated that preventive actions provided by clear and communicated procedures and policies will allow for proactive management styles. Over time, the maritime industry should realize substantial savings in cost that far outweigh start up and maintenance fees for safety management systems. These savings include reduction of: lost worker's hours due to injury, loss of vessel operation due to repairs, and costs due to fines and judicial actions against the company and its vessel(s). The Coast Guard specifically solicits comments on the benefits of this proposed action.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rulemaking will affect U.S. oceangoing vessels of specific categories of more than 500 gross tons, or passenger vessels of any size carrying more than 12 passengers in international trade. The greatest impact will fall on large U.S. oceangoing shipping companies, which have 1 to 37 deep draft vessels over 500 gross tons and are not considered as small business concerns or small business entities.

Today, there are approximately 5,600 small and large passenger vessels certificated for operation under the U.S. flag. Approximately 370 of those U.S. flag vessels will be affected by this proposed rule and the mandatory requirements of the ISM Code. Out of those 370 U.S. vessels, approximately 72 are small passenger vessels on limited international routes in the sportfishing, tourism and cruising trade. Only the small passenger vessel companies appear to have less than 500 employees within their firms or claim gross revenues far below the defined base of a small entity. Thus, for the purposes of this rulemaking, the 72 small passenger vessels are the only companies that appear to meet the definition of a small entity under this section.

Costs for these small passenger vessels to develop a safety management system, provide training and document procedures will be considerably less than larger companies due to the limited number of employees, routes, and passengers. Most of these companies operate with less than 5 employees. In some cases, the owner is the master of the vessel, and the crew are close relatives of the owner. There is long term tenure of the employees in these small companies, and since most positions aboard are unlicensed or undocumented, training consists of basic operations which are required to be documented by the existing

regulations for small passenger vessels in 46 CFR.

Furthermore, the Coast Guard proposes to permit vessels in the ''T boat'' category to comply with the ISM Code through an equivalence under 46 CFR part 176.930, at their option. This would eliminate the $860.00 certification cost for each vessel, per year, as discussed in the preceding cost/benefit analysis. All 54 of the ''T boats'' may opt to satisfy these requirements by that equivalence.

An initial evaluation showed that the cost of this rulemaking would not have a significant economic impact on a substantial number of small business entities as described above. Therefore, the Coast Guard certifies that under 5 U.S.C. 605(b), this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically effect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to help small entities understand this proposed rule so they can better evaluate its effects on them and participate in the rulemaking process. If your small business is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Mr. Robert M. Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), at (202) 267–1053, or fax (202) 267–4570.

Collection of Information

The proposed rule provided for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As defined in 5 CFR 1320.361, ''collection of information'' includes reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Summary of the Collection of Information

This proposal contains collection-of-information requirements in the following sections: 33 CFR 96.250, 96.320, 96.330, 96.340, 96.350, 96.360, and 46 CFR 2.01–25, 31.40–30, 71.75–13, 71.75–20, 91.60–30, 91.60–40, 107.417, 115.925, 126.480, 175.540, 176.925, 176.930,189.60–30, 189.60–40.

DOT No.: 2115–0056; 2115–0626, and 2115.

Administration: U.S. Coast Guard.

Title: International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code).

Need for Information: 46 U.S.C. Chapter 32 and Chapter IX of SOLAS require that U.S. companies and their vessels comply with the ISM Code. The ISM Code is a mandatory international convention requirement paralleled in U.S. law which will come into effect:

- On July 1, 1998, for passenger vessels, and tankers, bulk freight and high speed freight vessels over 500 gross tons engaged in foreign trade; and
- On July 1, 2002, for freight vessels and self-propelled mobile offshore drilling units over 500 gross tons engaged in foreign trade.

Information showing the compliance status of responsible persons and their U.S. vessels must be provided to the Coast Guard by recognized organizations authorized by the Coast Guard to act on behalf of the U.S. To comply, a responsible person, company and vessel(s) owned and operated by that person, must establish a safety management system and prepare internal audit reports for the responsible person's company and vessel(s) which demonstrate compliance with the ISM Code. Preparation of these reports requires a new information collection.

Title 46, chapter 32 also requires that a responsible person's company and U.S. vessel(s) possess Document of Compliance certificates and Safety Management Certificates, respectively, as evidence of compliance with the ISM Code. Recognized organizations authorized to act on behalf of the U.S. and the Coast Guard will issue these certificates. To prepare and issue these certificates, an amendment to existing 2115–0056 is required.

Safety management systems will be externally audited and reported on by the authorized, recognized organizations through a review of the internal audit reports prepared by a company. Since the Coast Guard reviews this information that documents the ISM Code compliance, 2115–0626 requires amendment.

Proposed use of Information: The information will be used by the Coast Guard or recognized organizations authorized to act on behalf of the U.S. to determine if responsible persons and their vessels are complying with the ISM Code. If in compliance, Document of Compliance certificates and Safety Management Certificates will be issued.

Frequency of Response: Initially, all responsible persons who own or operate U.S. vessels subject to these proposed rules will develop their internal auditing system and recordkeeping requirements. Once established, these procedures will state when internal audits and reports of the audits will be completed and reviewed, at the discretion of the responsible person. These reports will be reviewed by authorized recognized organizations during safety management audits of both the company and its vessel(s) safety management systems. It is expected that, at a minimum, an internal audit report will be prepared prior to each safety management audit.

Company safety management systems will be externally audited once to verify compliance with the ISM Code and to issue a company its Document of Compliance certificate. The Document of Compliance certificate is valid for five years and requires that an annual verification audit be completed. After five years, one renewal safety management audit will be conducted and a new certificate will be issued.

Once a company receives its Document of Compliance certificate, its U.S. flag vessel(s) will undergo an initial safety management audit, to verify compliance with the ISM Code and to issue a Safety Management Certificate. The Safety Management Certificate is valid for five years and requires one intermediate verification audit during that time. After five years, one renewal safety management audit will be conducted and a new certificate will be issued.

Recognized organizations authorized to complete certification actions on safety management systems for the U.S. will complete external audit reports which will be reviewed by the Coast Guard at a minimum of once a year.

Burden of Response: Companies of various sizes will be required to maintain internal audit reports in order to comply with the ISM Code. The burden of compliance is expected to be lower for those U.S. companies with few employees and/or vessels because less documentation will be required, and thus, preparation time is shorter. Preparation of these internal reports will allow companies and vessels to continuously be certificated to

international safety management system requirements. Additionally, recognized organizations, acting on behalf of the U.S., will review these internal reports during safety management audits, and will then prepare external audit reports which document a company or vessel's compliance or non-compliance with the ISM Code. If in compliance, Document of Compliance certificates and Safety Management Certificates will be issued by the organizations. External audit reports and certificates will be reviewed by the Coast Guard.

The burden estimate for the companies and their vessels is as follows:

- Small passenger vessels (T boats); 54 × .5 hours (per report)=27.0 annually.
- Other vessels; 316 (vessels) × 1 hour (audit report) × .4 (report frequency)=126.4 hours.
- Company review of audits; [316 (vessels) × 2 hour (audit report) × .4 (frequency of report)] + [100 (companies) × 2 hours (audit review)]=452.8 hours.

It is estimated that the recognized organizations will expend the following personnel hours to review internal audit reports, prepare external audit reports, and issue certificates to companies and U.S. vessels:

- Review of internal audit reports: [2 (audits/year/company) × 4 hours (complete report + review report) × 100 (companies)] + [2 (audits/year/vessels) × 5 hours (complete report + review report) × 316 (vessels)]=3,960 hours.
- Review of external audit reports; [316 + 100 (U.S. vessels and companies)/5 years] × .5 hours=41.6 hours.
- Endorsement of Document of Compliance certificates; 100 (companies) × .25 hours=25 hours.
- Endorsement of Safety Management Certificates; 316 (vessels) × .25 hours/5 years=15.8 hours.
- Vessel and company handling of certificates; 416 (certificates) × .25 hours/5 years=20.8 hours.

It is expected that the Coast Guard will review audits and certificates and expend the following estimated personnel hours:

- For small passenger vessels; 54 (vessels) × .5 (hours)=27.0 hours.
- For other vessels; 316 (vessels) × .5 (hours) × .4 (frequency)=63.2 hours.
- Review of recognized organization actions and reports on vessels; 316 (vessels) × 3 (hour)=948 hours.

Number of Respondents: Companies and their U.S. vessels which are over 500 gross tons or carry more than 12 passengers, engaged in international trade. Recognized organizations who opt to apply for authorization to act on behalf of the U.S. to review and certificate the safety management systems of companies and their U.S. vessels.

Estimated Total Annual Burden: The Coast Guard is submitting the required information to OMB for review under section 3504 (h) of the Paperwork Reduction Act. It is estimated that the following annual hours are required to complete the record and reportkeeping required by this proposal:

- Companies and U.S. vessels—3,981 hours for internal audit reports.
- Recognized Organizations—1,168 hours for external audit reports and certification requirements.
- Coast Guard—559 hours for review of audit reports, certificates, and company data.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

The Coast Guard solicits public comment on the proposed collection of information to (1) evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information would have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, as by allowing the submittal of responses by electronic means or the use of other forms of information technology.

Persons submitting comments on the collection of information should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES** by the date under **DATES.**

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. Before the requirements for this collection of information become effective, the Coast Guard will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environment impact of this proposed rule and concluded that under paragraph 2.B.2.e(34) of Commandant Instruction M16475.1B, this proposed rule is categorically excluded from further environmental documentation. Paragraph 2.B.2.e(34)(d) categorically excludes regulations concerning manning, documentation, measurement, inspection and equipping of vessels. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 96

Administrative practice and procedure, Incorporation by reference, Marine Safety, Reporting and recordkeeping requirements, Safety management systems, Vessels.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Safety management systems, Vessels.

46 CFR Part 115

Marine safety, Passenger vessels, Report and recordkeeping requirements, Safety management systems.

46 CFR Part 126

Marine safety, Offshore supply vessels, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 175

Marine safety, Passenger vessels, Report and recordkeeping requirements, Safety management systems.

46 CFR Part 176

Marine safety, Passenger vessels, Report and recordkeeping requirements, Safety management systems.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements, Safety management systems.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Ch. I and 46 CFR Ch. I as follows:

1. Add part 96 to read as follows:

33 CFR PART 96—RULES FOR THE SAFE OPERATION OF VESSELS AND SAFETY MANAGEMENT SYSTEMS

Subpart A—General

Sec.
96.100 Purpose.
96.110 Who does this subpart apply to?
96.120 Definitions.
96.130 Incorporation by reference.

Subpart B—Company and Vessel Safety Management Systems

96.200 Purpose.
96.210 Who does this subpart apply to?
96.220 What makes up a safety management system?
96.230 What objectives must a safety management system meet?
96.240 What functional requirements must a safety management system meet?
96.250 What documents and reports must a safety management system have?

Subpart C—How Will Safety Management Systems be Certificated and Enforced?

96.300 Purpose.
96.310 Who does this subpart apply to?
96.320 What is involved to complete a safety management audit and when is it required to be completed?
96.330 Document of Compliance certificate: What is it and when is it needed?
96.340 Safety Management Certificate: What is it and when is it needed?
96.350 Interim Document of Compliance certificate: What is it and when can it be used?
96.360 Interim Safety Management Certificate: What is it and when can it be used?
96.370 What are the requirements for vessels of countries not party to Chapter IX of SOLAS?
96.380 How will the Coast Guard handle compliance and enforcement of these regulations?
96.390 When will the Coast Guard deny entry into a U.S. port?

Subpart D—Authorization of Recognized Organizations to Act on Behalf of the U.S.

96.400 Purpose.
96.410 Who does this subpart apply to?
96.420 What authority may an organization ask for under this subpart?
96.430 How does an organization submit a request to be authorized?
96.440 How will the Coast Guard decide whether to approve an organization's request to be authorized?
96.450 What happens if the Coast Guard disapproves an organization's request to be authorized?
96.460 How will I know what the Coast Guard requires of my organization if my organization receives authorization?
96.470 How does the Coast Guard terminate an organization's authorization?
96.480 What is the status of a certificate if the issuing organization has its authority terminated?
96.490 What further obligations exist for my organization if the Coast Guard terminates its authorization?
96.495 How can I appeal a decision made by an authorized organization?

Authority: 46 U.S.C. 3201 et. seq.; 46 U.S.C. 3103; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 49 CFR 1.45, 49 CFR 1.46.

Subpart A—General

§ 96.100 Purpose.

This subpart implements Section 602, ''Safety Management'' (46 U.S.C. 3201–3205) of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324, 110 Stat. 3901), which requires responsible persons and their vessels to comply with the requirements of Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS), 1974, International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), adopted in London on May 24, 1994.

Note: Chapter IX of SOLAS is available from the International Maritime Organization, Publication Section, 4 Albert Embankment, London, SE1 75R, United Kingdom, Telex 23588. Please include document reference number ''IMO–190E'' in your request.

§ 96.110 Who does this subpart apply to?

This subpart applies to you if—

(a) You are a responsible person who owns a U.S. vessel(s) and must comply with Chapter IX of SOLAS;

(b) You are a responsible person who owns a U.S. vessel(s) that is not required to comply with Chapter IX of SOLAS, but requests application of this subpart;

(c) You are a responsible person who owns a foreign vessel(s) that trades in U.S. waters, which must comply with Chapter IX of SOLAS; or

(d) You are a recognized organization applying for authorization to act on behalf of the U.S. to conduct safety management audits and issue international convention certificates.

§ 96.120 Definitions.

As used in this part—

Administration means the Government of the State whose flag the ship is entitled to fly.

Authorized Organization Acting on behalf of the U.S. means an organization that is recognized by the Commandant of the U.S. Coast Guard under the minimum standards of subpart B of 46 CFR part 8, and has been authorized under this section to conduct certain actions and certifications on behalf of the United States.

Captain of the Port (COTP) means the U.S. Coast Guard officer as described in 33 CFR 6.01–3, commanding a Captain of the Port zone described in 33 CFR part 3, or that person's authorized representative.

Commandant means the Commandant, U.S. Coast Guard.

Company means the owner of a vessel, or any other organization or person such as the manager or the bareboat charterer of a vessel, who has assumed the responsibility for operation of the vessel from the shipowner and who on assuming responsibility has agreed to take over all the duties and responsibilities imposed by this part or the ISM Code.

Document of Compliance means a certificate issued to a company or responsible person that complies with the requirements of this part or the ISM Code.

International Safety Management (ISM) Code means the International Management Code for the Safe Operation of Ships and Pollution Prevention, Chapter IX of the Annex to the International Convention for the Safety of Life at Sea (SOLAS), 1974.

Non-conformity means an observed situation where objective evidence indicates the non-fulfillment of a specified requirement.

Major non-conformity means an identifiable deviation which poses a serious threat to personnel or vessel safety or a serious risk to the environment and requires immediate corrective action; in addition, the lack of effective and systematic implementation of a requirement of the ISM Code is also considered a major non-conformity.

Objective Evidence means quantitative or qualitative information, records or statements of fact pertaining to safety or to the existence and implementation of a safety management system element, which is based on observation, measurement or test and which can be verified.

Officer In Charge, Marine Inspection (OCMI) means the U.S. Coast Guard officer as described in 46 CFR 1.01–15(b), in charge of an inspection zone described in 33 CFR part 3, or that person's authorized representative.

Recognized organization means a national or international organization which has applied and been recognized by the Commandant of the Coast Guard to meet the minimum standards of 46 CFR part 8.

Responsible person means—

(a) The owner of a vessel to whom this part applies, or

(b) Any other person that—

(1) Has assumed the responsibility from the owner for operation of the vessel to which this part applies; and

(2) Agreed to assume, with respect to the vessel, responsibility for complying with all the requirements of this part.

(c) A responsible person may be a company, firm, corporation, association, partnership or individual.

Safety management audit means a systematic and independent examination to determine whether the safety management system activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives.

Safety Management Certificate means a document issued to a vessel which signifies that the responsible person or its company, and the vessel's shipboard management operate in accordance with the approved safety management system.

Safety Management System means a structured and documented system enabling Company and vessel personnel to effectively implement the responsible person's safety and environmental protection policies.

SOLAS means the International Convention for the Safety of Life at Sea, 1974, as amended.

Vessel engaged on a foreign voyage means a vessel to which this part applies that is—

(a) Arriving at a place under the jurisdiction of the United States from a place in a foreign country;

(b) Making a voyage between places outside the United States; or

(c) Departing from a place under the jurisdiction of the United States for a place in a foreign country.

§ 96.130 Incorporation by reference.

(a) The Director of the Federal Register approves certain material that is incorporated by reference into this subpart under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register** and the material must be available to the public. You may inspect all material at the Office of the **Federal Register**, 800 North Capitol St., NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Office of Design and Engineering Standards (G-MSE), 2100 Second St., SW., Washington, DC 20593–0001, and receive it from the source listed in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this subpart and the sections affected are as follows:

American National Standards Institute (ANSI)

11 West 42nd St., New York, NY 10036.

ANSI/ASQC Q9001–1994, Quality Systems—Model for Quality Assurance in Design, Development, Production, Installation, and Servicing, 1994—96.430

International Maritime Organization IMO

4 Albert Embankment, London, SE1 7SR, United Kingdom.

Resolution A.741(18), International Management Code for the Safe Operation of Ships and for Pollution Prevention, November 4, 1993—96.220, 96.370

Resolution A.788 (19), Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations, November 23, 1995—96.320, 96.440

Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, November 4, 1993—96.440

Subpart B—Company and Vessel Safety Management Systems.

§ 96.200 Purpose.

This subpart establishes the minimum standards that the safety management system of a company and its U.S. flag vessel(s) must meet for certification to comply with the requirements of 46 U.S.C. 3201–3205 and Chapter IX of SOLAS, 974. It also permits companies with U.S. flag vessels that are not required to comply with this part to voluntarily develop safety management systems which can be certificated to standards consistent with Chapter IX of SOLAS.

§ 96.210 Who does this subpart apply to?

(a) This subpart applies—

(1) To a responsible person who owns or operates a

U.S. vessel(s) engaged on a foreign voyage which meet the conditions of paragraph (a)(2) of this section;

(2) To all U.S. vessels engaged on a foreign voyage that are—

(i) A passenger vessel transporting 12 passengers or more; or

(ii) A tanker, a bulk freight vessel, a freight vessel or a self-propelled mobile offshore drilling unit (MODU) of 500 gross tons or more; and

(3) To all foreign vessels engaged on voyages operating in U.S. waters and subject to Chapter IX of SOLAS.

(b) This subpart does not apply to—

(1) A barge;

(2) A recreational vessel not engaged in commercial service;

(3) A fishing vessel;

(4) A vessel operating only on the Great Lakes or its tributary and connecting waters; or

(5) A public vessel, which includes a U.S. vessel of the National Defense Reserve Fleet owned by the U.S. Maritime Administration and operated in non-commercial service.

(c) Any responsible person and their company who owns and operates a U.S. flag vessel(s) which does not meet the conditions of paragraph (a) of this section, may voluntarily meet the standards of this part and Chapter IX of SOLAS and have their safety management systems certificated.

(d) The effective date for the requirements of this part are—

(1) On or after July 1, 1998, for—

(i) Vessels transporting 12 or more passengers engaged on a foreign voyage; or

(ii) Tankers, bulk freight vessels, or high speed freight vessel of at least 500 gross tons or more.

(2) On or after July 1, 2002, for freight vessels and self-propelled mobile offshore drilling units (MODUs) of at least 500 gross tons or more.

§ 96.220 What makes up a safety management system?

(a) The safety management system must document the responsible person's—

(1) Safety and pollution prevention policy;

(2) Functional safety and operational requirements;

(3) Recordkeeping responsibilities; and

(4) Reporting responsibilities.

(b) A safety management system must also be consistent with the functional standards and performance elements of IMO Resolution A.741(18).

§ 96.230 What objectives must a safety management system meet?

The safety management system must:

(a) Provide written safe practices for vessel operation and a safe working environment for the type of vessel the system is developed for;

(b) List safeguards against all identified risks;

(c) List expected actions to continuously improve safety management skills of personnel ashore and aboard vessels, including preparation for emergencies related to

both safety and environmental protection; and

(d) Ensure compliance with mandatory rules and regulations, and take into account all national, international, and industry guidelines, standards and codes when developing written procedures for the safety management system.

§ 96.240 What functional requirements must a safety management system meet?

The functional requirements of a safety management system must include—

(a) A written statement from the responsible person stating the company's safety and environmental protection policy;

(b) Instructions and procedures to provide direction for the safe operation of the vessel and protection of the environment in compliance with Titles 33 and 46 of the U.S. Code, and international conventions to which the U.S. is a party (SOLAS, MARPOL, etc.);

(c) Documents showing the levels of authority and lines of communication between shoreside and shipboard personnel;

(d) Procedures for reporting accidents, near accidents, and nonconformities with provisions of the company's and vessel's safety management system;

(e) Procedures to prepare for and respond to emergency situations by shoreside and shipboard personnel;

(f) Procedures for internal audits on the operation of the company and vessel(s) safety management system; and

(g) Procedures and processes for management review of company internal audit reports and correction of nonconformities that are reported by these or other reports.

§ 96.250 What documents and reports must a safety management system have?

The documents and reports required for a safety management system under § 96.330 or § 96.340 must include the written documents and reports itemized in Table 96.250. These documents and reports must be available to the company's shore-based and vessel(s)-based personnel:

TABLE 96.250 SAFETY MANAGEMENT SYSTEM DOCUMENTS AND REPORTS

Type of documents and reports	Specific requirements
(a) Safety and environmental policy statements	(1) Meet the objectives of § 96.230; and (2) Are carried out and kept current at all levels of the company.
(b) Company responsibilities and authority statements.	(1) The owners name and details of responsibility for operation of the company and vessel(s); (2) Name of the person responsible for operation of the company and vessel(s), if not the owner; (3) Responsibility, authority and interrelations of all personnel who manage, perform, and verify work relating to and affecting the safety and pollution prevention operations of the company and vessel(s); and (4) A statement describing the company's responsibility to ensure adequate resources and shore-based support are provided to enable the designated person or persons to carry out the responsibilities of this subpart.
(c) Designation in writing of a person or persons to oversee the safety management system for the company and vessel(s).	(1) Have direct access to communicate with the highest levels of the company and with all management levels ashore and aboard the company's vessel(s); (2) Have the written responsibility to monitor the safety and environmental aspects of the operation of each vessel; and (3) Have the written responsibility to ensure there are adequate support and shore-based resources for vessel(s) operations.
(d) Written statements that define the Master's responsibilities and authorities.	(1) Carry out the company's safety and environmental policies; (2) Motivate the vessel's crew to observe the safety management system policies; (3) Issue orders and instructions in a clear and simple manner; (4) Make sure that specific requirements are carried out by the vessel's crew and shore-based resources; and (5) Review the safety management system and report non-conformities to shore-based management.
(e) Written statements that the Master has overriding responsibility and authority to make vessel decisions.	(1) Ability to make decisions about safety and environmental pollution; and (2) Ability to request the company's help when necessary.
(f) Personnel procedures and resources which are available ashore and aboard ship.	(1) Masters of vessels are properly qualified for command; (2) Masters of vessels know the company's safety management system; (3) Owners or companies provide the necessary support so that the Master's duties can be safely performed; (4) Each vessel is properly crewed with qualified, certificated and medically fit seafarers complying with national and international requirements; (5) New personnel and personnel transferred to new assignments involving safety and protection of the environment are properly introduced to their duties; (6) Personnel involved with the company's safety management system know the relevant rules, regulations, codes and guidelines; (7) Needed training is identified to support the safety management system and ensure that the training is provided for all personnel concerned; (8) Communication of relevant procedures for the vessel's personnel involved with the safety management system is in the language(s) understood by them; and (9) Personnel are able to communicate effectively when carrying out their duties as related to the safety management system.

TABLE 96.250 SAFETY MANAGEMENT SYSTEM DOCUMENTS AND REPORTS—Continued

Type of documents and reports	Specific requirements
(g) Vessel safety and pollution prevention operation plans and instructions for key shipboard operations.	(1) Define tasks; and
	(2) Assign qualified personnel to specific tasks.
(h) Emergency preparedness procedures	(1) Identify, describe and direct response to potential emergency shipboard situations;
	(2) Set up programs for drills and exercises to prepare for emergency actions; and
	(3) Make sure that the company's organization can respond at anytime, to hazards, accidents and emergency situations involving their vessel(s).
(i) Reporting procedures on required actions	(1) Report non-conformities of the safety management system;
	(2) Report accidents;
	(3) Report hazardous situations to the owner or company; and
	(4) Make sure reported items are investigated and analyzed with the objective of improving safety and pollution prevention.
(j) Vessel maintenance procedures. (These procedures verify that a company's vessel(s) is maintained in conformity with the provisions of relevant rules and regulations, with any additional requirements which may be established by the company.).	(1) Inspect vessel's equipment, hull, and machinery at appropriate intervals;
	(2) Report any non-conformity with its possible cause, if known;
	(3) Take appropriate corrective actions;
	(4) Keep records of these activities;
	(5) Identify specific equipment and technical systems that may result in a hazardous situation if a sudden operational failure occurs;
	(6) Identify measures that promote the reliability of the equipment and technical systems identified in paragraph (j)(5), and regularly test standby arrangements and equipment or technical systems not in continuous use; and
	(7) Include the inspections required by this section into the vessel's operational maintenance routine.
(k) Safety management system document and data maintenance.	(1) Procedures which establish and maintain control of all documents and data relevant to the safety management system;
	(2) Documents are available at all relevant locations, i.e., each vessel carries on board all documents relevant to that vessel's operation;
	(3) Changes to documents are reviewed and approved by authorized personnel; and
	(4) Outdated documents are promptly destroyed.
(l) Safety management system internal audits which verify the safety and pollution prevention activities.	(1) Periodic evaluation of the safety management system's efficiency and review of the system in accordance with the established procedures of the company, when needed;
	(2) Types and frequency of internal audits, when they are required, how they are reported, and possible corrective actions, if necessary;
	(3) Determining factors for the selection of personnel, independent of the area being audited, to complete internal company and vessel audits; and
	(4) Communication and reporting of internal audit findings for critical management review and to ensure management personnel of the area audited take timely and corrective action on deficiencies found.

Subpart C—How Will Safety Management Systems be Certificated and Enforced?

§ 96.300 Purpose.

This subpart establishes the standards for the responsible person of a company and its vessel(s) to obtain the required and voluntary, national and international certification for the company's and vessel's safety management system.

§ 96.310 Who does this subpart apply to?

This subpart applies:

(a) If you are a responsible person who owns a vessel(s) registered in the U.S. and engaged on foreign voyages;

(b) If you are a responsible person who owns a vessel(s) registered in the U.S. and volunteer to meet the standards of this part and Chapter IX of SOLAS;

(c) To all foreign vessels engaged in foreign trade operating in U.S. waters and subject to Chapter IX of SOLAS; or

(d) If you are a recognized organization authorized by the U.S. to complete safety management audits and certification required by this part.

§ 96.320 What is involved to complete a safety management audit and when is it required to be completed?

(a) A safety management audit is any of the following:

(1) An initial audit which is carried out before a Document of Compliance certificate or a Safety Management Certificate is issued;

(2) A renewal audit which is carried out before the renewal of a Document of Compliance certificate or a Safety Management Certificate;

(3) Periodic audits including—

(i) An annual verification audit, as described in § 96.330(f) of this part, and

(ii) An intermediate verification audit, as described in § 96.340(e)(2) of this part.

(b) A satisfactory audit means that the auditor(s) agrees that the requirements of this part are met, based on review and verification of the procedures and documents that make up the safety management system.

(c) Actions required during safety management audits for a company and their U.S. vessel(s) are—

(1) Review and verify the procedures and documents that make up a safety management system, as defined in subpart B of this part.

(2) Make sure the audit complies with this subpart and is consistent with IMO Resolution A.788(19), Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations.

(3) Make sure the audit is carried out by a team of Coast Guard auditors or auditors assigned by a recognized organization authorized to complete such actions by subpart D of this part.

(d) Safety management audits for a company and their U.S. vessel(s) are required—

(1) Before issuing or renewing a Document of Compliance certificate, and to keep a Document of Compliance certificate valid, as described in §§ 96.330 and 96.340 of this part.

(2) Before issuing or renewing a Safety Management Certificate, and to maintain the validity of a Safety Management Certificate, as described in § 96.340 of this part. However, any safety management audit for the purpose of verifying a vessel's safety management system will not be scheduled or conducted for a company's U.S. vessel unless the company first has undergone a safety management audit of the company's safety management system, and has received its Document of Compliance certificate.

(e) Requests for all safety management audits for a company and its U.S. vessel(s) must be communicated—

(1) By a responsible person directly to a recognized organization authorized by the U.S.

(2) By a responsible person within the time limits for an annual verification audit, described in § 96.330(f) of this part, and for an intermediate verification audit, described in § 96.340(e)(2) of this part. If he or she does not make a request for a safety management annual or verification audit for a valid Document of Compliance certificate issued to a company or a valid Safety Management Certificate issued to a vessel, this is cause for the Coast Guard to revoke the certificate as described in §§ 96.330 and 96.340 of this part.

(f) If a non-conformity with the safety management system is found during the audit, it must be reported in writing to the company's owner or vessel's master by the auditor as described in IMO Resolution A.788(19).

§ 96.330 Document of Compliance certificate: what is it and when is it needed?

(a) You must hold a valid Document of Compliance certificate if you are the responsible person who, or company which, owns a U.S. vessel engaged in foreign voyages, carrying 12 or more passengers, or is a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more.

(b) You may voluntarily hold a valid Document of Compliance certificate, if you are a responsible person who, or a company which, owns a U.S. vessel not included in paragraph (a) of this section.

(c) You will be issued a Document of Compliance certificate only after you complete a satisfactory safety management audit as described in § 96.320 of this part.

(d) All U.S. and foreign vessels that carry 12 or more passengers or a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more, must carry a valid copy of the company's Document of Compliance certificate onboard when on a foreign voyage.

(e) A valid Document of Compliance certificate covers the type of vessel(s) on which a company's safety management system initial safety management audit was based. The validity of the Document of Compliance certificate may be extended to cover additional types of vessels after a satisfactory safety management audit is completed on the company's safety management system which includes those additional vessel types.

(f) A Document of Compliance certificate is valid for 60 months. It must be verified annually through a safety management verification audit within three months before or after the certificate's anniversary date.

(g) Only the Coast Guard may revoke a Document of Compliance certificate from a company which owns a U.S. vessel. The Document of Compliance certificate may be revoked if—

(1) The annual safety management audit and system verification required by paragraph (f) of this section is not requested by the responsible person; or

(2) Major non-conformities are found in the company's safety management system during a safety management audit or other related survey or inspection being completed by the Coast Guard or the recognized organization chosen by the company or responsible person.

(h) When a company's valid Document of Compliance certificate is revoked by the Coast Guard, a satisfactory safety management audit must be completed before a new Document of Compliance certificate for the company's safety management system can be reissued.

§ 96.340 Safety Management Certificate: what is it and when is it needed?

(a) Your U.S. vessel engaged on a foreign voyage must hold a valid Safety Management Certificate if it carries 12 or more passengers, or if it is a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more.

(b) Your U.S. vessel may voluntarily hold a valid Safety Management Certificate even if your vessel is not required to by paragraph (a) of this section.

(c) Your U.S. vessel may only be issued a Safety Management Certificate or have it renewed when your company holds a valid Document of Compliance certificate issued under § 96.330 of this part and the vessel has completed a satisfactory safety management audit of the vessel's safety management system set out in § 96.320 of this part.

(d) A copy of your company's valid Document of Compliance certificate must be on board all U.S. and foreign vessels which carry 12 or more passengers, and must be onboard a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more, when engaged on foreign voyages or within U.S. waters.

(e) A Safety Management Certificate is valid for 60 months. The validity of the Safety Management Certificate is based on—

(1) A satisfactory initial safety management audit;

(2) A satisfactory intermediate verification audit requested by the vessel's responsible person, completed between the 24th and 36th month of the anniversary date of the certificate; and

(3) A vessel's company holding a valid Document of Compliance certificate. When a company's Document of Compliance certificate expires or is revoked, the Safety Management Certificate for the company-owned vessel(s) is invalid.

(f) Renewal of a Safety Management Certificate requires the completion of a satisfactory safety management system audit which meets all of the requirements of subpart B of this part. A renewal of a Safety Management Certificate cannot be started unless the company which owns the vessel holds a valid Document of Compliance certificate.

(g) Only the Coast Guard may revoke a Safety Management Certificate from a U.S. vessel. The Safety Management Certificate will be revoked if—

(1) The vessel's responsible person does not ask for and complete a satisfactory intermediate safety management audit required by paragraph (e)(2) of this section; or

(2) Major non-conformities are found in the vessel's safety management system during a safety management

audit or other related survey or inspection being completed by the Coast Guard or the recognized organization chosen by the vessel's responsible person.

§ 96.350 Interim Document of Compliance certificate: What is it and when can it be used?

(a) An Interim Document of Compliance certificate may be issued to help set up a company's safety management system when—

(1) A company is newly set up or in transition from an existing company into a new company; or

(2) A new type of vessel is added to an existing safety management system and Document of Compliance certificate for a company.

(b) A responsible person for a company operating a U.S. vessel(s) that meets the requirements of paragraph (a) of this section, may send a request to a recognized organization authorized to act on behalf of the U.S. to receive an Interim Document of Compliance certificate that is valid for a period up to 12 months. To be issued the Interim Document of Compliance certificate the vessel's company must—

(1) Demonstrate to an auditor that the company has a safety management system that meets § 96.230 of this part; and

(2) Provide a plan for full implementation of a safety management system within the period that the Interim Document of Compliance certificate is valid.

§ 96.360 Interim Safety Management Certificate: What is it and when can it be used?

(a) A responsible person may apply for an Interim Safety Management Certificate when—

(1) A responsible person takes delivery of a new U.S. vessel; or

(2) Takes responsibility for the management of a U.S. vessel which is new to the responsible person or their company.

(b) An Interim Safety Management Certificate is valid for 6 months. It may be issued to a U.S. vessel which meets the conditions of paragraph (a) of this section, when—

(1) The company's valid Document of Compliance certificate or Interim Document of Compliance certificate applies to that vessel type;

(2) The company's safety management system for the vessel includes the key elements of a safety management system, set out in § 96.220, applicable to this new type of vessel;

(3) The company's safety management system has been assessed during the safety management audit to issue of the Document of Compliance certificate or demonstrated for the issuance of the Interim Document of Compliance certificate;

(4) The master and senior officers of the vessel are familiar with the safety management system and the planned set up arrangements;

(5) Written documented instructions have been extracted from the safety management system and given to the vessel prior to sailing;

(6) The company plans an internal audit of the vessel within three months; and

(7) The relevant information from the safety management system is written in English, and in any other language understood by the vessel's personnel.

§ 96.370 What are the requirements for vessels of countries not party to Chapter IX of SOLAS?

(a) Each foreign vessel which carries 12 or more passengers, or is a tanker, bulk freight vessel, freight vessel, or self-propelled mobile offshore drilling unit of 500 gross tons or more, operated in U.S. waters, under the authority of a country not a party to Chapter IX of SOLAS must—

(1) Have on board valid documentation showing that the vessel's company has a safety management system which was audited and assessed, consistent with the International Safety Management Code of IMO Resolution A.741(18);

(2) Have on board valid documentation from a vessel's Flag Administration showing that the vessel's safety management system was audited and assessed to be consistent with the International Safety Management Code of IMO Resolution A.741(18); or

(3) Show that evidence of compliance was issued by either a government that is party to SOLAS or an organization recognized to act on behalf of the vessel's Flag Administration.

(b) Evidence of compliance must contain all of the information in, and have substantially the same format as a—

(1) Document of Compliance certificate; and

(2) Safety Management Certificate.

(c) Failure to comply with this section will subject the vessel to the compliance and enforcement procedures of § 96.380 of this part.

§ 96.380 How will the Coast Guard handle compliance and enforcement of these regulations?

(a) While operating in waters under the jurisdiction of the United States, the Coast Guard may board a vessel to determine that—

(1) Valid copies of the company's Document of Compliance certificate and Safety Management Certificate are on board, or evidence of the same for vessels from countries not party to Chapter IX of SOLAS; and

(2) The vessel's crew or shore-based personnel are following the procedures and policies of the safety management system while operating the vessel or transferring cargoes.

(b) A foreign vessel that does not comply with these regulations, or one on which the vessel's condition or use of its safety management system do not substantially agree with the particulars of the Document of Compliance certificate, Safety Management Certificate or other required evidence of compliance, may be detained by order of the COTP or OCMI. This may occur at the port or terminal where the violation is found until, in the opinion of the detaining authority, the vessel can go to sea without presenting an unreasonable threat of harm to the port, the marine environment, the vessel or its crew. The detention order may allow the vessel to go to another area of the port, if needed, rather than stay at the place where the violation was found.

(c) If any vessel that must comply with this part or with the ISM Code does not have a Safety Management Certificate and a copy of its company's Document of Compliance certificate on board, a vessel owner, charterer, managing operator, agent, master, or any other individual in charge of the vessel that is subject to this part, may be liable for a civil penalty under 46 U.S.C. 3318. For foreign vessels, the Coast Guard may request the Secretary of the Treasury to withhold or revoke the clearance required by 46 U.S.C. App. 91. The Coast Guard may ask the Secretary to permit the vessel's departure after the bond or other surety is filed.

§ 96.390 When will the Coast Guard deny entry into a U.S. port?

(a) Unless a foreign vessel is entering U.S. waters under force majeure, no vessel shall enter any port or terminal of the U.S. without a safety management system that has been properly certificated to this subpart if—

(1) It is engaged in foreign trade; and

(2) It is carrying 12 or more passengers, or a tanker, bulk freight vessel, freight vessel, or self-propelled mobile offshore drilling unit of 500 gross tons or more.

(b) The cognizant COTP will deny entry of a vessel into a port or terminal under the authority of 46 U.S.C. 3204(c), to any vessel that does not meet the

requirements of paragraph (a) of this section.

Subpart D—Authorization of Recognized Organizations To Act on Behalf of the U.S.

§ 96.400 Purpose.

(a) This subpart establishes criteria and procedures for organizations recognized under 46 CFR part 8, to be authorized by the Coast Guard to act on behalf of the U.S. The authorization is necessary in order for a recognized organization to perform safety management audits and certification functions delegated to the Coast Guard as described in this part.

(b) To receive an up-to-date list of recognized organizations authorized to act under this subpart, send a self-addressed, stamped envelope and written request to the Commandant (G-MSE), 2100 Second Street SW., Washington, DC 20593–0001.

§ 96.410 Who does this subpart apply to?

This subpart applies to all organizations seeking authorization to conduct safety management audits and issue international safety management certificates on behalf of the U.S. that are recognized under 46 U.S.C. part 8.

§ 96.420 What authority may an organization ask for under this subpart?

(a) An organization may request authorization to conduct safety management audits and to issue the following certificates:

(1) Safety Management Certificate;

(2) Document of Compliance certificate;

(3) Interim Safety Management Certificate; and

(4) Interim Document of Compliance certificate.

(b) [Reserved]

§ 96.430 How does an organization submit a request to be authorized?

(a) A recognized organization must send a written request for authorization to the Commandant (G-MSE), Office of Design and Engineering Standards, 2100 Second Street SW, Washington, DC 20593–0001. The request must include the following:

(1) A statement describing what type of authorization the organization seeks;

(1) Documents showing that—

(i) The organization has an internal quality system with written policies, procedures and processes that meet the requirements in § 96.440 of this part for safety management auditing and certification; or

(ii) The organization has an internal quality system based on ANSI/ASQC C9001 for safety management auditing and certification; or

(iii) The organization has an equivalent internal quality standard system recognized by the Coast Guard to complete safety management audits and certification.

(3) A list of the organization's exclusive auditors qualified to complete safety management audits and their operational area;

(4) A written statement that the procedures and records of the recognized organization regarding its actions involving safety management system audits and certification are available for review annually and at any time deemed necessary by the Coast Guard; and

(5) If the organization is a foreign classification society that has been recognized under 46 CFR part 8 and wishes to apply for authorization under this part, it must demonstrate the reciprocity required by 46 U.S.C. 3316, by providing with its request for authorization an affidavit from the government of the country in which the classification society is headquartered. This affidavit must provide a list of authorized delegations by the flag state of the administration of the foreign classification society's country to the American Bureau of Shipping, and indicate any conditions related to the delegated authority. If this affidavit is not received with a request for authorization from a foreign classification society, the request for authorization will be disapproved and returned by the Coast Guard.

(b) Upon the satisfactory completion of the Coast Guard's evaluation of a request for authorization, the organization will be visited for an evaluation as described in § 96.440(b) of this part.

§ 96.440 How will the Coast Guard decide whether to approve an organization's request to be authorized?

(a) First, the Coast Guard will evaluate the organization's request for authorization and supporting written materials, looking for evidence of the following—

(1) The organization's clear assignment of management duties;

(2) Ethical standards for managers and auditors;

(3) Procedures for auditor training, qualification, certification, and requalification that are consistent with recognized industry standards;

(4) Procedures for auditing safety management systems that are consistent with recognized industry standards and IMO Resolution A.788(19);

(5) Acceptable standards for internal auditing and management review;

(6) Record-keeping standards for safety management auditing and certification;

(7) Methods for reporting non-conformities and recording completion of remedial actions;

(8) Methods for certifying safety management systems;

(9) Methods for periodic and intermediate audits of safety management systems;

(10) Methods for renewal audits of safety management systems;

(11) Methods for handling appeals; and

(12) Overall procedures consistent with IMO Resolution A.739(18), ''Guidelines for the Authorization of Organizations Acting on Behalf of the Administration.''

(b) After a favorable evaluation of the organization's written request, the Coast Guard will arrange to visit the organization's corporate offices and port offices for an on-site evaluation of operations.

(c) When a request is approved, the recognized organization and the Coast Guard will enter into a written agreement. This agreement will define the scope, terms, conditions and requirements of the authorization. Conditions of this agreement are found in § 96.460 of this part.

§ 96.450 What happens if the Coast Guard disapproves an organization's request to be authorized?

(a) The Coast Guard will write to the organization explaining why it did not meet the criteria for authorization.

(b) The organization may then correct the deficiencies and reapply.

§ 96.460 How will I know what the Coast Guard requires of my organization if my organization receives authorization?

(a) Your organization will enter into a written agreement with the Coast Guard. This written agreement will specify—

(1) How long the authorization is valid;

(2) Which duties and responsibilities the organization may perform, and which certificates it may issue on behalf of the U.S.;

(3) Reports and information the organization must send to the Commandant (G–MOC);

(4) Actions the organization must take to renew the agreement when it expires; and

(5) Actions the organization must take if the Coast Guard should revoke its authorization or recognition under 46 CFR part 8.

(b) [Reserved]

§ 96.470 How does the Coast Guard terminate an organization's authorization?

At least every 12 months, the Coast Guard evaluates organizations authorized under this subpart. If an organization fails to maintain acceptable standards, the Coast Guard may terminate that organization's authorization, remove the organization from the Commandant's list, and further evaluate the organization's recognition under 46 CFR part 8.

§ 96.480 What is the status of a certificate if the issuing organization has its authority terminated?

Any certificate issued by an organization authorized by the Coast Guard whose authorization is later terminated remains valid until—

(a) Its original expiration date,

(b) The date of the next periodic audit required to maintain the certificate's validity, or

(c) whichever of paragraphs (a) or (b) of this section occurs first.

§ 96.490 What further obligations exist for an organization if the Coast Guard terminates its authorization?

The written agreement by which an organization receives authorization from the Coast Guard places it under certain obligations if the Coast Guard revokes that authorization. The organization agrees to send written notice of its termination to all responsible persons, companies and vessels that have received certificates from the organization. In that notice, the organization must include—

(a) A written statement explaining why the organization's authorization was terminated by the Coast Guard;

(b) An explanation of the status of issued certificates;

(c) A current list of organizations authorized by the Coast Guard to conduct safety management audits; and

(d) A statement of what the companies and vessels must do to have their safety management systems transferred to another organization authorized to act on behalf of the U.S.

§ 96.495 How can I appeal a decision made by an authorized organization?

(a) A responsible person may appeal a decision made by an authorized organization by mailing or delivering to the organization a written request for reconsideration. Within 30 days of receiving your request, the authorized organization must rule on it and send you a written response. They must also send a copy of their response to the Commandant (G–MOC).

(b) If you are not satisfied with the organization's decision, you may appeal directly to the Commandant (G–MOC). You must make your appeal in writing, including any documentation and evidence you wish to be considered. You may ask the Commandant (G–MOC) to stay the effect of the appealed decision while it is under review.

(c) The Commandant (G–MOC) will make a decision on your appeal and send you a response in writing. That decision will be the final Coast Guard action on your request.

PART 2—VESSEL INSPECTIONS

2. Revise the authority citation for part 2 to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3103, 3205, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act of Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat 1120 (see 46 U.S.C. App. note prec.1).

3. In § 2.01–25, add paragraph (a)(1)(ix) and revise paragraph (a)(2) to read as follows:

§ 2.01–25 International Convention for Safety of Life at Sea, 1974.

(a) * * *

(1) * * *

(ix) Safety Management Certificate.

(2) The U.S. Coast Guard will issue through the Officer In Charge, Marine Inspection, the following certificates after performing an inspection or safety management audit of the vessel's systems and determining the vessel meets the applicable requirements:

(i) Passenger Ship Safety Certificate.

(ii) Cargo Ship Safety Construction Certificate except when issued to cargo ships by a Coast Guard recognized classification society at the option of the owner or agent.

(iii) Cargo Ships Safety Equipment Certificate.

(iv) Exemption Certificate

(v) Nuclear Passenger Ship Safety Certificate.

(vi) Nuclear Cargo Ship Safety Certificate.

(vii) Safety Management Certificate, except when issued by a recognized organization authorized by the Coast Guard.

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PART 31—INSPECTION AND CERTIFICATION

4. Revise the authority citation for part 31 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Section 31.10–21 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

5. Add § 31.40–30 to read as follows:

§ 31.40–30 Safety Management Certificate—T/ALL.

(a) All tankships on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such tankships must meet the applicable requirements of 33 CFR part 96.

6. In § 31.40–40, revise paragraph (b) to read as follows:

§ 31.40–40 Duration of Convention certificates—-T/ALL.

* * * * *

(b) A Cargo Ship Safety Construction Certificate and a Safety Management Certificate shall be issued for a period of not more than 60 months.

* * * * *

PART 71—INSPECTION AND CERTIFICATION

7. Revise the authority citation for part 71 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

8. Add § 71.75–13 to read as follows:

§ 71.75–13 Safety Management Certificate.

(a) All vessels on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

9. In § 71.75–20, revise paragraph (a) to read as follows:

§ 71.75–20 Duration of certificates.

(a) The certificates are issued for a period of not more than 12 months, with exception to a Safety Management Certificate which is issued for a period of not more than 60 months.

* * * * *

PART 91—-INSPECTION AND CERTIFICATION

10. Revise the authority citation for part 91 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

11. Add § 91.60–30 to read as follows:

§ 91.60–30 Safety Management Certificate.

(a) All vessels on an international voyage must have a valid Safety

Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

12. In § 91.60–40, revise paragraph (b) to read as follows:

§ 91.60–40 Duration of certificates.

* * * * *

(b) A Cargo Ship Safety Construction Certificate and a Safety Management Certificate are issued for a period of not more than 60 months.

* * * * *

PART 107—INSPECTION AND CERTIFICATION

13. Revise the authority citation for part 107 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3205, 3306, 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

14. Add § 107.415 to read as follows:

§ 107.415 Safety Management Certificate.

(a) All self-propelled mobile offshore drilling units of 500 gross tons or over on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

(c) A Safety Management Certificate is issued for a period of not more than 60 months.

PART 115—INSPECTION AND CERTIFICATION

15. Revise the authority citation for part 115 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

16. Add § 115.925 to read as follows:

§ 115.925 Safety Management Certificate.

(a) All vessels that carry more than 12 passengers on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

(c) A Safety Management Certificate is issued for a period of not more than 60 months.

PART 126—INSPECTION AND CERTIFICATION

17. Revise the authority citation for part 126 to read as follows:

Authority: 46 U.S.C. 3205, 3306; 33 U.S.C. 1321(j); E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

18. Add § 126.480 to read as follows:

§ 126.480 Safety Management Certificate.

(a) All offshore supply vessels of 500 gross tons or over on international voyages must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

(c) A Safety Management Certificate is issued for a period of not more than 60 months.

PART 175—GENERAL PROVISIONS

19. Revise the authority citation for part 175 to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 175.900 also issued under authority of 44 U.S.C. 3507.

20. In § 175.540, add paragraph (d) to read as follows:

§ 175.540 Equivalents

* * * * *

(d) The Commandant may accept alternative compliance arrangements in lieu of specific provisions of the International Safety Management (ISM) Code (IMO Resolution A.741(18)) for the purpose of determining that an equivalent safety management system is in place on board a vessel. The Commandant will consider the size and corporate structure of a vessel's company when determining the acceptability of an equivalent system. Requests for determination of equivalency must be submitted to Commandant (G–MOC) via the cognizant OCMI.

PART 176—INSPECTION AND CERTIFICATION

21. Revise the authority citation for part 176 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

22. Add § 176.925 to read as follows:

§ 176.925 Safety Management Certificate.

(a) All vessels that carry more than 12 passengers on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

(c) A Safety Management Certificate is issued for a period of not more than 60 months.

23. Revised § 176.930 to read as follows:

§ 176.930 Equivalents.

As outlined in Chapter I (General Provisions) Regulation 5, of SOLAS, the Commandant may accept an equivalent to a particular fitting, material, apparatus, or any particular provision required by SOLAS regulations if satisfied that such equivalent is at least as effective as that required by the regulations. An owner or managing operator of a vessel may submit a request for the acceptance of an equivalent following the procedures in § 175.540 of this chapter. The Commandant will indicate the acceptance of an equivalent on the vessel's SOLAS Passenger Ship Safety Certificate or Safety Management Certificate, as appropriate.

PART 189—INSPECTION FOR CERTIFICATION

24. Revise the authority citation for part 189 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

25. Add § 189.60–30 to read as follows:

§ 189.60–30 Safety Management Certificate.

(a) All vessels on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

26. In § 189.60–40, revise paragraph (b) to read as follows:

§ 189.60–40 Duration of certificates.

* * * * *

(b) A Cargo Ship Safety Construction Certificate and a Safety Management Certificate are issued for a period of not more than 60 months.

* * * * *

Dated: April 23, 1997.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–11189 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–14–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI70

Monetary Allowance Under 38 U.S.C. 1805 for a Child Born with Spina Bifida Who Is a Child of a Vietnam Veteran

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of a monetary allowance to a child born with spina bifida who is a child of a Vietnam veteran. The intended effect of this amendment is to implement legislation authorizing VA to provide such benefits. A companion document (RIN: 2900-AI65) concerning a proposal for the provision of health care for such children is set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before June 30, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900-AI70.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7230.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Public Law 102–4, 105 Stat. 11, directed the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academy of Sciences (NAS) for a series of reports to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era, and each disease suspected to be associated with such exposure. In its most recent report, entitled ''Veterans and Agent Orange: Update 1996,'' which was released on March 14, 1996, NAS noted what it considered ''limited/suggestive evidence of an association'' between herbicide exposure and spina bifida in the offspring of Vietnam veterans.

Since VA did not have the statutory authority to provide benefits to children of veterans based on birth defects, the Secretary announced on May 28, 1996, that he would seek legislation to provide an appropriate remedy and submitted proposed legislation to Congress in July of that year. Section 421 of Public Law 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with spina bifida who are the natural children of veterans who served in the Republic of Vietnam during the Vietnam era. This document amends existing VA adjudication regulations and adds a new section to title 38, Code of Federal Regulations, to implement this new authority.

Section 1805(c) of title 38, United States Code, specifies that receipt of this allowance shall not affect the right of the child, or the right of any individual, based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA, nor will the allowance be considered income or resources in determining eligibility for, or the amount of, benefits under any Federal or federally assisted program. We propose to amend 38 CFR 3.261, 3.262, 3.263, 3.272, and 3.275 to reflect this statutory provision as it applies to VA's income-based benefit programs.

Section 1806 of title 38, United States Code, provides that the effective date of the monetary allowance to a child under new chapter 18 will be fixed in accordance with the facts found, but will not be earlier than the date of receipt of application. The effective date of section 421 of Public Law 104–204 will be October 1, 1997, unless other legislation is enacted to provide for an earlier effective date. VA is proposing to amend 38 CFR 3.403 to reflect these statutory provisions.

VA is also proposing to amend 38 CFR 3.503 to specify that this monetary allowance will terminate the last day of the month before the month in which the death of a child occurs. This date is consistent with the termination provisions of 38 U.S.C. 5112(b) applicable to compensation, pension, and dependency and indemnity compensation benefits administered by VA, and there is no indication in the statute that Congress intended that VA administer this benefit in any different manner. Due to the amendments to 38 CFR 3.403 and 3.503, we are proposing technical amendments to each cross-reference following 38 CFR 3.57, 3.659, 3.703, 3.707, and 3.807.

VA is also proposing to amend 38 CFR 3.105 to specify that, where there is a change in disability status warranting a reduction of the monetary allowance, such reduction in evaluation will be effective the last day of the month following sixty days from the date of notice to the recipient (at the recipient's last address of record) of the contemplated reduction. This is the date stipulated by 38 U.S.C. 5112(b)(6) for reduction of disability compensation benefits under the same circumstances. We are not, however, proposing to incorporate an additional 60-day notice such as that provided before reductions of compensation awards under the provisions of 38 CFR 3.105(e). Since reduction of this monetary allowance would generally be based on private medical evidence that the claimant had authorized to be released to VA, and since the rating criteria for this benefit are generally less complex than those for rating compensation claims, in our judgment, 60 days is enough time for claimants to submit evidence showing that the monthly allowance should not be reduced. We are proposing to apply the provisions of 38 CFR 3.105(h) concerning the opportunity for a predetermination hearing to reductions of this monetary allowance.

Section 3.158 of title 38, Code of Federal Regulations, describes the circumstances under which VA will consider a claim abandoned. Where evidence requested in connection with a claim is not furnished within one year after the date of request, the claim will be considered abandoned and further action will not be taken unless a new claim is received. Should entitlement be established on the basis of this new claim, benefits are awarded effective not earlier than the date of the filing of the new claim. Where benefit payments have been discontinued because a payee's present whereabouts are unknown, payments will be resumed effective the day following the date of last payment if entitlement is otherwise established, upon receipt of a valid current address. In view of the similarity between this benefit and other monetary benefits which VA

administers, and, in order to maintain consistency with respect to the administration of these benefits, we believe it is appropriate to apply these provisions to the monetary monthly allowance for children with spina bifida, and we are proposing to amend 38 CFR 3.158 accordingly.

Pursuant to 38 U.S.C. 1805(b)(3), the amount of the monthly monetary allowance payable to a child with spina bifida will be $200, $700, or $1,200, based on the individual's degree of disability. Section 1805(b)(3) also specifies that these amounts are subject to adjustment under the provisions of 38 U.S.C. 5312, which provide for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*). We propose to amend 38 CFR 3.27 to reflect that statutory provision.

We propose to add a new § 3.814 to title 38, Code of Federal Regulations, to implement additional provisions of 38 U.S.C. 1805. If a child with spina bifida is the natural child of two Vietnam veterans, new § 3.814 would make clear that that child may receive only one monthly allowance. This limitation is consistent with the provision of 38 U.S.C. 5304(a)(1) that limits a person to not more than one award of pension, compensation, emergency officers, regular or reserve retirement pay based on his or her own service. Such a limit is appropriate in this instance because a child establishes entitlement to this benefit in his or her own right due to being afflicted with spina bifida, and awarding more than one monthly allowance based on the existence of the same disability would constitute a duplication of benefits similar to that prohibited by 38 U.S.C. 5304(a)(1).

We propose to require an applicant for the monetary allowance to furnish certain information contained on a VA form entitled ''Application for Spina Bifida Benefits'' which is set forth in full in the text portion of proposed § 3.814(b). The information requested is necessary for making determinations regarding eligibility for monetary allowances. Furnishing the Social Security numbers of the natural parent(s) and the child on whose behalf benefits are sought is not mandatory, given the absence, under current law, of statutory authority that would authorize VA to require this information. Nevertheless, voluntary submission of such Social Security numbers would be helpful to VA in establishing an individual's eligibility for the monetary allowance authorized by law. VA would use the Social Security numbers to: (1) Verify that the child's natural parent was a veteran who served in Vietnam during the specified period; (2) identify medical records; and (3) ensure that awards to deceased beneficiaries are terminated in a timely manner to avoid creation of overpayments.

The term ''Vietnam veteran'' is defined by the statute as a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. We propose to adopt the statutory language for purposes of new § 3.814. We also propose to define the term *service in the Republic of Vietnam* to include service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. This is consistent with the definition of *service in the Republic of Vietnam* that appears at 38 CFR 3.307(a)(6)(iii), which sets forth the conditions under which VA presumes that Vietnam veterans were exposed to a herbicide agent during active military service. Since the purpose of this rulemaking is to provide for payment to the children of those same veterans if the children are born with spina bifida, it is appropriate to recognize the same area in which veterans are presumed to have been exposed to herbicides.

The statute defines the term ''child'' as meaning a natural child of a Vietnam veteran, regardless of age or marital status, who was conceived after the date on which the veteran first entered the Republic of Vietnam during the Vietnam era. In general, the statutes authorizing VA benefits recognize a legitimate child, a legally adopted child, a stepchild who is a member of the veteran's household, or an illegitimate child either acknowledged in writing by the veteran or judicially decreed to be the child of the veteran, as the child of the veteran (See 38 U.S.C. 101(4)(A)). 38 U.S.C. 1801, however, establishes a stricter requirement; in order to be eligible for this benefit a child must be the *natural* child of a Vietnam veteran. We therefore propose to require that, in order to establish entitlement to this benefit, a claimant must provide the types of evidence specified in 38 CFR 3.209 and 3.210 sufficient to demonstrate, in the judgment of the Secretary, that the child on whose behalf benefits are sought is the natural child of a Vietnam veteran.

38 U.S.C. 1805 (b) authorizes VA to make monthly payments at one of three levels based on the degree of disability suffered by the child, as determined in accordance with a schedule for rating such disabilities to be prescribed by the Secretary. Spina bifida is a developmental anomaly characterized by defective closure of the bony encasement of the spinal cord, through which the cord (myelocele), meninges (meningocele), or both (meningomyelocele) may (spina bifida cystica) or may not (spina bifida occulta) protrude (Dorland's Illustrated Medical Dictionary, 27th ed. 1988, 1560, and The Merck Manual, 16th ed. 1992, 2077). Neurological deficit is the main determinant of disability for an individual with spina bifida (Long-term Outcome in Surgically Treated Spina Bifida Cystica, Isao Date, M.D., Yasunori Yagyu, M.D., Shoji Asari, M.D., and Takshi Ohmoto, M.D., *Surg. Neurol.* 1993, 40:471–5). In our judgment, the neurological manifestations that best define the severity of disability are impairment of: Functioning of the extremities; bowel or bladder function; and intellectual functioning.

We propose to designate levels of disability identified as Level I, II, or III, based on an assessment of these neurologic manifestations in eligible individuals. Each of these neurologic manifestations exhibits three clearly identifiable levels of impairment that can be used in determining levels of payment. Functioning of the lower extremities can be assessed from least to most impaired based on (1) the ability to walk without braces or other external support; (2) the ability to walk only with braces or other external support; or (3) the inability to walk. Functioning of the upper extremities can be assessed from least to most impaired based on (1) absence of sensory or motor impairment; (2) existence of sensory or motor impairment not precluding the ability to grasp a pen, feed one's self, perform self care; and (3) existence of sensory or motor impairment severe enough to preclude the ability to grasp a pen, feed one's self, or perform self care. Bowel or bladder function can be assessed from least to most impaired based upon whether an individual is (1) continent of urine and feces; (2) requires drugs or mechanical means to maintain proper bladder or bowel function; or (3) is completely incontinent of urine or feces.

Intellectual function is ordinarily assessed through the use of any of several standardized tests that determine the intelligence quotient (I.Q.). The average or normal I.Q. range is generally considered to be 90 to 110 (''Comprehensive Textbook of Psychiatry'' 497 (Harold I. Kaplan, M.D., and Benjamin J. Sadock, M.D., eds., 5th ed. 1989)). The American Association of Mental Deficiency considers an I.Q. of 69 or less to indicate mental retardation. Between these ranges falls an intermediate group with an I.Q. between 70 and 89, considered to be in the range

of dull-normal to borderline mental retardation.

Section 1805(a) authorizes VA to pay a monetary allowance for any disability resulting from spina bifida. We have concluded that any person who has spina bifida, other than spina bifida occulta, suffers some degree of disability. Accordingly, we propose to rate individuals suffering from spina bifida at Level I (the lowest level of disability) if they are able to walk without braces or other external support (although gait may be impaired), have no motor or sensory impairment of the upper extremities, have an I.Q. of 90 or higher, and are continent of urine and feces. Provided that none of their disabilities due to spina bifida are severe enough to meet the requirements of Level III, we propose to rate individuals at Level II (the intermediate level of disability) if they are ambulatory, but only with braces or other external support; or, if they have motor or sensory impairment of the upper extremities but are able to grasp a pen, feed themselves, and perform self care; or, if they have an I.Q. between 70 and 89; or, if they require drugs or intermittent catheterization to maintain proper urinary bladder function, or mechanisms for proper bowel function. We propose to rate individuals at Level III (the highest level of disability) if they are unable to ambulate; or, if they have motor or sensory impairment of the upper extremities severe enough to preclude grasping a pen, self-care or self-feeding; or, if they have an I.Q. of 69 or less; or, if they are completely incontinent of urine or feces. For a child with spina bifida to be evaluated at Level I, each of any existing neurological disabilities would have to fall into the least impaired range described above. If at least one of the claimant's neurological impairments falls into the middle range, the individual would be rated at Level II. Furthermore, if at least one of the disabilities falls into the highest level of impairment, the individual would be rated at Level III.

Children who are less than one year of age, regardless of whether they suffer from spina bifida, are essentially helpless, incontinent, unable to walk, and too young for I.Q. to be measured. Therefore, the above-noted criteria we are proposing are not readily applicable as determinants of disability at that age. We therefore propose that children under the age of one be rated at Level I, unless a pediatric neurologist certifies that, in his or her medical judgment, there is a neurological deficit present that will prevent the child from ambulating, grasping a pen, performing self-care, or feeding him or herself because of sensory or motor impairment of the upper extremities, or that will make it impossible for the child to achieve urinary or fecal continence. In our judgment, pediatric neurologists are the only physicians with the expertise in this highly specialized area necessary to assess neurological deficits and their likely prognosis in children under the age of one. If such a deficit is present, we propose that the child be rated at Level III. We also propose to require that VA reassess the level of disability in each child at the age of one year, at which time the effects of spina bifida can more readily be determined.

In some cases, symptoms due to spina bifida do not become manifest for several years. Even if the limbs initially appear totally paralyzed, early training and the use of appliances may allow ambulation in childhood (Brain's Diseases of the Nervous System, revised by John N. Walton, M.D., D.Sc., F.R.C.P., 8th ed., 1977, 777). However, children with lesions at the second lumbar level or higher, even if they become ambulatory in childhood, usually will require wheelchairs in the teenage period. Despite initial bowel or bladder incontinence, most older children, with training and the use of medication or appliances, are able to achieve continence (Diseases of the Nervous System, Arthur K. Asbury, M.D., Guy M. McKhann, M.D., and W. Ian McDonald, Ph.D., F.R.C.P., eds., 1986, 712).

VA will reassess the level of disability due to spina bifida whenever it receives medical evidence indicating that a change is warranted. Nevertheless, we propose to require that VA reassess the level of disability due to spina bifida at intervals of not more than five years until the child has reached the age of 21. Required reassessments will assure that the appropriate level of disability is assigned during the period of time when changes in the disabling effects of spina bifida are most likely to occur. Thereafter, we propose to reassess the level of disability only if we receive medical evidence indicating a material change in the level of disability or that the current rating may be incorrect. By the time a child is age 21, the condition has generally stabilized and, in our judgment, required reassessments beyond that age will no longer be necessary.

Because VA medical facilities generally provide examination and care only to veterans, VA lacks pediatric examiners, pediatric neurologists, and other pediatric specialists who might participate in the evaluation and care of children with spina bifida. We therefore propose to accept statements from private physicians, as well as examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination, provided they are adequate to permit the evaluation of the effects of spina bifida under the criteria proposed above. Because of the critical need to obtain this information in order to assure assignment of an appropriate rating level, we propose to require that individuals seeking or receiving benefits under this provision authorize the release of pertinent medical records to VA and that children for whom VA schedules an examination, whether at a VA facility or by a private health-care provider under contract, report for that examination. Individuals who fail to authorize the release of pertinent medical records or fail to report for examination would be rated at Level I.

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has determined that proposed 38 CFR 3.814 would contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection of information it approves. VA 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.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI70.''

Title: Application for Benefits Eligibility.

Summary of collection of information: The provisions of proposed 38 CFR 3.814 would require applicants for the monetary allowance to submit certain personal identifying information of the child and natural parents, medical status of the child, veteran status of the natural parents, and incompetency details (if applicable and the child is over 18 years old). The types of evidence specified in §§ 3.209 and 3.210

would be sufficient to establish that a child is the natural child of a Vietnam veteran.

Description of the need for information and proposed use of information: VA needs the information to determine eligibility for obtaining the monetary allowance and the appropriate level of payment. Although submission of Social Security numbers is not mandatory, pending the enactment of specific legislation, VA would use the Social Security numbers to: (1) Verify that the child's natural parent was a veteran who served in Vietnam during the specified period; (2) identify medical records; and (3) ensure that awards to deceased beneficiaries are terminated in a timely manner to avoid creation of overpayments.

Description of likely respondents: Individuals seeking the monetary allowance for a child born with spina bifida who is a child of a Vietnam veteran.

Estimated number of respondents: 600–2,000.

Estimated frequency of responses: 1.

Estimated total annual reporting and recordkeeping burden: 335 hours.

Estimated annual burden per collection: 10 minutes.

Title: Acceptance of Released Statements from Private Physicians or Institutions for the Purpose of Evaluating Spina Bifida Claims.

Summary of collection of information: The provisions of the proposed 38 CFR 3.814(d) would permit VA to accept statements from private physicians, as well as examination reports from government or private institutions, for the purpose of evaluating spina bifida claims without VA examination provided that they are adequate to evaluate the effects of spina bifida under the criteria proposed in the regulation, and would require individuals seeking the monetary allowance to authorize the release of pertinent medical records to VA.

Description of the need for information and proposed use of information: Because VA medical facilities generally provide examination and care only to veterans, VA lacks pediatric examiners, pediatric neurologists, and other pediatric specialists who might participate in the evaluation of children with spina bifida.

Description of likely respondents: Individuals seeking the monetary allowance for a child born with spina bifida who is a child of a Vietnam veteran.

Estimated number of respondents: 600–2,000.

Estimated frequency of responses: 1.

Estimated total annual reporting and recordkeeping burden: 335 hours.

Estimated annual burden per collection: 10 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses 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.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance program number for this benefit.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: March 21, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.27, paragraph (c) is redesignated as paragraph (d), a new paragraph (c) is added, and newly redesignated paragraph (d) and its authority citation are revised to read as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(c) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(b)(3))

(d) *Publishing requirements.* Increases in pension rates, parents' dependency and indemnity compensation rates and income limitation, and the monthly allowance under 38 U.S.C. 1805 for a child born with spina bifida made under this section shall be published in the **Federal Register**.

(Authority: 38 U.S.C. 5312(c)(1), 1805(b)(3))

3. In § 3.105, paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), respectively; in paragraphs (d), (e), (f) and newly redesignated paragraph (h) remove ''paragraph (h)'' each time it appears and add, in its place, ''paragraph (i)''; in newly redesignated paragraph (i)(1) remove ''paragraphs (d) through (g)'' and add, in its place, ''paragraphs (d) through (h)''; in newly redesignated paragraph (i)(2) introductory text, remove ''paragraph (d), (e), (f) or (g)'' and add, in its place, ''paragraph (d), (e), (f), (g) or (h)''; in newly redesignated paragraph (i)(2)(ii) remove ''paragraph (f)'' and add, in its place, ''paragraphs (f) and (g)''; in newly

redesignated paragraph (i)(2)(iii) remove ''paragraph (g)'' and add, in its place, ''paragraph (h)''; and add a new paragraph (g) to read as follows:

§ 3.105 Revision of decisions.

* * * * *

(g) *Reduction in evaluation—monetary allowance to a child with spina bifida under 38 U.S.C. 1805.* Where a change in disability level warrants a reduction of the monthly allowance currently being made, a rating proposing the reduction will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that the monthly allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced effective the last day of the month following sixty days from the date of notice to the payee of the proposed reduction.

(Authority: 38 U.S.C. 501)

* * * * *

§ 3.158 [Amended]

4. In § 3.158, paragraphs (a) and (c) are amended by removing ''or dependency and indemnity compensation'' and adding, in its place, ''dependency and indemnity compensation, or monetary allowance under the provisions of 38 U.S.C. 1805''.

5. In § 3.261, paragraph (a)(40) is added to read as follows:

§ 3.261 Character of income; exclusions and estates.

* * * * *

(a) * * *

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See
(40) Monetary allowance under 38 U.S.C. 1805 for children born with spina bifida who are children of Vietnam Veterans.	Excluded	Excluded	Excluded	Excluded	§ 3.262(y)

* * * * *

6. In § 3.262, paragraph (y) is added to read as follows:

§ 3.262 Exclusions of income.

* * * * *

(y) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.* There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. 1805 to a child born with spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

7. In § 3.263, paragraph (g) is added to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(g) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. 1805 to a child born with spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

8. In § 3.272, paragraph (u) is added to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(u) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.* Any allowance paid under the provisions of 38 U.S.C. 1805 to a child born with spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

9. In § 3.275, paragraph (i) is added to read as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(i) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. 1805 to a child born with spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

10. In § 3.403, the introductory text and paragraphs (a)–(e) are redesignated as paragraphs (a), and (a)(1)–(a)(5), respectively, and paragraph (b) is added to read as follows:

§ 3.403 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran (§ 3.814).* An award of the monetary allowance under 38 U.S.C. 1805 to a child with spina bifida who is the child of a Vietnam veteran will be either date of birth if claim is received within one year of that date, or date of claim, but not earlier than October 1, 1997.

(Authority: 38 U.S.C. 1806, 5110(n); sec. 422(c), Pub. L. 104–204, 110 Stat. 2926)

11. In § 3.503, the introductory text and paragraphs (a)-(j) are redesignated as paragraphs (a), and (a)(1)-(a)(10), respectively, and paragraph (b) is added to read as follows:

§ 3.503 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran (§ 3.814).* The effective date of discontinuance of the monthly allowance under 38 U.S.C. 1805 to a child with spina bifida who is the child of a Vietnam veteran will be the last day of the month before the month in which the death of the child occurred.

(Authority: 38 U.S.C. 501)

12. Section 3.814 is added to read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. 1805 for a child born with spina bifida who is a child of a Vietnam veteran.

(a) VA shall pay a monthly allowance based upon the level of disability determined under the provisions of paragraph (c) of this section to or for a child born with spina bifida who is a child of a Vietnam veteran. Receipt of this allowance shall not affect the right of the child, or the right of any individual based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA. If a child with spina bifida is the natural child of two Vietnam veterans,

he or she is entitled to only one monthly allowance under this section.

(b) Applicants for the monetary allowance under this section must submit an application to the VA regional office and include the information mandated on the following VA form entitled ''Application for Spina Bifida Benefits'':

BILL CODE 8320–01–U

OMB Approved No. 2900-
Respondent Burden: 10 Minutes

Department of Veterans Affairs

APPLICATION FOR SPINA BIFIDA BENEFITS

PRIVACY ACT INFORMATION: The social security number and other information on this form is requested under 38 U.S.C. chapter 18, which provides benefits to Vietnam veterans' children with spina bifida. Any information on this form may be disclosed outside VA only if authorized under 38 U.S.C. 5701 and the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Routine disclosures may be made for the following purposes: Debt collection, civil or criminal law enforcement, communications with members of Congress or other representatives, benefits delivery, administration of programs, and personnel administration. Disclosure of the social security numbers and other requested information is voluntary; however, failure to furnish that information would impose administrative difficulties which may result in a delay in processing your application for spina bifida benefits.

RESPONDENT BURDEN: VA may not conduct or sponsor, and respondent is not required to respond to this collection of information unless it displays a valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have comments regarding this burden estimate or any other aspect of this collection of information, call 1-800-827-1000 for mailing information on where to send your comments.

1. NAME OF CLAIMANT-CHILD *(First, middle, last)*	2. SOCIAL SECURITY NUMBER OF CLAIMANT-CHILD *(If available)*
3. CLAIMANT-CHILD'S DATE OF BIRTH *(Mo.,day,yr.)*	4. CLAIMANT-CHILD'S PLACE OF BIRTH *(City and state)*
5. ADDRESS OF CLAIMANT-CHILD *(Include number and street or rural route, city or P.O., State and ZIP Code)*	6. TELEPHONE NUMBER OF CLAIMANT-CHILD *(Include Area Code)* ( )
7. NAME(S) OF NATURAL PARENT(S) *(Please provide information for both)*	
A. FATHER *(First, middle, last)*	B. MOTHER *(First, middle, last)*
8. ADDRESS,TELEPHONE NUMBER AND VETERAN STATUS OF NATURAL PARENT(S)	
A. FATHER *(Include number and street or rural route, city or P.O., State and ZIP Code)* ( )	C. MOTHER *(Include number and street or rural route, city or P.O., State and ZIP Code)* ( )
B. VIETNAM SERVICE? *(If "Yes," provide dates below)* ☐ YES ☐ NO *(From: To:)*	D. VIETNAM SERVICE? *(If "Yes," provide dates below)* ☐ YES ☐ NO *(From: To:)*
9. SOCIAL SECURITY NUMBER(S) OF NATURAL PARENT(S)	
A. FATHER	B. MOTHER
10. VA CLAIM NUMBER(S) OF NATURAL PARENT(S) *(If veteran previously applied to VA for any benefit)*	
A. FATHER	B. MOTHER
11. IF CHILD IS UNDER AGE 18 WHO HAS CUSTODY, IF OTHER THAN NATURAL PARENT? *(Complete Items 11A, 11B and 11C)*	
A. NAME OF CUSTODIAN/GUARDIAN OF CLAIMANT-CHILD	B. RELATIONSHIP TO CHILD ☐ ADOPTIVE PARENT ☐ GUARDIAN ☐ OTHER *(Specify)* _____
C. ADDRESS OF CUSTODIAN/GUARDIAN OF CLAIMANT-CHILD	
12A. IF CLAIMANT-CHILD IS AGE 18 OR OLDER HAS THE CLAIMANT-CHILD BEEN DECLARED INCOMPETENT? ☐ YES ☐ NO *(If "Yes," complete Items 12B and 12C)*	
12B. NAME AND ADDRESS OF THE COURT WHICH MADE THE FINDING OF INCOMPETENCY?	12C. NAME AND ADDRESS OF THE GUARDIAN
13. NAME AND ADDRESS OF PRIMARY HEALTH CARE PROVIDER FOR THE CLAIMANT-CHILD	
14A. HAS THE CHILD BEEN DIAGNOSED WITH SPINA BIFIDA? ☐ YES ☐ NO *(If "Yes," complete Items 14B and 14C)*	14B. DATE OF DIAGNOSIS *(Mo.,day,yr.)*
14C. IF THE CLAIMANT-CHILD HAS BEEN TREATED/HOSPITALIZED FOR SPINA BIFIDA RELATED DISABILITIES WITHIN THE LAST YEAR, PLEASE PROVIDE THE NAME AND ADDRESS OF EACH HOSPITAL OR OTHER INSTITUTION WHERE THE TREATMENT WAS PROVIDED *(Use reverse or attach a separate sheet if more space is needed)*	
I/We, the undersigned, hereby authorize the hospital or physician shown in Items 13 and 14C to disclose and release to the Department of Veterans Affairs (VA) any information that may have been obtained in connection with the physical examination or treatment of the child.	
15A. SIGNATURE(S) OF PARENT/GUARDIAN/ADULT CHILD	15B. DATE SIGNED
16A. SIGNATURE OF WITNESS (Required)	16B. DATE SIGNED
I/We, the undersigned, declare under penalty of perjury that the information provided is true and correct and that the child named in Item 1 above is the natural child of the person(s) named above in Item 7.	
17A. SIGNATURE	17B. DATE SIGNED
18A. SIGNATURE	18B. DATE SIGNED

VA FORM SEP 1997 **21-0304**

BILLING CODE 8320-01-C

(c) *Definitions.*

(1) *Vietnam veteran.* For the purposes of this section, the term ''Vietnam veteran'' means a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Child.* For the purposes of this section, the term ''child'' means a natural child of a Vietnam veteran, regardless of age or marital status, conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of § 3.204(a)(1), VA shall require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish in the judgment of the Secretary that a child is the natural child of a Vietnam veteran.

(3) *Spina bifida.* For the purposes of this section, the term ''spina bifida'' means any form and manifestation of spina bifida except spina bifida occulta.

(d)(1) Upon receipt of competent medical evidence that a child has spina bifida, VA shall determine the level of disability suffered by the child in accordance with the following criteria:

(i) *Level I.* The child is able to walk without braces or other external support (although gait may be impaired), has no sensory or motor impairment of upper extremities, has an IQ of 90 or higher, and is continent of urine and feces.

(ii) *Level II.* Provided that none of the child's disabilities are severe enough to be evaluated at Level III, and the child: is ambulatory, but only with braces or other external support; or has sensory or motor impairment of upper extremities, but is able to grasp pen, feed self, and perform self care; or has an IQ of at least 70 but less than 90; or requires drugs or intermittent catheterization or other mechanical means to maintain proper urinary bladder function, or mechanisms for proper bowel function.

(iii) *Level III.* The child is unable to ambulate; or has sensory or motor impairment of upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or has an IQ of 69 or less; or has complete urinary or fecal incontinence.

(2) Provided that they are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section, VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination. In the absence of such information, VA will schedule an examination for the purpose of assessing the level of disability.

(3) Unless or until VA is able to obtain medical evidence adequate to assess the level of disability due to spina bifida, it will rate the disability of a person eligible for this monetary allowance at no higher than Level I.

(4) Children under the age of one year will be rated at Level I unless a pediatric neurologist certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the child from ambulating; from grasping a pen, feeding him or herself, or performing self care; or from achieving urinary or fecal continence. If such a deficit is present, the child will be rated at Level III. VA will reassess the level of disability of each child to which this provision is applied at the age of one year.

(5) VA will reassess the level of disability due to spina bifida whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it will reassess the level of disability at intervals of not more than five years. Thereafter, it will reassess the level of disability only if evidence indicates there has been a material change in the level of disability or that the current rating may be incorrect.

(Authority: 38 U.S.C. 501, 1805)

13. The Cross-Reference following § 3.57 is amended by removing ''§ 3.403(a)'' and ''§ 3.503(c)'' and adding, in their places, ''§ 3.403(a)(1)'' and ''§ 3.503(a)(3)'', respectively. Each Cross-Reference following §§ 3.659 and 3.703 is amended by removing ''§ 3.503(g)'' and adding, in its place, ''§ 3.503(a)(7)''. Each Cross Reference following §§ 3.707 and 3.807 is amended by removing ''§ 3.503(h)'' and adding, in its place, ''§ 3.503(a)(8)''.

[FR Doc. 97–11256 Filed 4–30–97; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AI65

Provision of Health Care to Vietnam Veterans' Children With Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish regulations regarding Vietnam veterans' children with spina bifida by providing for the provision of health care needed for the spina bifida or any disability that is associated with such condition. This is necessary for providing health care to such children in accordance with recently enacted legislation. A companion document (RIN: 2900-AI70) concerning a proposal to provide for payment of a monetary allowance to a Vietnam veteran's child with spina bifida is set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before June 30, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900-AI65.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Robert De Vesty, Health Systems Specialist, Office of Public Health and Environmental Hazards (13), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC 20420, telephone (202) 273–8456.

SUPPLEMENTARY INFORMATION: This document proposes to amend the ''Medical regulations (38 CFR part 17),'' by setting forth new §§ 17.900–17.905 regarding the provision of health care to Vietnam Veterans' children with spina bifida. Spina bifida is a congenital birth defect, characterized by defective closure of the bones surrounding the spinal cord. The spinal cord and its covering (the meninges) may protrude through the defect.

The provisions of 38 U.S.C. Chapter 18 (Public Law 104–204, section 421, September 26, 1996) provide for three separate types of benefits for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances (2) provision of health care needed for the spina bifida or any disability that is associated with such condition, and (3) provision of vocational training and rehabilitation.

This document proposes to set forth a mechanism regarding provision of health care to Vietnam Veterans' children with spina bifida. In large part the proposed regulations restate statutory provisions.

As a condition of eligibility for the provision of health care under proposed §§ 17.900–17.905, it is proposed that a recipient must be eligible for a monetary allowance under the provisions setting forth a mechanism for monthly monetary payments relating to spina bifida. This would ensure that each recipient would have been determined to be a Vietnam Veteran's child suffering from spina bifida, and would obviate the need for duplicative medical determinations. In this regard, it is noted that monetary allowance would be awarded if the parent is determined to be a Vietnam veteran; if the child is determined, based on medical evidence, to suffer from spina bifida; and if the parent has not been dishonorably discharged (38 U.S.C. 101(2)). The provisions of §§ 17.900 through 19.905 and the rationale for such provisions are contained in the companion document (RIN: 2900-AI70) discussed above in the **SUMMARY** portion of this document.

The proposal explains, consistent with the authorizing legislation, that the proposed provisions are not intended to be a comprehensive insurance plan and do not cover health care unrelated to spina bifida.

The statutory provisions state that ''the Secretary may provide health care directly or by contract or other arrangement with any health care provider.'' It is proposed that any health care paid for by VA be provided only by ''approved health care providers.'' In this regard, it is proposed that such health care providers be only those approved by the Health Care Financing Administration (HCFA), Department of Defense (DoD) Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), or Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or those who possess a state license or certificate. This appears to provide reasonable assurance that individuals providing health care are qualified to do so.

Under the proposal VA officials may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities. This would allow recipients to consider such sources for health care.

The proposal includes a note clarifying when VA is the exclusive payer for health care provided. The note states that VA would provide payment under the proposal only for health care relating to spina bifida or a disability that is associated with such condition. The note also states that VA is the exclusive payer for services authorized under this proposal regardless of any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. The note further states that any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida and not constituting a disability that is associated with such condition.

It is proposed as a condition of payment that preauthorization from a preauthorization specialist of the Health Administration Center (P.O. Box 65025, Denver, CO 80206–9025) be required in accordance with prescribed procedures for case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services or travel (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants—other than mileage at the General Services Administration rate for privately owned automobiles). This will help VA provide necessary care.

Under the proposal, payment to approved health care providers would be made using the methodology already established for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see 38 CFR 17.270 *et seq.*). We believe this methodology based on Medicare and DoD principles would result in fair payments and allow VA to utilize a payment mechanism already in place.

It is proposed that claims from approved health care providers be submitted to the Health Administration Center for payment and that the claims contain specified information. The Center already provides the same types of services for eligible veterans' dependents under the CHAMPVA program. Also, the specified information appears to be necessary to make determinations concerning authorization for payment. The proposal also includes time frames for submission of claims to ensure an orderly and efficient payment system. Further, it is proposed that in response to a request for payment, VA will provide an explanation of benefits to ensure that VA determinations of payments would be understood by claimants.

The proposal sets forth a review/appeal process concerning determinations relating to the provision of health care or payment. A note also would be added to state that the final decision of the Health Administration Center Director concerning provision of health care or payment will inform the claimant of further appellate rights for appeals to the Board of Veterans' Appeals.

Consistent with the statutory scheme, we propose that payments made shall constitute payment in full. The proposed rule also includes a specific list of items that would be excluded from payment since we believe they were not intended to be subject to payment.

The proposal includes provisions concerning medical records. It is proposed that copies of medical records generated outside VA that relate to activities for which VA provided payment and that VA determines are necessary to adjudicate claims under §§ 17.900–17.905 of this part, must be provided to VA at no charge when requested by VA.

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has determined that the proposed §§ 17.902–17.904 of 38 CFR contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection of information it approves. VA 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.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI65''.

Preauthorization—§ 17.902

Title: Preauthorization for Provision of Certain Health Care to Vietnam Veterans' Children with Spina Bifida.

Summary of collection of information: The provisions of the proposed 38 CFR 17.902 would require individuals to submit a to a preauthorization specialist of the Health Administration Center a preauthorization application for health

care consisting of case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services or travel (other than mileage at the General Services Administration rate for privately owned automobiles). The preauthorization application would contain the child's name and social security number; the type of service requested; the medical justification; the estimated cost; and the name, address, and telephone number of the provider.

Description of need for information and proposed use of information: Such information would be necessary to make preauthorization determinations in accordance with proposed 38 CFR 17.902.

Description of likely respondents: Individuals seeking provisions of health care to Vietnam veterans' children with spina bifida.

Estimated number of respondents: 600 to 2000.

Estimated frequency of responses: One time.

Estimated total annual reporting and recordkeeping burden: 500 hours.

Estimated annual burden per collection: 15 minutes each.

Payment of Claims—§ 17.903

Title: Payment of Claims for Provision of Health Care to Vietnam Veterans' Children with Spina Bifida.

Summary of collection of information: The provisions of the proposed 38 CFR 17.903 would require that, as a condition of payment, claims from ''approved health care providers'' for health care provided under 38 CFR 17.900 must include the following information, as appropriate: With respect to patient identification information: The veteran's and patient's full name, social security numbers, patient's address, and date of birth; with respect to patient treatment information (inpatient and outpatient services): Full name and address (such as hospital or physician), remittance address, physical location where services were rendered, individual provider's professional status (M.D., Ph.D., R.N., etc.), and provider tax identification number (TIN) or Social Security Number (SSN); with respect to patient treatment information (inpatient institutional services): Dates of service (specific and inclusive); summary level itemization (by revenue code); dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed; principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization; all secondary diagnoses; all procedures performed; discharge status of the patient; and institution's Medicare provider number; with respect to patient treatment information for all health care providers and ancillary outpatient services: Diagnosis, procedure code for each procedure, service or supply for each date of service, and individual billed charge for each procedure, service or supply for each date of service; with respect to prescription drugs and medicines: Name and address of pharmacy where drug was dispensed, name of drug, National Drug Code (NDC) for drug provided, strength, quantity date dispensed, and pharmacy receipt for each drug dispensed.

Description of need for information and proposed use of information: Such information would be necessary to make payment determinations in accordance with proposed 38 CFR 17.903.

Description of likely respondents: Individuals seeking provision of health care to Vietnam Veterans' children with spina bifida.

Estimated number of respondents: 600 to 2000.

Estimated frequency of responses: 10.

Estimated total annual reporting and recordkeeping burden: 2,000 hours.

Estimated annual burden per collection: 6 minutes per item.

Review/Appeal process—§ 17.904

Title: Review/Appeal process regarding provision of health care or payment relating to provision of health care to Vietnam Veterans' Children with Spina Bifida.

Summary of collection of information: The provisions of the proposed 38 CFR 17.904 would establish a review process regarding disagreements by a Vietnam veteran's child or representative with a determination concerning authorization of health care or a health care provider's disagreement with a determination regarding payment. The person or entity requesting reconsideration of such determination would be required to submit such request to the Chief, Administrative Division, Health Administration Center, in writing within one year of the date of initial determination. The request must state why the decision is in error and include any new and relevant information not previously considered. After reviewing the matter, a benefits advisor would issue a written determination to the person or entity seeking reconsideration. If such person or entity remains dissatisfied with the determination, the person or entity would be permitted to make a written request for review by the Director, Health Administration Center.

Description of need for information and proposed use of information: The information proposed to be collected under 17.904 appears to be necessary to make review and appeal determinations.

Description of likely respondents: Beneficiaries and providers disagreeing with determinations regarding covered services and benefits.

Estimated number of respondents: 100.

Estimated frequency of responses: 10.

Estimated total annual reporting and recordkeeping burden: 334 hours.

Estimated annual burden per collection: 20 minutes per item.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses 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.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

The Secretary hereby certifies that the adoption of the proposed rule would not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. It is estimated that there are only between 600 and 2,000 Vietnam veterans' children who suffer from spina bifida. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b),

the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance program numbers.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: March 21, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is proposed to be amended as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, an undesignated center heading and new §§ 17.900–17.905 are added to read as follows:

Health Care for a Vietnam Veteran's Child with Spina Bifida

Sec.

17.900 Spina Bifida—Provision of health care.
17.901 Definitions.
17.902 Preauthorization.
17.903 Payment.
17.904 Review appeal process.
17.905 Medical records.

Health Care for a Vietnam Veteran's Child with Spina Bifida

§ 17.900 Spina Bifida—Provision of health care.

(a) VA shall provide a Vietnam veteran's child who has been determined under § 3.814 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for the spina bifida or any disability that is associated with such condition. This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida.

(b) Health care provided under this section shall be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.

(Authority: 38 U.S.C. 101(2), 1801–1806)

Note: VA provides payment under this section only for health care relating to spina bifida or a disability that is associated with such condition. VA is the exclusive payer for services authorized under this section regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida and not constituting a disability that is associated with such condition.

§ 17.901 Definitions.

For the purpose of this section—

Approved health care provider means a health care provider approved by the Health Care Financing Administration (HCFA), Department of Defense Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health care Organizations (JCAHO), or any health care provider approved for providing health care pursuant to a state license or certificate. An entity or individual shall be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

Child means the same as defined at § 3.814(c) of this title.

Habilitative and rehabilitative care means such professional counseling, guidance services and treatment programs (other than vocational training under 38 U.S.C. 1804) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

Health care means home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care; and includes the training of appropriate members of a child's family or household in the care of the child; and the provisions of such pharmaceuticals, supplies, equipment, devices, appliances, assistive technology, direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants), and other materials as the Secretary determines necessary.

Health care provider means any entity or individual who furnishes health care, including specialized spina bifida clinics, health care plans, insurers, organizations, and institutions.

Home care means medical care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to an individual in the individual's home or other place of residence.

Hospital care means care and treatment furnished to an individual who has been admitted to a hospital as a patient.

Nursing home care means care and treatment furnished to an individual who has been admitted to a nursing home as a resident.

Outpatient care means care and treatment including preventive health services, furnished to an individual other than hospital care or nursing home care.

Preventive care means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.

Respite care means care furnished on an intermittent basis for a limited period to an individual who resides primarily in a private residence when such care will help the individual continue residing in such private residence.

Spina bifida means all forms and manifestations of spina bifida except spina bifida occulta (this includes complications or associated medical conditions which are adjunct to spina bifida according to the scientific literature).

Vietnam veteran means the same as defined at § 3.814(b) of this title.

(Authority: 38 U.S.C. 101(2), 1801–1806)

§ 17.902 Preauthorization.

Preauthorization from a preauthorization specialist of the Health Administration Center is required for health care consisting of case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services or travel (other than mileage at the General Services Administration rate for privately owned automobiles). These services will be authorized only in those cases where there is a demonstrated medical need. Applications for provision of health care requiring preauthorization shall either

be made by telephone at (800) 733–8387, or in writing to Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The application shall contain the following:

(a) Name of Child,

(b) Child's Social Security number,

(c) Name of veteran,

(d) Veteran's Social Security number,

(e) Type of service requested,

(f) Medical justification,

(g) Estimated cost, and

(h) Name, address, and telephone number of provider.

(Authority: 38 U.S.C. 101(2), 1801–1806)

§ 17.903 Payment.

(a) (1) Payment under this section will be determined utilizing the same payment methodologies as provided for under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see 38 CFR 17.720 et seq.).

(2) As a condition of payment, claims from approved health care providers for health care provided under this section must be filed with the Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025, no later than:

(i) One year after the date of service; or

(ii) In the case of inpatient care, one year after the date of discharge; or

(iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of authorization.

(3) Claims for health care provided under the provisions of §§ 17.900 through 17.905 of this part shall contain, as appropriate, the information set forth in paragraphs (a)(3)(i) through (a)(3)(v) of this section.

(i) Patient identification information:

(A) Full name,

(B) Address,

(C) Date of birth, and

(D) Social Security number.

(ii) Provider identification information (inpatient and outpatient services):

(A) Full name and address (such as hospital or physician),

(B) Remittance address,

(C) Address where services were rendered,

(D) Individual provider's professional status (M.D., Ph.D., R.N., etc.), and

(E) Provider tax identification number (TIN) or Social Security number.

(iii) Patient treatment information (long-term care or institutional services):

(A) Dates of service (specific and inclusive),

(B) Summary level itemization (by revenue code),

(C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,

(D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization,

(E) All secondary diagnoses,

(F) All procedures performed,

(G) Discharge status of the patient, and

(H) Institution's Medicare provider number.

(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites and independent laboratories:

(A) Diagnosis,

(B) Procedure code for each procedure, service or supply for each date of service, and

(C) Individual billed charge for each procedure, service or supply for each date of service.

(v) Prescription drugs and medicines and pharmacy supplies:

(A) Name and address of pharmacy where drug was dispensed,

(B) Name of drug,

(C) Drug Code for drug provided,

(D) Strength,

(E) Quantity,

(F) Date dispensed,

(G) Pharmacy receipt for each drug dispensed (including billed charge), and

(H) Diagnosis.

(b) Health care payment shall be provided in accordance with the provisions of §§ 17.900 through 17.905 of this part. However, the following are specifically excluded from payment:

(1) Care as part of a grant study or research program,

(2) Care considered experimental or investigational,

(3) Drugs not approved by the U.S. Food and Drug Administration for commercial marketing,

(4) Services, procedures or supplies for which the beneficiary has no legal obligation to pay, such as services obtained at a health fair,

(5) Services provided outside the scope of the provider's license or certification, and

(6) Services rendered by providers suspended or sanctioned by a Federal agency.

(c) Payments made in accordance with the provisions of §§ 17.900 through 17.905 of this part shall constitute payment in full. Accordingly, the health care provider or agent for the health care provider may not impose any additional charge for any services for which payment is made by VA.

(d) Explanation of benefits (EOB). When a claim under the provisions of §§ 17.900 through 17.905 of this part is adjudicated, an EOB will be sent to the beneficiary or guardian and the provider. The EOB provides at a minimum, the following information:

(1) Name and address of recipient,

(2) Description of services and/or supplies provided,

(3) Dates of services or supplies provided,

(4) Amount billed,

(5) Determined allowable amount,

(6) To whom payment, if any, was made, and

(7) Reasons for denial (if applicable).

(Authority: 38 U.S.C. 101(2), 1801–1806)

§ 17.904 Review appeal process.

If a health care provider, Vietnam veteran's child or representative disagrees with a determination concerning provision of health care or a health care provider disagrees with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing within one year of the date of the initial determination to the Chief, Administrative Division, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The request must state why it is concluded that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination to the person or entity seeking reconsideration that affirms, reverses or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 30 days of the date of the decision he or she may make a written request for review by the Director, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The Director will review the claim and any relevant supporting documentation and issue a decision in writing that affirms, reverses or modifies the previous decision.

(Authority: 38 U.S.C. 101(2), 1801–1806)

Note: The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans Appeals.

§ 17.905 Medical records.

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment, and that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905 of this part, must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1801–1806)

[FR Doc. 97–11257 Filed 4–30–97; 8:45 am]
BILLING CODE 8320–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AC62

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Insurance Administration, (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National Flood Insurance Program (NFIP) regulations establishing the Financial Assistance/Subsidy Arrangement. This Arrangement may be entered into by and between the Administrator and private sector insurers under the Write Your Own (WYO) program. The proposed amendments would: (1) Reduce the range between the minimum and maximum amount of premium income a company may retain as a servicing fee as a result of its marketing performance; (2) restructure the Arrangement so that under no circumstance would a company have to return any portion of the expense allowance; (3) reformat the Arrangement to make it easier to read; (4) standardize references throughout the document, and (5) add details to clarify responsibilities of private sector insurers under the Arrangement with regard to reporting requirements, litigation, and ''errors and omissions.''

DATES: All comments received on or before June 16, 1997 will be considered before final action is taken on the proposed rule.

ADDRESSES: Please submit any written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, 202–646–3443.

SUPPLEMENTARY INFORMATION: The Write Your Own (WYO) program has operated for fourteen years as a cooperative venture between the Federal Government and private insurance companies in order to make it easier for the public to obtain flood insurance coverage. The duties and responsibilities of the Federal Government and the private insurers participating in the WYO program are spelled out each year in the Financial Assistance/Subsidy Arrangement (the ''Arrangement'').

Prior to the 1994–95 Arrangement Year, the amount of premium which the Company retained as a servicing fee or expense allowance was adjusted based on the average of expense ratios for ''Other Acq.,'' ''General Exp.,'' and ''Taxes'' as published in the latest available ''Best's'' Aggregates and Averages: Property Casualty Insurance Underwriting— by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril combined. The average for the 1993–94 Arrangement Year was 32.6 percent, and the expense allowance has not been adjusted for the last three years. This rule proposes an expense allowance range between 31.6 percent and 32.9 percent depending on a company's reaching certain policy growth goals, with 31.9 percent, the current industry average, corresponding to a four percent growth, the current annual growth of flood insurance under the Write Your Own program. FIA also plans, after the implementation of the Arrangement for 1997–98, to continue discussions with the WYO companies on the best way to maintain in future years financial incentives for companies to market flood insurance while minimizing financial uncertainties from one year to the next for participating companies.

This rule proposes in ''B. Time Standards'' of Article II, ''Undertaking of the Company'' adding specific provisions regarding ''continual failure'' of a participating company to meet the time standards of the Arrangement.

Additionally, this rule proposes adding under ''Article III-Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds'': 1. Specific reporting requirements regarding litigation, 2. specific criteria for reporting litigation, and 3. Authority to withhold reimbursement for companies failing to meet the Arrangement's reporting requirements for litigation. Also added in Article III and Article IX, ''Errors and Omissions,'' is proposed language that clarifies the responsibilities of participating companies in connection with ''errors and omissions.''

Finally, this rule proposes other changes that would reformat the Arrangement by modifying the outline format and rearranging text in order to make the document clearer and easier to read. These proposed changes would be consistent with the changes made to the Arrangement last year for the express purpose of making the Arrangement more serviceable for FIA and its insurance industry partners.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental assessment has been prepared.

Executive Order 12898, Environmental Justice

The socioeconomic conditions to this proposed rule were reviewed and a finding was made that no disproportionately high and adverse effect on minority or low income populations would result from this final rule.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this final rule adheres to the regulatory principles set forth in E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 62

Claims, Flood insurance.

Accordingly, 44 CFR part 62 is proposed to be amended as follows:

PART 62— SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Appendix A of part 62 would be revised to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

Purpose: To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

Accounting Data: Pursuant to Section 1310 of the Act, a Letter of Credit shall be issued for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1996.

Issued By: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its ''Finding and Declaration of Purpose'' in the National Flood Insurance Act of 1968, as amended, (''the Act'') recognized the benefit of having the National Flood Insurance Program (the ''Program'' or ''NFIP'') ''carried out to the maximum extent practicable by the private insurance industry''; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of Section 1345 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, overtime, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act); and

Whereas, the insurer (hereinafter the ''Company'') under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to enable any interested qualified insurer to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name under prescribed policy conditions and pursuant to this Arrangement and the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

Article II—Undertaking of the Company

A. Eligibility Requirements for Participation in the NFIP:

1. Policy Administration. All fund receipt, recording, control, timely deposit requirements, and disbursement in connection with all Policy Administration and any other related activities or correspondences, must meet all requirements of the Financial Control Plan. The Company shall be responsible for:

a. Compliance with the Community Eligibility/Rating Criteria

b. Making Policyholder Eligibility Determinations

c. Policy Issuance

d. Policy Endorsements

e. Policy Cancellations

f. Policy Correspondence

g. Payment of Agents' Commissions

2. Claims Processing. All claims processing must be processed in accordance with the processing of all the companies' insurance policies and with the Financial Control Plan. Companies will also be required to comply with FIA Policy Issuance's and other guidance authorized by FIA or the Federal Emergency Management Agency (''FEMA'').

3. Reports a. Monthly Financial Reporting and Statistical Transaction reporting requirements. All monthly financial reporting and statistical transaction reporting shall be in accordance with the requirements of the NFIP Transaction Record Reporting and processing plan for the Company Program and the Financial Control Plan for business written under the WYO (Write Your Own) Program. 44 C.F.R. Part 62, App. (B). These data shall be validated/edited/audited in detail and shall be compared and balanced against Company reports.

b. Monthly financial reporting procedure shall be in accordance with the WYO Accounting Procedures.

B. Time Standards. These time standards are for guidance. Time will be measured from the date of receipt through the date mailed out. All dates referenced are working days, not calendar days. In addition to the standards set forth below, all functions performed by the company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing field. Continual failure to meet these requirements may result in limitations on the company's authority to write new business or the removal of the Company from the program. Applicable time standards are:

1. Application Processing—15 days (note: if the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added moneys shall be mailed within 10 days);

2. Renewal Processing—7 days

3. Endorsement Processing—15 days

4. Cancellation Processing—15 days

5. Claims Draft Processing—7 days from completion of file examination

6. Claims Adjustment—45 days average from the receipt of Notice of Loss (or equivalent) through completion of examination.

C. Single Adjuster Program. To ensure the maximum responsiveness to the NFIP policy holders following a catastrophic event, e.g., a hurricane, involving insured wind and flood damage to policyholders, the Company shall agree to the adjustment of the combined flood and wind losses utilizing one adjuster under an NFIP-approved Single Adjuster Program using procedures issued by the Administrator. The Single Adjuster procedure shall be followed in the following cases:

1. Where the flood and wind coverage is provided by the Company;

2. Where the flood coverage is provided by the Company and the wind coverage is provided by a participating State Property Insurance Plan, Windpool Association, Beach Plan, Joint Underwriting Association, FAIR Plan, or similar property insurance mechanism; and

3. Where the flood coverage is provided by the Company and the wind coverage is provided by another property insurer and the State Insurance Regulator has determined that such property insurer shall, in the interest of consumers, facilitate the adjustment of its wind loss by the adjuster engaged to adjust the flood loss of the Company.

D. Policy Issuance. 1. The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2. The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act.

3. All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator.

4. All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business.

5. The Administrator may require the Company to discontinue issuing policies subject to this Arrangement immediately in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FlA.

G. The Company shall market flood insurance policies in a manner consistent with the marketing guidelines established by the Federal Insurance Administration.

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production

expenses, including any State premium taxes, dividends, agent's commissions or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement but excluding other taxes or fees, such as surcharges on flood insurance premium and guaranty fund assessments.

B. The Company shall be entitled to withhold, as operating and administrative expenses, including agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in Section C. of this Article, which amount shall be a minimum of 31.6% of the Company's written premium on the policies covered by this Arrangement.

The amount of expense allowance retained by the company may be increased to a maximum of 32.9%, depending on the extent to which the company meets the marketing goals for the 1997–1998 Arrangement year contained in marketing guidelines established pursuant to Article II. G. The amount of any increase shall be paid to the company after the end of the 1997–1998 Arrangement year.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include ''incurred but not reported'').

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to a ''Fee Schedule'' coordinated with the Company and provided by the Administrator.

3. Special allocated loss expenses shall be reimbursed to the Company in accordance with guidelines issued by the Administrator.

D. Loss Payments. 1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account(s) established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments include payments as a result of litigation which arises under the scope of this Arrangement, and the Authorities set forth above. All such loss payments must meet the documentation requirements of the Financial Control Plan and of this Arrangement. The Company will be reimbursed for errors and omissions only as set forth at Article IX of this Arrangement.

3. Notification of claims in litigation against the company. To ensure reimbursement of costs expended to defend a claim in litigation against the Company, the Company must promptly notify FIA and the FEMA Office of General Counsel (OGC) of all pending and active litigation upon receipt of notice of that litigation and/or claim.

Prompt notice of any such claim for damages within the scope of this section (D) shall be sent to the Administrator along with a copy of any material pertinent to the claim for damages. At the same time as notice is sent to the Administrator, the Company must submit written notice of all such claims to the Associate General Counsel for Litigation, FEMA OGC, 500 C St. SW, Washington, DC 20472. Following the initial notice of claims in litigation, the company must submit all pertinent material and billing documentation as it becomes available. Within 60 days of the receipt of a claim in litigation by the Company, the company must submit an initial case analysis and legal fee estimate. Failure to meet these notice requirements may result in the Administrator's decision not to reimburse expenses for which FIA and the FEMA OGC have not been notified in a timely manner.

4. Limitation on Litigation Costs. Following receipt of notice of such claim, the Office of General Counsel (OGC), FEMA, shall review the information submitted. If it is determined that the claim is grounded in actions by the Company that are outside the scope of this Arrangement, the National Flood Insurance Act, and 44 C.F.R. Part 59, *et seq.*, and/or involve issues of insurer/agent negligence as discussed in Article IX of this Arrangement, the OGC shall make a recommendation to the Administrator as to whether the claim is grounded in actions by the Company that are significantly outside the scope of this Arrangement. In the event the Administrator determines that the claim is grounded in actions by the Company that are significantly outside the scope of this Arrangement, the Company will be notified, in writing, within thirty (30) days of the Administrator's decision, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for reconsideration the determination that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) ''Flood Insurance Manual'' shall be made by the Company from Federal flood insurance funds referred to in Article II, Section E, and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

Article IV—Undertakings of the Government

A. Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed procedures implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections C, D, and E. Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit expenses.

Request for payment on Letters of Credit Shall not Ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn by the Company for any of the following reasons:

1. Payment of claim as described in Article III, Section D;

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected Or when

cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the **Federal Register** and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for a period not to exceed one (1) year following the original term of this Arrangement, or any renewal thereof, or (2) the transfer to the FIA of:

1. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

2. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

3. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be canceled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, the FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be canceled for any new or renewal business, but the Arrangement shall continue for policies in force that shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

Article VI—Information and Annual Statements

The Company shall furnish to FEMA such summaries and analyses of information including claim file information, and property address, location, and/or site information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds, including interest, not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual or procedures approved in writing by the FIA.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities that shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

Article VIII—Arbitration

If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination that shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by inadvertent delay, error, or omission made in connection with any transaction under this Arrangement. In the event of such actions, the responsible party must attempt to rectify that error as soon as possible after discovery of the error and act to mitigate any costs incurred due to that error. In the event that steps are not taken to rectify the situation and such action leads to claims against the company, the NFIP, or other related entities, the responsible party shall bear all liability attached to that delay, error or omission to the extent permissible by law.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or Trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Article X—Officials Not To Benefit

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FlA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset.

Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement, the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program Shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program

Article XIV—Access to Books and Records

The FIA and the Comptroller; General of The United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records that fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

Article XV—Compliance with Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, the National Flood Insurance Reform Act of 1994, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: April 24, 1997.

Roland E. Holland,

Acting Executive Administrator, Federal Insurance Administration.

[FR Doc. 97–11318 Filed 4–30–97; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF DEFENSE

48 CFR Parts 32 and 52

Federal Acquisition Regulation; Progress Payments

AGENCY: Department of Defense.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Comments are solicited from both government and industry personnel on how Federal Acquisition Regulation (FAR) Subpart 32.5, Progress Payments Based on Costs, the clause at FAR 52.232–16, Progress Payments, and Standard Form 1443, Contractor's Request For Progress Payment, can be revised to result in a simplified and streamlined process of applying for and administering progress payments. The Director of Defense Procurement is sponsoring an initiative to review existing forms, procedures, and provisions related to progress payments. Regulatory requirements pertaining to progress payments that are not required by statute, required to ensure adequately standardized government business practices, or required to protect the public interest will be considered for revision or elimination. Innovative means of simplifying the process of contractor requests for progress payments and the subsequent government administration of progress payments will be considered for incorporation into the regulation.

Comments may be submitted in two formats: (1) By letter to the address below, or (2) by electronic response on the Director of Defense Procurement Office of Cost, Pricing, and Finance Internet Home Page: http://www.acq.osd.mil/dp/cpf. Comments should include (1) An identification of the existing regulation, form, or procedure, (2) a proposed revision thereto, and (3) a supporting rationale for the proposed revision.

DATES: Comments are due on or before May 30, 1997.

ADDRESSES: Send comments to the Chair, Progress Payments Rewrite Team, Mr. Richard Brown, PDUSD(A&T)DP/CPF, Room 3C800, Defense Pentagon, Washington, DC 20301–3060.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Brown, by telephone at (703) 695–7197, by FAX at (703) 693–9616, or by e-mail at brownrg@acq.osd.mil.

Background

The Director of Defense Procurement, Department of Defense, has established a special interagency team, with participants from the Office of the Under Secretary of Defense (Comptroller), the Military Departments, the Defense Logistics Agency, the Defense Contract Audit Agency, the Defense Finance and Accounting Service, the Department of Energy, and the National Aeronautics and Space Administration, that will review and rewrite FAR Part 32 and Part 52 provisions regarding Progress Payments to make them easier to understand and to minimize the burdens imposed on contractors and contracting officers. The Director of Defense Procurement will provide a forum for an exchange of ideas and information with government and industry personnel by holding at least one public meeting, soliciting public comments, and publishing notices of public meetings in the **Federal Register**. Discussion will focus on draft revisions of FAR Part 32, Subpart 32.5, Progress Payments Based on Costs, and associated contract clauses and forms. In addition to the overall simplification of the progress payments process, the rewrite team will also consider changes needed in the progress payments provisions to address the inclusion of performance-based payments and commercial financing payments to subcontractors as part of a contractor's request for progress payments. The rewrite team will also address whether indirect costs for supplies and services purchased by the contractor are eligible for progress payment reimbursement before the contractor has paid the direct costs that are burdened by those indirect costs and included the direct costs in progress payment requests.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 97–11296 Filed 4–30–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 97–D007]

Specialty Metals; Agreements with Qualifying Countries

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the Preference for Domestic Speciality Metals clause for consistency with the provisions of the Berry Amendment.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 30, 1997.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Ms. Amy Williams, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0305. Please cite DFARS Case 97–D007 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the contract clause at DFARS 252.225–7014, Preference for Domestic Specialty Metals. The clause requires that, with certain exceptions, any specialty metals incorporated in articles delivered under the contract will be melted in the United States, its possessions, or Puerto Rico. Paragraph(c)(2) of the clause presently provides for an exception to this requirement when the acquisition is for an end product of a qualifying country listed in DFARS 225.872–1. This proposed rule revises paragraph (c)(2) of the clause to provide an exception for speciality metals melted in a qualifying country or incorporated in an article manufactured in a qualifying country, rather than only providing an exception for the acquisition of end products of a qualifying country. This proposed revision is consistent with the Berry Amendment (10 U.S.C. 2241 note) (as implemented at DFARS 225.7002–2(i)), which provides an exception from domestic source restrictions for the procurement of specialty metals where such procurement is necessary in furtherance of agreements with foreign governments in which both governments agree to remove barriers to purchase of supplies produced in the other country.

B. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule increases the opportunity for foreign competition by firms providing speciality metals melted in qualifying countries or qualifying country components containing specialty metals. An Initial Regulatory Flexibility Analysis (IRFA) has, therefore, been performed, and is summarized as follows: This proposed rule amends the clause at DFARS 252.225–7014 to make the exception in the clause consistent with the Berry Amendment (10 U.S.C. 2241 note) and with the existing DFARS text at 225.7002–2(i). The clause at DFARS 252.225–7014 is prescribed for use in all solicitations and contracts over the simplified acquisition threshold that require delivery of an article containing specialty metals. The clause is prescribed for use with its Alternate I if the article containing specialty metals is for one of certain major programs. The basic clause only restricts the direct acquisition of specialty metals by the prime contractor, whereas Alternate I flows down the restriction to subcontractors at any tier. The proposed rule does not affect the already unrestricted sources of speciality metals when acquiring qualifying country end products or when acquiring components including speciality metals for use in an end product for other than a major program. The proposed rule does loosen the restriction on domestic specialty metals for prime contractors providing domestic nonqualifying country end products, permitting them to incorporate speciality metals melted in a qualifying country (for both major and non-major programs), or qualifying country components containing specialty metals of unrestricted source for use in end products for major programs. Because the components subject to increased foreign competition are at a subcontract level, it is not possible to more specifically identify the items or whether they are produced by small business firms. The proposed rule does not require any new reporting or recordkeeping, and does not duplicate, overlap, or conflict with other relevant Federal rules. An alternative approach would be to require that the specialty metals incorporated in articles manufactured in a qualifying country also be melted in a qualifying country.

This approach could slightly reduce the extent of foreign competition facing domestic entities. However, this approach appeared to go beyond the requirements of the statute being implemented.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the IRFA from the address specified herein. Comments are invited. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D007 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule contains no 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 Part 252

Government procurement.

Michele P. Peterson

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 252 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 252.225–7014 is amended by revising the date of the clause, paragraph (c)(2) of Alternate I to read as follows:

252.225–7014 Preference for domestic specialty metals.

* * * * *

Preference for Domestic Specialty Metals (Date)

* * * * *

(c) * * *

(2) The specialty metal is melted in a qualifying country, or is incorporated in an article manufactured in a qualifying country. (Qualifying countries are those countries listed in subsection 225–872–1 of the Defense Federal Acquisition Regulation Supplement);

* * * * *

Alternate I (Date)

* * * * *

(c) * * *

(2) The specialty metal is melted in a qualifying country, or is incorporated in an article manufactured in a qualifying country. (Qualifying countries are those countries listed in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement); or

* * * * *

[FR Doc. 97–11297 Filed 4–30–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1121 and 1150

[STB Ex Parte No. 562]

Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902—Advance Notice of Proposed Transactions

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board, after reviewing public comments on labor protective requirements for line acquisitions by Class II railroads in Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad Company, STB Finance Docket No. 33116 (STB served Apr. 17, 1997), proposes to establish a 60-day notice period for the benefit of rail employees who work on rail lines subject to, and to facilitate the implementation of, transactions: under 49 U.S.C. 10902 by Class II rail carriers; under 49 U.S.C. 10902 by Class III rail carriers to acquire or operate additional rail lines where the lines to be acquired or operated, together with the acquiring carrier's existing lines, would produce annual revenue exceeding $5 million; and under 49 U.S.C. 10901 by noncarriers to acquire or operate rail lines where the lines to be acquired or operated would produce annual revenue exceeding $5 million.

DATES: Comments are due on June 2, 1997.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 562 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: We considered and recently granted the petition by Wisconsin Central Ltd. (WCL), a Class II carrier, for an exemption for its acquisition of two rail lines from Union Pacific Railroad Company in Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad Company, STB Finance Docket No. 33116 (STB served Apr. 17, 1997) (WCL Exemption). By **Federal Register** notice published November 27, 1996 (61 FR 60320–21), we had described WCL's exemption request and its proposed employee protective arrangement, and had sought public comments on the issues of whether WCL's proposed labor protection met the statutory requirements of 49 U.S.C. 10902 and whether the Board should establish and/or oversee the procedural aspects of such arrangements in rail line acquisitions by Class II railroads. A number of comments were filed, including comments by WCL and the Transportation Trades Department of the AFL–CIO (TTD).

In WCL Exemption, we adopted standards for implementing the labor protection requirement of subsection 10902(d), other than for a specific notice period for the seller's employees to be affected by a line sale. While TTD had requested a 90-day notice period, we determined that affected employees on the line to be sold had been afforded at least that amount of notice. Rather than adopt a specific notice period in that proceeding, we announced that we would seek public comments on a proposed requirement that Class II railroads provide a minimum of 60 days' notice in future proceedings under § 10902. We also proposed to amend the existing class exemption rules so that a similar 60-day notice period is afforded in all transactions, involving acquisitions under § 10902 by Class III carriers or under 49 U.S.C. 10901 by noncarriers, that would result in the acquiring entity becoming a carrier with annual revenues in excess of $5 million.

As preliminarily concluded in WCL Exemption, we are not proposing that individual employee notice be required. Rather, we believe that requiring the posting and submission of notice to the national offices of the labor unions with employees on the affected line setting forth the terms of employment and principles of selection to be followed by the acquiring carrier should be sufficient.[1]

Sixty days is the notice period for displaced workers adopted by the Worker Adjustment and Retraining Notification Act, Pub. L. No. 100–379 (August 4, 1988). That seems to be a

[1] *See* 49 CFR 1150.35(b)(2), (c)(3); and 49 CFR 1150.45(b)(2), (c)(3), for current notice requirements in our class exemptions for larger transactions under 49 U.S.C. 10901 and 10902.

reasonable period of time in which employees directly affected by the acquisitions of rail lines may be asked to make decisions or to take actions. By ''directly affected employees,'' we mean the employees who actually work on the line or lines to be acquired. These employees are faced at a minimum with having to decide whether to accept a position on the acquiring entity or to exercise seniority on the carrier that is selling, leasing or otherwise transferring the line. In either case employees are faced with significant changes in their work assignments. And one or more of these employees may be separated from employment altogether and will have to seek work elsewhere.

Employees who work on lines acquired under §10901 have as much need for notice as do the employees working on lines acquired under §10902. Although the Interstate Commerce Commission (ICC or the Commission) had discretionary authority to impose labor protective conditions in line sale cases, the Commission rarely exercised that authority. Nevertheless, new carriers buying or leasing lines often extended offers of employment to employees working on the lines acquired. We have no reason to believe that this practice will not continue. That being the case, employees affected by those transactions will often have to choose whether or not to accept employment with the new carrier. In addition, employees in §10901 transactions will, in many instances, have to move to new positions on their present employer or may have to seek new employment altogether. Under the circumstances, we believe that some additional advance notice involving larger transactions would be beneficial to employees who must make adjustments and decisions and would facilitate the smooth implementation of these transactions.[2]

The acquisitions of larger lines under both §§ 10901 and 10902 are already subject to prior notice periods pursuant to our regulations at 49 CFR 1150.35 and 1150.45, respectively. In a number of those transactions, the ICC or the Board stayed the effect of the notices, thereby effectively providing for notice periods longer than those proposed here; see New England Central Railroad, Inc.—Acquisition and Operation Exemption—Lines Between East Alburgh, VT and New London, CT, Finance Docket No. 32432 (ICC served Dec. 9, 1994); Indiana and Ohio Railway Company—Acquisition Exemption—Lines of the Grand Trunk Western Railroad, Inc., STB Finance Docket No. 33180 (STB served Feb. 3, 1997); and I&M Rail Link, LLC—Acquisition and Operation Exemption—Certain Lines of Soo Line Railroad Company D/B/A Canadian Pacific Railway, STB Finance Docket No. 33326 (STB served Apr. 2, 1997). The application of a 60-day notice period for these transactions would have little effect on the way they have been treated to date.

We propose to limit the 60-days' notice requirement to transactions in which the acquiring carrier or noncarrier will earn annual revenues in excess of $5 million as a result of the acquisition. More than 78% of the total number of freight railroads have annual revenues under $5 million but employ fewer than 3% of the total number of rail freight employees; see ''Selected Statistics—U.S. Freight Railroads by Revenue Range'', Profiles of U.S. Railroads—1996 Edition (Association of American Railroads). Thus, the majority of transactions involving the creation of, or purchases by, Class III railroads should not be affected by this notice requirement, but the $5 million limit should embrace the transactions that affect significant numbers of rail freight employees.

The Board invites comments on the proposed regulations. Written comments (an original and 10 copies) are due on June 2, 1997. The Board encourages that, in addition to submitting a paper original and copies, each commenter provide a copy of his comments on a 3.5-inch floppy diskette formatted for WordPerfect 7.0, or formatted so that it can be readily converted into WordPerfect 7.0.

Small Entities

The Board certifies that this rule, if adopted, would not have a significant effect on a substantial number of small entities. The proposed regulation, while marginally increasing the notice requirement of the acquiring carrier or entity, would benefit individuals and entities affected by line transfers by providing a standard notice period prior to consummation of the sale.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1121

Administrative practice and procedures, Railroads.

49 CFR Part 1150

Administrative practice and procedures, Railroads.

Decided: April 21, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Board proposes to amend title 49, chapter X, parts 1121 and 1150 of the Code of Federal Regulations, as follows:

PART 1121—RAIL EXEMPTION PROCEDURES

1. The authority citation for part 1121 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10502 and 10704.

2. Section 1121.4 is amended by adding a new paragraph (h) to read as follows:

§ 1121.4 Procedures.

* * * * *

(h) In transactions for the acquisition or operation of rail lines by Class II rail carriers under 49 U.S.C. 10902, the exemption may not become effective until 60 days after applicant certifies to the Board that it has posted at the workplace of the employees on the affected line(s) and served a notice of the transaction on the national offices of the labor unions with employees on the affected line(s), setting forth the terms of employment and principles of employee selection.

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

3. The authority citation for part 1150 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 721(a), 10502, 10901 and 10902.

4. Section 1150.32 is amended by adding a new paragraph (e) to read as follows:

§ 1150.32 Procedures and relevant dates—transactions that involve creation of Class III carriers.

* * * * *

(e) If the projected annual revenue of the carrier to be created by an acquisition under this exemption exceeds $5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent

[2] We do not view this notice requirement as imposing labor protection which we are statutorily prohibited from imposing on Class III and noncarrier line acquisitions, but rather as establishing a procedural mechanism to ensure that transactions we have authorized will be implemented without disruption.

to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the terms of employment and principles of employee selection, and certify to the Board that it has done so.

5. Section 1150.35 is amended by revising paragraph (a) to read as follows:

§ 1150.35 Procedures and relevant dates—transactions that involve creation of Class I or Class II carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.32(e).

* * * * *

6. Section 1150.42 is amended by adding a new paragraph (e) to read as follows:

§ 1150.42 Procedures and relevant dates for small line acquisitions.

* * * * *

(e) If the projected annual revenue of the rail lines to be acquired, together with the acquiring carrier's projected annual revenue, exceeds $5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the terms of employment and principles of employee selection, and certify to the Board that it has done so.

7. Section 1150.45 is amended by revising paragraph (a) to read as follows:

§ 1150.45 Procedures and relevant dates-transactions under section 10902 that involve creation of Class I or II rail carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.42(e).

* * * * *

[FR Doc. 97–11360 Filed 4–30–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 120996A]

Magnuson Act Provisions; Essential Fish Habitat (EFH); Public Meetings

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

ACTION: Public meetings.

SUMMARY: The National Marine Fisheries Service (NMFS) will hold public meetings to allow for input on the proposed rule to implement essential fish habitat (EFH) provisions of the Magnuson Act.

DATES: The meetings are scheduled to be held from May 12 to May 21, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Requests for special accommodations should be addressed to Office of Habitat Conservation, Attention: EFH, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282; telephone: 301/713–2325.

FOR FURTHER INFORMATION CONTACT: Lee Crockett, NMFS, 301/713–2325.

SUPPLEMENTARY INFORMATION:

Background

NMFS issued proposed regulations containing guidelines for the description and identification of EFH in fishery management plans, adverse impacts on EFH, and actions to conserve and enhance EFH on April 23, 1997 (62 FR 19723). The regulations would also provide a process for NMFS to coordinate and consult with Federal and state agencies on activities that may adversely affect EFH. The guidelines are required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The purpose of the rule is to assist fishery management councils in fulfilling the requirements set forth by the Magnuson-Stevens Act to amend their FMPs to describe and identify EFH, minimize adverse effects on EFH, and identify other actions to conserve and enhance EFH. The purpose of the coordination and consultation provisions is to specify procedures for adequate consultation with NMFS on activities that may adversely affect EFH.

Public Meetings

All public meetings will begin at 7 p.m., except the Seattle, Washington, public meeting, which will begin at 7:30 p.m. The dates and locations of the hearings are scheduled as follows:

1. Monday, May 12, 1997—Meadowlands Hilton, Solarium Room; Two Harmon Plaza, Secaucus, NJ.

2. Tuesday, May 13, 1997—Holiday Inn Crowne Plaza; 333 Poydras Street, New Orleans, LA.

3. Tuesday, May 20—NMFS Northwest Regional Headquarters, Auditorium Building 9; 7600 Sand Point Way, NW., Seattle, WA.

4. Wednesday, May 21—Centennial Hall, Hickel Room; 101 Egan Drive, Juneau, AK.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Lee Crockett (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: April 25, 1997.

James P. Burgess,

Acting Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 97–11245 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 84
Thursday, May 1, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to BTG USA Inc. of Gulph Mills, Pennsylvania, an exclusive license to U.S. Patent No. 5,496,732 (Serial No. 08/054,985) issued on March 5, 1996, and to U.S. Patent Application Serial No. 08/609,320 filed on March 1, 1996, both entitled ''Enhanced Inset Resistance in Plants Genetically Engineered with a Plant Hormone Gene Involved in Cytokinin Biosynthesis.'' Notice of Availability for Serial No. 08/054,985 was published in the **Federal Register** on July 23, 1993. Serial No. 08/608,320 is a continuation of Serial No. 08/054,985.

DATES: Comments must be received on or before June 30, 1997.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC–West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as BTG USA Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which established that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 97–11254 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to NOBL Laboratories, Inc, of Sioux Center, Iowa, an exclusive license to U.S. Patent Application Serial No. 08/609,334 filed on March 1, 1996, entitled ''Restriction Enzyme Screen for Differentiating Porcine Reproductive and Respiratory Syndrome Virus Strains.'' Notice of Availability was published in the **Federal Register** on July 18, 1996.

DATES: Comments must be received on or before June 30, 1997.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as NOBL Laboratories, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 97–11253 Filed 4–30–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–027N]

Codex Strategic Planning Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; public hearing and request for comments.

SUMMARY: This notice informs the public of a strategic planning activity relating to the U.S. Government's representation on the Codex Alimentarius Commission, an international food standard-setting program. The notice includes a description of Codex activities; identifies five issues to be addressed; identifies specific objectives, methods, timeframes, and persons or agencies responsible for addressing them. A public hearing will be held in Washington, DC on May 8, 1997, to allow a dialogue on the identified issues. U.S. Government agencies plan to use the record of that hearing and of comments received in finalizing their planned approaches to achieving U.S. goals for Codex standard-setting activities.

DATES: The public meeting will be held on May 8, 1997, from 9:30 a.m. until 12:30 p.m.

ADDRESSES: The conference will be held at the Holiday Inn Rosslyn-Westpark, 1900 N. Fort Myer Drive, Arlington, VA 22207. Send an original and two copies of written comments to: FSIS Docket Clerk, DOCKET NO. 97–027N, Room 102, Cotton Annex, 300 12th Street SW, Washington, DC, 20250–3700. All comments submitted and a transcript of the hearing will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 1:00 p.m., and

2:00 p.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, U.S. Codex Office, United States Department of Agriculture, Food Safety and Inspection Service, West End Court, Room 311, Washington, DC 20250; (202) 418–8852.

SUPPLEMENTARY INFORMATION: The Codex Alimentarius Commission (Codex) is an international governmental organization with current membership from the national governments of 156 countries, including the United States. It was formed in 1962 to facilitate world trade in foods and to promote consumer protection.

Codex is a subsidiary of two United Nations groups, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). It has worked to develop international food standards that protect consumers' health as well as promote fair trade. Food production practices all over the world have been upgraded as a result.

The United States participates in Codex Alimentarius activities through U.S. Codex, which consists of federal government officials assisted by representatives of non-government interests.

How Codex Currently Operates

Codex provides a forum in which member countries and international organizations can cooperate to achieve the dual goals of consumer protection and fair food trade practices. The Commission meets every other year; its Executive Committee meets between sessions.

Codex Committees

Codex has established several types of committees. The ones that draft standards and codes of practice and guidelines are commodity committees and general-subject committees.

Fifteen commodity committees have operated from time to time. Those currently active are Fats and Oils, Fish and Fishery Products, Nutrition and Foods for Special Dietary Uses, Milk and Milk Products, Fresh Fruits and Vegetables, Cereals, Pulses and Legumes, Natural Mineral Waters, Cocoa and Chocolate Products, Sugars, and Processed Fruits and Vegetables. Meat Hygiene, which had been inactive, was reconvened in 1991 to update the codes of practice under its jurisdiction. It adjourned in 1993 after completing this task.

There are eight committees which deal with general subjects rather than with particular commodities. They are: Food Labeling; Food Additives and Contaminants; Food Hygiene; Pesticide Residues; Residues of Veterinary Drugs in Foods; Methods of Analysis and Sampling; Food Import and Export Inspection and Certification Systems; and General Principles, which sets rules and procedures for Codex.

There are also five regional coordinating committees representing Africa, Asia, Europe, Latin America and the Caribbean, and North America and the South-West Pacific. They define the regions' problems and needs concerning food standards and food control.

The United States serves on all the commodity and general subject committees that are currently active, and on the regional committee that includes North America.

Two independent committees of experts work closely with Codex: the Joint FAO/WHO Expert Committee on Food Additives (JECFA) and the Joint FAO/WHO Meeting on Pesticide Residues (JMPR). These expert committees perform the scientific evaluations which support Codex standards, guidelines, Maximum Residue Levels (MRLs), and codes of practice.

A comprehensive notice, detailing the sanitary and phytosanitary standard-setting activity of Codex, is published annually in the **Federal Register** (FR) (see June 4, 1996 (61 FR 28132)). It also details other standard-setting activities of Codex, including commodity standards, guidelines, codes of practice, and revised texts. Included as an Appendix to that notice is a description of the system for elaborating standards within the Codex Commission and its Committees. A reading of that notice will enhance an understanding of the issues identified in this strategic planning document.

In 1994, the United States signed and ratified the Uruguay Round Agreements Act, and thereby became a signatory member of the World Trade Organization (WTO). The agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) requires members to use international standards as the basis for sanitary and phytosanitary measures when such international standards meet the member's appropriate level of protection. The SPS Agreement explicitly recognizes Codex as an organization that develops such standards. In this context, Codex standards will play a significant role with regard to food safety and agricultural trade.

In anticipation of the emerging importance of Codex standards, Codex inaugurated a review of the policies, processes, and procedures established over the course of its more than 30-year-history. This examination grew out of an international conference held in Rome in 1991 to address three major areas of concern: (1) The heightened status and responsibility that would be given to Codex standards under what was then a draft proposal of the General Agreement on Tariffs and Trade (GATT);

(2) advances in food production technologies; and (3) changing consumer expectations about food safety and composition. U.S. Codex also engaged in a process of self-examination as a prelude to change.

In February 1995, U.S. Codex issued a draft report setting forth the results of work initiated in October 1992, by a Strategic Planning Group to recommend a new course for United States participation in Codex Alimentarius. The group was asked to consider how U.S. Codex can become more effective in:

—maintaining and improving public health protection;
—encouraging changes in Codex to enhance its public health mission;
—broadening the involvement of public, consumer, and environmental organizations as well as the chemical and food industries in developing international food safety standards;
—prioritizing its activities and using its resources more efficiently; and
—facilitating trade.

The Strategic Planning Group identified five critical issues to be addressed. The first two issues deal with changes in Codex itself; the other three issues deal with internal U.S. changes. The Group subsequently identified specific actions or approaches that the U.S. Codex might take to address these issues. (The Group did not address those parts of Codex standards that are not related to food safety; e.g., food composition/identity standards which are subject to the WTO Agreement on Technical Barriers to Trade. It might be useful for another group to consider systematically the strategic issues concerning these standards.) A brief description of each issue and related actions is presented below.

Issue 1: U.S. Support for Strengthening the Scientific Basis for Codex Decisions

Codex health and safety standards have been and must continue to be based on scientific analysis and evidence. The procedures by which those standards are elaborated should be transparent and consistently applied. In many cases scientific work in support of Codex's elaboration of standards is performed by Expert Committees that

are independent of Codex. In other cases, work is performed internally by Codex Committees. In the latter case, those committees are termed, ''process committees.'' In all cases, criteria for making decisions on standards should be clear and science-based. The United States should support the efforts of Codex and other international organizations to improve the scientific basis for Codex standards to meet these goals.

Expert Committees

With regard to the elaboration of standards, primary responsibility for performing the scientific evaluations that underlie most Codex health and safety standards rests with FAO, and with WHO through the International Programme for Chemical Safety (IPCS). This work is done through two expert committees, The Joint FAO/WHO Meeting on Pesticide Residues (JMPR) and the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In addition, FAO and WHO sponsor ad hoc expert consultations on specific topics related to food safety.

Governments and non-governmental organizations have no routine, direct working relationship with JMPR and JECFA, although both EPA and FDA have provided funds and support in kind to FAO and WHO/IPCS. While the work of JECFA and JMPR has been of high quality, the procedures under which they operate should be enhanced to assure that decisions are firmly based in science, and that their operations are transparent to all interested parties. The same would hold true for other expert consultations.

FAO and WHO/IPCS have begun to make changes in the way they conduct scientific evaluations of chemicals. However, with demands and expectations for change coming from many sources, a broader and more systematic look is needed at the scientific framework, and the processes of international chemical safety evaluation.

The expert committees need effective processes that would allow broader consideration of the views of countries, consumer and public interest groups, the chemical industry, food producers, international organizations involved in chemical safety, and any other interested party.

Codex and member countries should encourage the FAO/WHO to initiate necessary changes internally or support development of and adoption of such relevant and suitable procedures, as may be internationally agreed on by other international organizations which will improve the quality, consistency, integrity, and transparency of expert committee evaluations.

Issues that might be considered include:

—establishment of minimum data sets for evaluation,
—establishment of guidelines for data development,
—establishment of standard data evaluation and reporting procedures,
—development and application of good laboratory practice standards,
—development and application of data quality standards (factors which might render a study acceptable or unacceptable for review),
—establishment of harmonized and articulated approaches to risk assessment,
—use of national evaluations which meet international standards instead of creating new international evaluations,
—tailoring evaluations to meet the practical needs of countries and other international organizations,
—establishment of processes and time frames for updating previous evaluations as new scientific information emerges,
—maintenance of administrative records,
—establishment of roles and responsibilities of member countries and non-governmental organizations,
—development of guidelines how to establish priorities for chemical evaluation work,
—improved mechanisms to ensure FAO/WHO awareness of all relevant data, including adverse effects data, are provided,
—establishment of selection criteria for JMPR/JECFA experts, and
—improvement in communicating of the results of all work that supports the elaboration of Codex standards.

Process Committees

Codex committees performing work primarily related to food production and inspection activities, notably the Meat Hygiene and Food Hygiene committees and the Committee on Food Import and Export Inspection and Certification Systems, are sometimes known as ''process'' committees. They do not use JECFA or JMPR evaluations as part of their deliberation. They develop Codes of Practice through discussion and assignment of working groups. Codes of Practice are not considered official standards by Codex in that countries are not requested to provide a formal acknowledgment of acceptance or rejection. However, they are established through the Codex step process and will probably be considered as standards under WTO, NAFTA and future trade agreements.

Criteria for decision-making relating to such standards within Codex should be clearly articulated to allow consideration of only those factors relevant to the health protection of consumers and to the promotion of fair practices in trade. Such criteria for decision making should be used in all Codex committees and in the Commission itself. The decisions should be arrived at through an open process, with a clearly defined rationale. Previous decisions should be revisited if new scientific information becomes available.

Availability of information on Codex activities and on work performed in support of Codex activities, in the form of working documents and standards, is critical to achieving the transparency necessary to assure the public's confidence in Codex. Mechanisms to improve communications must be sought by Codex and all member states.

ACTOPM PLAN—ISSUE #1: U.S. SUPPORT FOR STRENGTHENING THE SCIENTIFIC BASIS FOR CODEX DECISIONS

Objective	Method	Responsibility (person/area)	Resources	Initiation date	Completion date
A. Develop and promote criteria to be used by WHO/FAO in selecting experts to serve on the JMPR/JECFA which will be based on the following:					
(1) Open process for the submission of nominations/acceptance and tenure;.	(1) U.S. will develop paper	U.S. Codex Office to establish an inter-agency group.	.....	2/1/97	(1)

ACTOPM PLAN—ISSUE #1: U.S. SUPPORT FOR STRENGTHENING THE SCIENTIFIC BASIS FOR CODEX DECISIONS—Continued

Objective	Method	Responsibility (person/area)	Resources	Initiation date	Completion date
(2) Conflict of interest disclosure; and;.	(2) Paper will be circulated to U.S. Government/ NGO's as well as other countries for input.				
(3) Technical Qualifications	(3) Document will be introduced in appropriate Codex forum and will form basis for U.S. Position in any related deliberations of any Codex Committee.				
B. Establish better communication mechanisms to ensure that information on Codex activities is readily and easily available.	(1) U.S. Codex establish Codex Home Page. (2) Encourage Codex to expand use of the Internet (See item 2(A)).	U.S. Codex Office	.....	11/01/96 ..	7/1/96
C. Develop and promote the establishment of minimum/adequate data sets for expert bodies (JECFA/JMPR).	(1) U.S. Develop paper ..... (2) Circulate document to Government officials as well as other countries for input. (3) Document will be introduced in appropriate Codex forum and will form basis for U.S. Position in any related deliberations of any Codex Committee.	U.S. Codex Office to establish an inter-agency technical working group.	.....	2/1/97	10/15/97

[1] Ongoing.

Issue 2: U.S. Support for Codex Efforts to Improve its Management Processes

U.S. Codex should support the revitalization of Codex. Revitalization of Codex should include conducting a systematic review of priorities, streamlining the decision-making processes, increasing transparency, and improving communication. These steps will enhance the credibility of Codex with national regulatory authorities and consumers.

FAO/WHO began a formal reevaluation of Codex procedures and guiding principles in March 1991 at the Conference on Food Standards, Chemicals in Foods and Food Trade. Codex is now streamlining its standards to concentrate on essential health-related aspects. This represents a shift in emphasis. Now that over l00 countries have become members of the WTO, it is important that Codex again re-examine its operation with particular attention to the following areas:

1. Codex should conduct a formal strategic planning exercise, including a systematic review of Codex priorities. This would provide a framework for major policy decisions and serve as a basis for refocusing priorities. Codex needs to strengthen its links with other international food safety organizations and ensure that its activities are integrated with and do not duplicate the activities of others in the broad area of chemical safety.

2. Codex decision-making procedures should be clearly defined and transparent so that interested parties can more fully understand, evaluate, and participate in the process.

3. Codex needs to streamline its processes so that standards can be developed and adopted more rapidly. In addition, it needs a process, including an emergency procedure, to reevaluate and update its standards as new scientific information emerges.

4. The public needs to understand how Codex operates in order to work within the system and use it effectively. Codex should more frequently and more broadly communicate information on its activities and on how to obtain standards, meeting reports and other documents.

5. Codex should review the terms of reference of the Executive Committee to expand its area of responsibility to include strategic planning and better ensuring that priority areas of work are on target in terms of time and other considerations. The Executive Committee must refocus itself to become the ''Board of Directors'' of the organization, responsible for making decisions on significant issues occurring between Commission meetings such as establishing work priorities and directing issues to the appropriate committees for action.

6. Codex should examine its use of resources to determine whether increased efficiency is possible. If appropriate, additional resources should be identified.

ACTION PLAN—ISSUE #2: U.S. SUPPORT FOR CODEX EFFORTS TO IMPROVE ITS MANAGEMENT PROCESSES

Objective	Method	Responsibility (person/area)	Resources	Initiation date	Completion date
A. Encourage Codex to establish standard procedures for handling Codex documents to ensure timeliness and opportunity for adequate review by member countries.	U.S. submit a proposal to the Executive Committee for discussion.	U.S. Codex Office	.....	2/1/97	5/15/97
	One recommendation is that Codex move expeditiously to put Committee documents on the World Wide Web so that countries could have immediate access to the working documents.	.....	.....	.....	(1)
B. Codex review its policies for drafting the Committee reports to assure adequate information is provided on assignments and history of evolving standards.	U.S. submit a proposal to the Executive Committee for discussion.	U.S. Codex Office	.....	2/1/97	5/97
C. Commission meeting operating practices be reviewed to assure the most efficient/effective use of members time.	U.S. submit a proposal to the Executive Committee for discussion.	U.S. Codex Office	.....	2/1/97	5/15/97
D. Encourage Codex review of operating practices to utilize strategic thinking in developing the work plan and to determine if additional efficiencies can be realized. This could include related changes to the Executive Committee's terms of reference.	Develop appropriate follow-up to 1995 Executive Committee discussion of this issue.	U.S. Codex Office	.....	3/1/97	5/97
E. In the appropriate Codex Committee promote the development of a process for establishing emergency procedures (developing, revising or elaborating Codex standards where warranted to protect public health by newly developed food safety scientific information which invalidates the existing standard).	1. U.S. develop paper ..... 2. Circulate document to government officials as well as other countries for input. 3. Present paper in appropriate Codex Committee.	U.S. Codex Office	.....	2/97	11/97

[1] Ongoing.

Issue 3: U.S. Acceptance of Codex Standards

To facilitate U.S. decisions on increased acceptance of Codex standards related to food safety, U.S. Codex should develop processes for systematically evaluating such existing Codex standards and proposed new Codex standards using established U.S. approaches to risk assessment.

Historically, two factors have worked against U.S. Acceptance of Codex Standards. These are:

—current U.S. workloads, which force the regulatory agencies to place a low priority on reaching decisions on whether they can accept proposed Codex standards, and;

—differences between the Codex standards and U.S. regulations.

Under current Codex rules and procedures, Codex member countries are obligated to consider for acceptance all pesticide and veterinary drug MRLs as well as all food additive, commodity and general standards adopted by Codex. Current U.S. acceptance procedures vary among agencies having responsibilities for each of these categories of standards. The agencies include EPA, FDA and USDA. These agencies need to harmonize their processes for considering Codex Standards and for developing U.S. standards with the Codex processes for data evaluation and standard development. Where methods supporting the Codex processes pose impediments to harmonization, the U.S. Codex needs to address those processes in all appropriate forums. The Food Quality Protection Act of 1996 provides for consideration by the U.S. Government of Codex pesticide MRLs.

ACTION PLAN—ISSUE #3: U.S. ACCEPTANCE OF CODEX STANDARDS

Objective	Method	Responsibility (person/area)	Resources	Initiation date	Completion date
A. Agencies shall consider Codex Standards in the development of U.S. Standards for food.	(1) Develop model SOP with examples. (The model should accommodate the variable complexity of different type standards.).	U.S. Codex Office with input from agencies.	Individual agency resources (to be determined).	2/1/97	10/97
	(2) Have model Standard Operating Practice endorsed by Steering Committee.	U.S. Codex Office Steering Committee.	.....	.....	.....
	(3) Distribute to relevant agencies for implementation	U.S. Codex Office	.....	.....	.....
B. Improve understanding and level of quality input into all phases of Codex standards development by stakeholders (government, non-government organizations).	—Establish and implement an outreach program including elements such as: —Home page —Workshops —Paper distribution	U.S. Codex Office	.....	1/1/97	06/97
C. Encourage U.S. industry to submit data relevant to U.S. consideration of acceptance of Codex standards.	Enhance dialog with U.S. industry.	U.S. Manager for Codex ...	.....	1/1/97	(1)
D. Establish and codify process for routine review of Codex standards, guidelines, and recommendations for consideration for acceptance.	Agencies develop their own model.	Individual agencies	Implementation of the objective will require substantial resources by individual agencies (to be determined).	01/96	3/1/98
E. In recognition of the obligations under Article 3 of the SPS Agreement, issue policy statement regarding acceptance of Codex standards, guidelines and recommendations.	Issue joint policy statement across all agencies.	Steering Committee U.S. Manager for Codex.	.....	6/97	08/97
F. Establish model format for U.S. positions on proposed Codex standards at Step 3 to specifically identify:					
(a) whether acceptance of the Codex standard would affect U.S. consumer health and safety.	(1) Prepare format for U.S. positions to address issues ''a''–''c'' to be applied by committees. —for any document going through step procedures.	Steering Committee U.S. Manager for Codex EPA, USDA, FDA, DOC.	.....	2/11/97	03/97
(b) whether acceptance of the Codex standard would require changes in U.S. food production, marketing and regulatory practices.	(2) Train U.S. delegates in implementation of format.	U.S. Codex Office	.....	02/97	.....
(c) steps which need to be initiated to harmonize the relevant U.S. standard and the proposed Codex standard.	(3) Implement new format	Individual agencies	Substantial resources (to be determined.).	06/97	.....

[1] Ongoing.

Issue 4: Effective Participation of Non-Governmental Organizations in U.S. Codex

Balanced non-governmental participation is needed and will help ensure that the positions taken by U.S. Codex have broad support. In line with this objective, the process of gathering information and developing positions should be transparent—open to public scrutiny.

Codex delegations are led by U.S. government officials, primarily managers and scientists, who serve as the formal U.S. representatives in Codex committee meetings. Nevertheless, in the development of U.S. positions, parties outside the government have traditionally provided technical information and support to such representatives, in some cases serve as members of the delegation. These experts primarily from the regulated industry, serve a useful purpose because of their expertise in specific technical matters before the various Codex committees. In addition to providing technical information, they convey the views of their constituents to the

committees and relay information about U.S. Codex activities to those constituents.

U.S. Codex should involve a greater variety of groups in its activities and, for all of its activities, should expand their criteria for participation. In addition, U.S. Codex's entire process of gathering information and developing positions must be transparent.

U.S. Codex must develop and implement mechanisms to involve a far broader range of interests in U.S. Codex activities. This expanded participation can occur on many levels, ranging from simply receiving written information on Codex activities to actively participating in the development of U.S. positions. U.S. Codex should conduct an extensive outreach effort to include national, regional, and local organizations and individuals with a stake in the establishment of international food standards. U.S. Codex should explore the possibility of creating a network of scientists and food and nutrition technologists interested in Codex issues.

In order for the U.S. Government to formally accept standards adopted by Codex, it is essential that such standards not only provide adequate public health protection, but that non-governmental organizations (public interest, industry, professional, etc.) have confidence in the integrity of all aspects of the standard elaboration process.

ACTION PLAN—ISSUE #4: EFFECTIVE PARTICIPATION OF NON-GOVERNMENTAL ORGANIZATIONS (NGOS) IN U.S. CODEX

Objective	Method	Responsibility (person/area)	Resources	Initiation date	Completion date
A. Establish guidelines and criteria for consistency in the operations of U.S. Codex delegations including the selection process of NGOs on delegations and participation of NGOs in U.S. Codex.	Develop guidelines and provide training for all U.S. delegates to ensure awareness of operating procedures for delegations (See Item 5 (E)).	U.S. Codex Office and agency representatives	.....	Started Operations	(1)
B. Establish a system for timely distribution of papers to allow for routine and early opportunity for public comment on U.S. positions as well as papers from the Codex Secretariat.	Papers should be posted on Internet and a cut-off date should be established for submissions of papers by all Codex Committees. (Discussed in Executive Committee, June 1996).	U.S. Codex Office	.....	4/5/96	(1)
C. Request the establishment of a procedure for increased participation of NGO's in Expert Consultations. Specifically recommend that NGO's attend Expert Consultations as participants.	U.S. will request that names be submitted to the Codex Office by public interest groups to facilitate participation in Expert Consultations. Bring to the attention of FAO/WHO the need to notify interested officials when such expert consultations are planned.	U.S. Codex Office ..... Codex Secretariat	.....	6/96	(1)
D. Continue to work with other Codex members to promote effective NGO participation.	The United States will continue to provide strong support for NGO participation in appropriate Codex forums.	U.S. Codex Office	.....	.....	(1)
E. Continue to provide opportunities for NGOs to increase awareness of the Codex Alimentarius Food Standards Programme.	U.S. will develop regular briefings and public meetings and utilize USDA's Communications Office and the Office of Intergovernmental Relations, as well as FR notices Internet, consumer and industry-sponsored forums and interagency communications to promote awareness.	U.S. Codex Office	.....	.....	(1)

[1] Ongoing.

Issue 5: Management and Effectiveness of U.S. Codex

To enhance its effectiveness in Codex, the U.S. government should consider a larger role for U.S. Codex, including a senior executive position for the U.S. Manager, staffing, and funding.

The United States has actively participated in and been considered a leader in Codex since the organization was established. Its contributions have centered around science and technology. It is now clear that to capitalize on its scientific and technical capabilities and increase the effectiveness of its participation, the United States must expand its focus and investment.

The following points need to be addressed to enhance the effectiveness of current U.S. participation:

1. U.S. Codex needs to take into account the changing Codex dynamics and develop increased social, political and economic sensitivity and awareness

of the global implications of such change. U.S. representatives must be fully informed about the needs of other countries as well as domestic needs. The United States must function as a team player, sharing information, seeking coalitions and engaging in partnerships to advance and support proposals of mutual concern. It must be well-prepared to step into a leadership role when the situation warrants, and be willing to negotiate in support of the development of science-based standards for all member countries.

2. The U.S. government should provide adequate resources for effective participation in Codex and consider a larger organizational role for U.S. Codex, thus promoting increased efficiency, effectiveness, and participation. Full support from all management levels is needed to ensure that Codex activities receive high priority, with full time staff, targeted funding, and a senior executive position for the U.S. Manager.

3. The federal managers and scientists in U.S. Codex need training in international negotiations and intercultural relations. There should be regular interaction among them to strengthen their sense of identity, improve awareness of cross-cutting issues, and identify at an early stage controversial issues that need attention by the coordinator of U.S. Codex. Early identification of emerging issues will allow effective coalition building with other countries' delegates to promote mutual interests.

4. U.S. Codex needs a mechanism to allow it to routinely evaluate the results of its efforts.

5. The makeup of U.S. Codex should reflect a balance between trade and regulatory perspectives.

ACTION PLAN—ISSUE #5: MANAGEMENT AND EFFECTIVENESS OF U.S. CODEX

Objective	Method	Responsibility (person/area)	Resources	Initiation date	Completion date
A. Establish and recruit/select a U.S. Manager for Codex Alimentarius in the Office of the Under Secretary for Food Safety in order to better facilitate interagency process.	—Included in FSIS reorganization package. —Announce position .... —Designate a review panel.	Under Secretary for Food Safety.	.....	4/30/96	1/30/97.
B. Provide adequate staffing for the U.S. Codex Office.	—Appropriately classify and staff positions consistent with Strategic Plan and Action Plan assumptions.	Administrator for FSIS ..	.....	8/31/96	Ongoing.
Further enhance technical and policy expertise in U.S. Codex Office.	—Detail staff from relevant U.S. Government agencies.	U.S. Codex Office Steering Committee.	No new resources—FTE would be borne by participating agencies.	4/1/97	Ongoing.
	—Internship Programs —e.g. George Washington University Program/School for Advanced Studies at John Hopkins/investigate other interagency fellowship possibilities.	U.S. Codex Office	.....	08/05/97	Ongoing.
C. Seek appropriations to establish specific funding for U.S. Codex Office and funding for U.S. hosted meetings.	Prepare estimates of needed resources.	Under Secretary for Food Safety, Steering Committee, U.S. Manager for Codex, U.S. Codex Office.	.....	1/1/97	FY–1999.
	Develop appropriation package to include in FY–99 appropriation submission.	.....	.....	1/1/97	
D. Seek Congressional funding for individual Federal Agency activities in the development, review, and acceptance of Codex standards.	Prepare estimate of resources needed.	—Policy level Steering Committee. —U.S. Manager for Codex.	.....	2/1/97.	12/97.
E. Provide training for all U.S. Codex officials to ensure awareness of operating procedures for delegations and to enhance knowledge and skills. (Include training modules which distinguish between food safety and quality requirements in Codex standards and the implications under WTO). See 4(A).	Interagency working group to define training requirements and plan. (FDA, EPA, USDA, USTR, DOC, State).	U.S. Codex Office	.....	2/1/97	Ongoing.

ACTION PLAN—ISSUE #5: MANAGEMENT AND EFFECTIVENESS OF U.S. CODEX—Continued

Objective	Method	Responsibility (person/area)	Resources	Initiation date	Completion date
F. Reorganize current Codex Steering Committee to better manage and provide oversight in a timely manner to Codex issues, e.g. form separate policy and technical committees. (1 senior-level policy committee) (1 senior-level technical committee).	Discuss proposal w/current Steering Committee.	—Under Secretary for Food Safety. —Existing Steering Committee. —U.S. Manager for Codex.	.....	2/96	5/1/97.
	Review Steering Committee comments and get Steering Committee endorsement.	—Under Secretary for Food Safety. —Steering Committee .. —U.S. Manager for Codex.	.....	6/1/97	8/1/97.
	Prepare draft terms of reference for new committees and determine membership.	—Under Secretary for Food Safety. —Steering Committee .. —U.S. Manager for Codex.	.....	8/1/97	10/1/97.
G. Develop a process to define inter/intra agency communication problems and necessary steps to resolve them. Such steps should be oriented toward sharing information with a view toward identifying significant cross-cutting or controversial issues to Codex Steering Committee.	Agencies document current procedures of inter/intra process to U.S. Codex office and identify steps taken to resolve problems. Manager routinely participate as member.	—FDA, USDA, EPA, DOC, USTR. —Policy level Steering Committee. —U.S. Manager for Codex.	To be determined	2/1/97	Ongoing.
H Establish relationship with SPS Committee.	Share data on acceptance of standards.	—U.S. Manager for Codex. —U.S. Codex Office	To be determined	2/1/97	10/1/97.
I. Establish Homepage on Internet in the U.S. Codex Office and utilize electronic transmission of documents: • transmitting U.S. response to request for country comments. • receiving working Codex documents.	.....	—FSIS Administrator ... —U.S. Codex Office	.....	2/1/97	7/1/97.
J. Ensure that Codex duties are reflected in Codex managers (delegates/alternates) position descriptions/performance plans.	U.S. Codex office to introduce subject/need to the Steering Committee.	Individual Agencies	.....	2/1/97	7/1/97.
Develop generic performance standards.	Codex office to provide agencies generic statement of duties of U.S. Delegates.	.....	.....	10/1/97.	
	Steering Committee to contact individual agencies to request initiation of this objective.	.....	.....	.....	10/1/97.

Public Hearing

A public hearing is scheduled for May 8, 1997, from 9:30 AM to 12:30 PM, at the Holiday Inn Rosslyn-Westpark, 1900 N. Fort Myer Drive, Arlington, VA 22207. Attendees will hear brief descriptions of the issues and action plans, and will have the opportunity to pose questions and offer comments. A transcript will be made of the proceedings. The Agencies plan to use the record of this hearing and of comments received in finalizing their planned approaches to achieving U.S. goals for Codex standard-setting activities.

Comments regarding the Codex standard-setting activities may be sent to the FSIS Docket Room (see **ADDRESSES**). Please state that your comments relate to Codex activities and specify which issues and objectives your comments address.

Done at Washington, DC on: April 25, 1997.

Thomas J. Billy,

Administrator, Food Safety and Inspection Service.

[FR Doc. 97–11314 Filed 4–28–97; 1:43 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Merge Two Currently Approved Information Collections With a Proposed Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to combine two currently approved information collections, the June Agricultural Survey (0535–0089) and the Agricultural Surveys Program (0535–0213) with a new information collection, the Fall Agricultural Survey. The new integrated information collection will be called the Agricultural Surveys Program.

DATES: Comments on this notice must be received by July 2, 1997 to be assured for consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Surveys Program.

OMB Number: 0535–0213.

Expiration Date of Approval: February 28, 1999.

Type of Request: To create a single information collection by merging two currently approved information collections and a proposed information collection.

Abstract: The National Agricultural Statistics Service is responsible for collecting and issuing state and national estimates of crop and livestock production, grain stocks, farm numbers, land values, on-farm pesticide usage, and pest crop management practices. The June Agricultural Survey collects information on planted acreage for major crops, livestock inventories, agricultural land values, and on-farm grain stocks. The survey establishes a base for estimating crop production and value for the remainder of the crop year. Information from this survey is used by farmers, ranchers, private sector agribusinesses, government agencies in planning, farm policy analysis, and program administration.

The Agricultural Surveys Program contains a series of surveys that obtains basic agricultural data from farmers and ranchers throughout the Nation for preparing agricultural estimates and forecasts of crop acreages, yield, and production; stocks of grains and soybeans; hog and pig numbers; sheep inventory and lamb crop; cattle inventory; and cattle on feed. Uses of the statistical information are extensive and varied. Producers, farm organizations, agribusinesses, state and national farm policy makers, and government agencies are important users of these statistics. Agricultural statistics are used to plan and administer other related Federal and state programs in such areas as consumer protection, conservation, foreign trade, education and recreation.

The Fall Agricultural Survey collects information on fall planted crops, livestock inventories, grazing fees, land values, pesticide usage, and pest management practices. Producers, farm organizations, agribusinesses, state and national policy makers, and government agencies are users of the data. The Environmental Protection Agency uses the pesticide use information to conduct benefit and risk assessments for use during the product registration cycle. USDA uses the pesticide and pest management information to build its chemical use database, to conduct pesticide benefit assessments, and to assessments, and to assess the adoption of integrated pest management practices.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 13 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 565,000.

Estimated Total Annual Burden on Respondents: 122,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., April 14, 1997.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 97–11252 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Cooperative Power Association; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by three electric utilities: Cooperative Power Association (CPA) of Eden Prairie, Minnesota, Otter Tail Power Company of Fergus Falls, Minnesota, and Missouri Basin Municipal Power Agency of Sioux Falls, South Dakota. These three utilities are collectively referred to as the Partners for the purpose of this project. They proposed to construct and operate a transmission line and associated facilities between Alexandria and Henning in Otter Tail and Douglas Counties, Minnesota. The line will originate at the Rush Lake Tap Switching Station, located about 2.6 miles northeast of Henning, Minnesota. The line will terminate at a new switching station to be located where the new line intersects the existing

Grant County-Douglas County 115 kV line in Alexandria Township.

RUS has concluded that the impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that the Partners prepare a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facilities. The BER which includes input from the Federal, state, and local agencies, has been adopted as RUS's Environmental Assessment for the project in accordance with 7 CFR Section 1794.61. RUS has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The proposed project will not affect any known properties listed or eligible for listing in the National Register of Historic Places. The project will be constructed on an existing right-of-way for almost all its entire length, requiring only about one mile of new right-of-way. However, if previously unknown resources are discovered during construction, the Partners will halt construction while the significance of the finding and proper mitigation is determined. Construction of the line should have no impact on floodplains, air quality, and formally classified areas. The project should also have no significant impact on farmlands, water quality, wetlands, aesthetics, federally listed or proposed for listing threatened or endangered species or their critical habitat.

Alternatives considered to the project included no action, power purchase from other sources, localized generating facilities, load management and energy conservation, alternative routes, construction method alternatives, design alternatives, and voltage alternatives. RUS has considered these alternatives and concluded that the project as proposed will meet the needs of the Partners to provide adequate service in the project area with a minimum of adverse impact.

Copies of the BER and FONSI are available for review at, or obtained from RUS at the address provided above or from the office of CPA, 14615 Lone Oak Road, Eden Prairie, Minnesota 55344–2287, telephone (612) 949–1551 during normal business hours.

Dated: April 24, 1997.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 97–11248 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m. on Monday, May 19, 1997, at the Xerox Centre, 55 West Monroe Street, Suite 1660, Chicago, Illinois 60603. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Joseph Mathewson, 312–360–1110, or Constance Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–11343 Filed 4–30–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m. on Tuesday, May 20, 1997, at the United Way of St. Joseph County, 3517 East Jefferson Boulevard, South Bend, Indiana 46660. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Paul Chase, 317–920–3190, or Constance Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–11345 Filed 4–30–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maryland Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn 3:30 p.m. on Monday, May 19, 1997, at the Western Maryland College, Hoover Library, Trustees Board Room, 2 College Hill, Westminster, Maryland 21157. The purpose of the meeting is to develop a speakers list and identify other prospective participants in an upcoming briefing on Korean-American concerns in Baltimore, Maryland.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Chester Wickwire, 410–825–8949, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–11346 Filed 4–30–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m. on Thursday, May 29, 1997, at 100 Renaissance Center, Suite 1602, Detroit, Michigan 48243. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Roland Hwang, 517–373–1476, or Constance Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–11347 Filed 4–30–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 03/15/97–04/14/97

Firm name	Address	Date petition accepted	Product
Texas Boot, Inc	127 E. Forrest Avenue, Lebanon, TN 37087.	03/25/97	Leather Boots for Men, Women and Children.
Architectural Woodworking, Inc	709 Haines NW, Albuquerque, NM 87102.	03/25/97	Wood Office and Kitchen Cabinets and Custom Millwork.
Control Tech Northwest, Inc	22614—66th Avenue South, Kent, WA 98032.	03/28/97	Bicycle Parts and Accessories.
Kabana, Inc	616 Indian School Road N.W., Albuquerque, NM 87102.	03/28/97	Gold and Silver Jewelry.
Accord Carton Company, Inc	940 West 94th Street, Chicago, IL 60620.	04/01/97	Cartons of Heavy Paperboard.
Frantz Manufacturing Company	P.O. Box 497, Sterling, IL 61081.	04/01/97	
Woodpro Cabinetry, Inc	P.O. Box 70, Cabool, MO 65689.	04/01/97	Bathroom Cabinets of Wood.
Thermofusion, Inc	2342 American Avenue, Hayward, CA 94545.	04/02/97	Transmission Shafts, Chassis for Electronic Work Stations, and Aluminum Molds for Shower Head Screens.
Missouri Industries, Inc	15440 Clayton Road, Suite 112, Ballwin, MO 63011.	04/07/97	Injection Molded Shoes.
Electronic Hardware Corporation.	320 Broad Hollow Road, Farmingdale, NY 11735.	04/08/97	Injection Molded Plastic and Aluminum Control Knobs and Assorted Plastic or Metal Panel Hardware.
Unipower Corporation	3900 Coral Ridge Drive, Coral Springs, FL 33065.	04/14/97	Custom 20 to 3,000 Watt Switching Power Supplies and Systems.
Quality Wood Products, Inc	605 Henly Avenue, Miami, FL 74334.	04/14/97	Wood Plaques and Other Home Ornamental Furnishings.
Star Manufacturing, Inc	101 Industrial Avenue, Little Ferry, NJ 07643.	04/14/97	Precision Injection and/or Compression Transfer Plastic Molded Parts.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 24, 1997.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 97–11239 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Request for Special Priorities Assistance

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th & Constitution Avenue, NW., Room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. must have the capability to rapidly mobilize its resources in the interest of national security. Therefore, to achieve prompt deliver of articles, products, and materials to meet national security or emergency preparedness' requirements, the Defense Priorities Allocation Systems (DPAS) was developed. The information collected on BXA–999, from defense contractors and suppliers, is required for the enforcement and administration of the Defense Production Act and the Selective Service Act to provide Special Priorities Assistance under the DPAS regulation. This form can be filed for any reason when the regular DPAS provisions are not sufficient to meet customer needs. The information provided by contractors is used to help resolve the problem.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0057.

Form Number: BXA–999.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 600.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 300.

Estimated Total Annual Cost: $6,000 (no material or equipment will need to be purchased to provide information).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 24, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–11260 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–DEBT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Exceptions to IC/DV Procedures

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th & Constitution Avenue, NW, Room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This reporting requirement allows exporters to request an exception to the import certificate (or its equivalent) procedure. This reporting requirement also covers requests for exceptions to the delivery verification procedure.

III. Data

OMB Number: 0694–0012.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 21.

Estimated Time Per Response: .5 hours per response.

Estimated Total Annual Burden Hours: 11.

Estimated Total Annual Cost: $272 (no material or equipment will need to be purchased to provide information).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 24, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–11262 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–DEBT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review.

SUMMARY: On December 27, 1996, the Department of Commerce published the preliminary results and partial termination of administrative review of the antidumping order on fresh garlic from the People's Republic of China. The review covers 159 producers/exporters of subject merchandise. The period of review is July 11, 1994, through October 31, 1995.

We gave interested parties an opportunity to comment on the preliminary results. Our analysis of the comments we received resulted in no change in our preliminary results for these final results. The final dumping margin is listed below the section entitled ''*Final Results of the Review*.''

EFFECTIVE DATE: May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Andrea Chu or Thomas O. Barlow, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTAL INFORMATION:

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 the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On December 27, 1996, we published the preliminary results and partial termination of administrative review (61 FR 68229) of the antidumping duty order on fresh garlic from the PRC (November 16, 1994, 59 FR 59209). Because we determined that (1) The review of Top Pearl should be terminated, and (2) the other PRC producers/exporters failed to submit responses to our questionnaires, we preliminarily determined to use facts otherwise available for cash deposit and assessment purposes for all PRC producers/exporters of the subject merchandise. We invited parties to comment on our Preliminary Results. We received comments from Top Pearl and a rebuttal brief on behalf of petitioners. A hearing was requested by Top Pearl but was subsequently canceled at its request. We have conducted this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing and level of decay.

The scope of this order does not include: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) Mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Analysis of Comments Received

Comment 1: Top Pearl disagrees with the Department's preliminary determination that Top Pearl is not the appropriate respondent for this review. It asserts that the issue before the Department is whether Shandong Wallong Import & Export Co. (Wallong) knew the destination of the merchandise at the time of the sale between Wallong and Top Pearl and argues that the sales process and evidence on record demonstrate that Wallong did not know the destination at the time of sale.

Top Pearl presents a chronology of the sales process to support its position that Wallong did not know the destination of the merchandise at the time of sale and argues that it is the Department's practice to give the original exporter a margin only if the exporter knew or had reason to know at the time of sale the destination of the shipment (citing *Final Determination of Sales at Less Than Fair Value: Manganese Sulfate From the People's Republic of China,* 60 FR 52155 (October 5, 1995) (*Manganese*), and *Notice of Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol From the People's Republic of China,* 62 FR 14063 (March 29, 1996) (*PVA*). Top Pearl asserts that, although certain documents in *Manganese* indicated the United States as the destination of the shipment, that was not sufficient to demonstrate that respondent had knowledge of the ultimate destination at the time of sale. Top Pearl further asserts that in *PVA* the Department excluded sales to a Hong Kong trading company where none of the sales documents showed information to identify the United States as the ultimate destination at the time of sale and prior to shipment.

Top Pearl claims that none of the sales contracts between Top Pearl and Wallong make any reference to the destination of the sale and that, at the time Top Pearl made the sale to the U.S. customer, Wallong did not know of the sale. Top Pearl further claims that when it contracted with Shangdong Huangpu Group Corporation (Huangpu), a Chinese garlic producer, neither Huangpu nor Wallong knew the destination of the merchandise. Top Pearl notes that only after the sale was made did Top Pearl instruct Wallong to change the terms of sale to indicate a U.S. port. Top Pearl argues that, like *Manganese*, the invoice made by Wallong to Top Pearl does not prove Wallong knew the destination because it was issued after Top Pearl's sale to the U.S. customer and after Top Pearl's purchase from Wallong. Top Pearl further argues that, like *PVA*, none of the sales documents on record show information identifying the United States as the ultimate destination of the

merchandise. Top Pearl concludes, therefore, that the Department should calculate an individual margin for Top Pearl since Wallong did not know the destination of the shipment at the time of sale.

Petitioners assert that it is clear that Wallong sold the garlic to Top Pearl and that this sale meets the requirements of section 772(a) of the Act. Petitioners maintain that it was appropriate to treat Wallong's sale to Top Pearl as a U.S. sale, given that the Department must examine the sale from the non-market economy (NME) exporter to the intermediate-country reseller (citing the Department's November 22, 1996, memorandum, *Partial Termination of 1994–95 Administrative Review of Fresh Garlic from the PRC,* (termination memo). Petitioners claim that the date of sale is the date upon which the essential terms of price and quantity become fixed by agreement of the parties and remain unchanged (citing *PVA from Taiwan,* 61 FR 14064, 14067–68 and *Stainless Steel Bar from India,* 62 FR 4029 (1997) (*Stainless Bar*)).

Petitioners maintain that the record evidence establishes that the date Wallong invoiced Top Pearl, and thereby confirmed the revised terms of sale, is the actual date of sale between Wallong and Top Pearl. Petitioners claim, therefore, Top Pearl's statement that the invoice was issued after the date of sale is incorrect, given that the invoice established the date of sale.

Petitioners also maintain that additional record evidence demonstrates that Wallong knew the destination of the merchandise at the time of sale. Petitioners note that correspondence between Top Pearl and Wallong and the invoice issued by Wallong indicate the United States as the destination, contrary to Top Pearl's assertion that none of the contracts with Wallong make reference to the destination of the sale. Petitioners also note that Top Pearl's questionnaire and supplemental responses indicate that, as exporter of the merchandise, Wallong supplied destination-specific export documents which alone show it had knowledge of the destination prior to sale (also citing *Certain Headwear from the People's Republic of China,* 54 FR 11983, 11987–88 (1989)).

Department's Position: We fully addressed the issue of the proper respondent in reseller or ''middleman'' sales situations in our termination memo. As we stated in the memo, section 772(a) of the Act permits us to use the price from a producer to a middleman if the producer knew the merchandise was intended for sale to the United States under terms of sale fixed on or before the date of importation (see termination memo at 2–3). We further stated that we have interpreted the relevant price in such a sales situation to be the price at which the first party in the chain of distribution who has knowledge of the U.S. destination sells the merchandise. However, we explained that this practice is restricted with regard to NME cases, since we will not base export price on internal transactions between two companies located in the NME country.

Applying these principles to the facts of this case, we determined that, although Huangpu had knowledge of the U.S. destination of the merchandise and is the first party in the distribution chain, its transaction with Wallong was an internal transaction between two companies located in an NME country and inappropriate for review. We further determined that the party after Huangpu in the distribution chain is Wallong and that there was ample evidence to indicate that Wallong had knowledge of the U.S. destination of the merchandise when it sold the merchandise to Top Pearl. Therefore, our determinations remain unchanged for these final results.

As indicated above, the appropriate starting point for application of our knowledge test is the transaction between Wallong and Top Pearl because the sale from Wallong to Top Pearl is the first market-based sale in the chain of distribution for export to the United States. Based on the evidence of record, the essential terms of the transaction between Top Pearl and Wallong were established no earlier than June 30, 1994, when Top Pearl advised Wallong of new delivery terms and price which subsequently did not change. It is also clear from the record that by this date Wallong had knowledge that the destination of the merchandise was the United States (see June 30, 1994 letter from Top Pearl to Wallong). In this case it is irrelevant that the invoice from Wallong was issued after the date of sale because Wallong had knowledge of the destination when the parties finally agreed on the essential terms, as evidenced by the fact that the transaction was ultimately consummated according to those terms. Top Pearl erroneously argues that the few documents to which it refers in *Manganese* were determinative of the Department's decision not to treat the sale in question as a U.S. sale; all of the relevant sales documents in that case failed to disclose the United States as the ultimate destination. In addition, the record in this case indicates that Wallong knew the destination prior to invoicing Top Pearl and shipping the merchandise. Our decision in *PVA* is in accord with our actions here, given that in this case the documents indicate the United States as the destination of the merchandise. Because the sale from Wallong to Top Pearl is the first market-based sale in the chain of distribution for export to the United States, we have maintained our position that the export transaction by Wallong to Top Pearl, not by Top Pearl to the unaffiliated U.S. customer, is the appropriate basis for determining the export price and that, accordingly, Top Pearl is not an appropriate respondent in this review.

Finally, we disagree with Top Pearl that we should assign it a separate rate. Because Top Pearl is not a proper respondent in this review, the issue is moot.

Comment 2: Top Pearl claims that if the Department had questions concerning the sales process it could have sent a supplemental questionnaire and conducted a verification to resolve such matters.

Petitioners assert that there is no basis for verification because the documents that form the basis for the Department's preliminary results are clear on their face and conclusively establish that, because Wallong sold the garlic to Top Pearl knowing it was destined for the United States, Top Pearl is not the appropriate respondent in this review.

Department's Position: Our decision to terminate the review with regard to Top Pearl was based on record evidence supplied by Top Pearl. We have no reason to dispute the veracity or reliability of the information and find it sufficient to support our position that it is inappropriate to review Top Pearl's transaction with the U.S. customer.

In addition, contrary to respondent's claim, on March 29, 1996, we sent a supplemental questionnaire to Top Pearl. In the supplemental questionnaire, we inquired about Top Pearl's organizational structure and export licenses, as well as sales process, specifically with respect to Huangpu's and Wallong's knowledge of the destination of the subject merchandise. We did not send additional questionnaires to Top Pearl as we determined that Top Pearl is not the appropriate respondent in this review.

Final Results of the Review

As a result of our review, we determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise from the PRC for the period July 11, 1994 through October 31, 1995.

The Department shall determine, and the Customs Service shall assess,

antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for all PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 376.67 percent; and (2) for other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 25, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–11383 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Results of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Administrative Review.

SUMMARY: In response to requests by Lloyd's Metals & Engineers Ltd. (Lloyd's) and Rajinder Pipes Ltd. (Rajinder), the Department of Commerce (the Department) is conducting a new shipper administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. The period of review (POR) is May 1, 1995 through April 30, 1996. We have preliminarily determined that sales have been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the export price (EP) or construed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Kristie Strecker, Matthew Rosenbaum or Thomas O. Barlow, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On April 30, 1996, the Department received a request from Lloyd's for a new shipper review pursuant to section 751(a)(2)(B) of the Act and section 353.22(h) of the Department's interim regulations. On May 22, 1996, the Department also received a request from Rajinder for a new shipper review. The petitioner in this case is the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports (the Petitioner).

Section 751(a)(2) of the Act and section 353.22(h) of the Department's regulations govern determinations of antidumping duties for new shippers. These provisions state that, if the Department receives a request for review from an exporter or producer of the subject merchandise that (1) did not export the merchandise to the United States during the period of investigation (POI) and, (2) is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer. To establish these facts, the exporter or producer must include with its request, with appropriate certification: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States; (ii) a list of the firms with which it is affiliated; and (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI. The requests from Lloyd's and Rajinder were accompanied by information and certifications establishing the date on which each company first shipped and entered subject merchandise, the names of Lloyd's and Rajinder's affiliated parties, and statements from Lloyd's and Rajinder and their affiliated parties that they did not, under any name, export the subject merchandise during the POI. Based on the above information, on June 27, 1996, the Department initiated a new shipper review of Lloyd's and Rajinder (61 FR 33492). On December 30, 1996, we published an extension of the time limit for the preliminary results of this review until April 23, 1997 (61 FR 68713). The Department is now conducting this review in accordance with section 751 of the Act and section 353.22 of its regulations.

Scope of the Review

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inch or more but not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon-steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil-country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of the products covered by this review are currently classified under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 07306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The review covers two producers/exporters. The POR is May 1, 1995 through April 30, 1996.

Level of Trade

To the extent practicable, we determine NV for sales at the same level of trade as the U.S. sales (either EP or CEP). When there are no sales at the same level of trade, we compare U.S. sales to home market (or, if appropriate, third-country) sales at a different level of trade. The NV level of trade is that of the starting-price sales in the home market.

For both EP and CEP, the relevant transaction for the level-of-trade analysis is the sale (or constructed sale) from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the CEP results in a price that would have been charged if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an independent U.S. customer the expenses under section 772(d) of the Act and the profit associated with these expenses. These expenses represent activities undertaken by the affiliated importer. Because the expenses deducted under section 772(d) represent selling activities in the United States, the deduction of these expenses normally yields a different level of trade for the CEP than for the later resale (which we use for the starting price). Movement charges, duties and taxes deducted under section 772(c) do not represent activities of the affiliated importer, and we do not remove them to obtain the CEP level of trade.

To determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user, regardless of whether the final user is an individual consumer or an industrial user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are commonly used by respondents to describe levels of trade, but, without substantiation, they are insufficient to establish that a claimed level of trade is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed levels of trade. If the claimed levels are different, the selling functions performed in selling to each level should also be different. Conversely, if levels of trade are norminally the same, the selling functions performed should also be the same. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the levels of trade. A different level of trade is characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in levels of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. We use the average difference in net prices to adjust NV when NV is based on a level of trade different from that of the export sale. If there is no pattern of consistent price differences, the difference in levels of trade does not have a price effect and, therefore, no adjustment is necessary.

The statute also provides for an adjustment to NV when NV is based on a level of trade different from that of the CEP if the NV level is more remote from the factory than the CEP and if we are unable to determine whether the difference in levels of trade between CEP and NV affects the comparability of their prices. This latter situation can occur where there is no home market level of trade equivalent to the U.S. sales level or where there is an equivalent home market level but the data are insufficient to support a conclusion on price effect. This adjustment, the CEP offset, is identified in section 773(a)(7)(B) and is the lower of the following:

- The indirect selling expenses on the home market sale, or
- The indirect selling expenses deducted from the starting price in calculating CEP.

The CEP offset is not automatic each time we use CEP. The CEP offset is made only when the level of trade of the home market sale is more advanced than the level of trade of the U.S. (CEP) sale and there is not an appropriate basis for determining whether there is an effect on price comparability.

In this review, Rajinder reported two channels of distribution in the home market: (1) sales to government

agencies, which include sales made to original equipment manufacturers (OEMs) and end-users (Channel One); and (2) sales made to local distributors, which include sales made to trading companies (Channel Two). We found that the two home market channels differed significantly with respect to selling activities. The level of selling activities with respect to Channel One was much greater than that with respect to Channel Two. Channel One activities included strategic and economic planning, market research, computer, legal, accounting, audit and business systems development, engineering services, inventory, agent coordination, and delivery arrangement. Channel Two activities consisted of only advertising. The Channel One sales, therefore, constitute a more advanced level of trade. Based on these differences and other factors such as the point in the chain of distribution where the relevant selling expenses occurred, we found that the two home market channels constituted two different levels of trade.

Rajinder reported only CEP sales in the U.S. market. The CEP sales were based on sales made by the exporter to the U.S. affiliate through one channel of distribution which was to a local distributor. The single selling activity associated with these sales was inventory maintenance. Hence, we determined these sales constitute a single level of trade.

To determine whether sales in the comparison market were at a different level of trade than CEP sales, we examined whether the CEP and comparison sales were at different stages in the marketing process. We made this determination on the basis of a review of the distribution system in the two markets, including selling functions, class of customer, and the level of selling expenses for each type of sale. In Rajinder's Channel Two level of trade for the home market, as noted above, we found that the selling activity included only advertising while that for the CEP level of trade consisted only of inventory maintenance. While these selling functions differ, as explained above, differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. In the present case, there is a single selling function in both the U.S. and home market channel of distribution and the selling expenses incurred with respect to both of these channels of distribution were comparable. Moreover, both the CEP sales and the Channel Two home market sales were to the same customer category, distributors.

Based upon this evidence, we have concluded that the differences between the channels of distribution for the CEP and Channel Two home market sales are not sufficient to constitute different levels of trade. Therefore, to the extent possible, we have used the Channel Two sales for comparison purposes in our analysis without making a level-of-trade adjustment.

However, for certain CEP sales we found that sales of identical matches took place only at the Channel One level of trade. Therefore, we matched these U.S. sales to sales at the Channel One level of trade. However, because we have not been able to determine the extent of any pattern of consistent price differences between sales at Channels One and Two, we have not made a level-of-trade adjustment. Instead, for purposes of these preliminary results, we have applied a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act. Prior to the completion of our final results we will further examine the record concerning this issue.

Lloyd's reported two channels of distribution in the home market: (1) Sales to OEMs and end-users; and (2) sales to local distributors. We found that in both home market channels of distribution Lloyd's selling activities included the following: strategic and economic planning; market research; computer, legal, accounting, audit and/or systems development assistance; personnel training, personnel exchange, and manpower assistance program; engineering services; technical programs; advertising; packing; and inventory maintenance. Therefore, we concluded that the selling activities associated with all home market sales were the same and we determined that these two channels of distribution constitute one level of trade.

Lloyd's made one EP sale to an unaffiliated customer through a single channel of distribution (sale made to a trading company). Respondent stated that this EP sale had many of the same selling functions as the home market level of trade described above. Therefore, based upon this information, we have determined that the level of trade for the EP sale is the same as that in the home market, and we have made no level-of-trade adjustment.

Product Comparisons

In accordance with section 777A(d)(2) of the Act, we calculated for Lloyd's and Rajinder transaction-specific EPs and CEPs for comparison to monthly weighted-average NVs. We compared EP or CEP sales to sales in the home market of identical merchandise.

Export Price

For Lloyd's, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of this review.

We calculated EP based on packed, C.&F. prices to unaffiliated customers in the United States. We made deductions for domestics inland freight, insurance, brokerage, and ocean freight in accordance with section 772(c)(2) of the Act. We made additions for duty drawback, where applicable, in accordance with section 772(c)(1)(B) of the Act. No other adjustments were claimed or allowed.

Constructed Export Price

For Rajinder, we based our margin calculation on CEP as defined in section 772(b) of the Act because the subject merchandise was first sold in the United States to a person not affiliated with Rajinder after importation by Rajinder International Incorporated (RII), a seller affiliated with Rajinder.

We calculated CEP based on ex-warehouse prices from RII to the unaffiliated purchasers. We deducted inland freight, insurance, brokerage and warehousing from the price pursuant to section 772(c)(2) of the Act. We also deducted an amount from the price for the following expenses, in accordance with section 772(d)(1) of the Act, that related to economic activity in the United States: commissions, direct selling expenses, including credit expenses, and indirect selling expenses, including inventory carrying costs. In accordance with section 772(d)(3) of the Act, we also deducted from the price an amount for profit to arrive at the CEP. We added duty drawback to the starting price in accordance with section 772(c)(1)(B) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Lloyd's and Rajinder's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since both Lloyd's and Rajinder's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of its U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, in

accordance with section 773(a)(1)(B)(i), we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

Home market prices were based on the packed, ex-factory or delivered prices of identical merchandise to unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6) (A) and (B) of the Act. For comparison to EP, we made circumstance-of-sale (COS) adjustments in accordance with section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses.

We based NV on the price at which the foreign like product was first sold for consumption in the exporting country, in the usual commercial quantities, in the ordinary course of trade and at the same level of trade as the EP or CEP, to the extent practicable, in accordance with section 773(a)(1)(B)(i) of the Act.

No other adjustments were claimed or allowed.

Cost of Production Analysis

Based on allegations made by Petitioner, we had reasonable grounds to believe or suspect that sales of both Lloyd's and Rajinder in the home market were made at prices below the cost of producing the merchandise. As a result, we initiated an investigation to determine whether Lloyd's and Rajinder made home market sales during the POR at prices below its cost of production (COP) within the meaning of section 773(b) of the Act.

A. Calculation of COP

We calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. We relied on the home market sales and COP information provided by Lloyd's and Rajinder in their questionnaire responses.

B. Test of Home Market Prices

We tested whether home market sales of pipes and tubes were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, rebates, and direct selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales where such sales were found to be made at prices which would not permit the recovery of all costs within a reasonable period of time (in accordance with section 773(b)(2)(D) of the Act). Where we disregarded all contemporaneous sales of the comparison product based on this test, we calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

We found that, for certain pipe and tube products, more than 20 percent of Lloyd's home sales were sold at below the COP. Further, we did not find that the prices for these sales provided for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis and used the remaining sales as the basis for determining NV in accordance with section 773(b)(1) of the Act.

For Rajinder, we found that the below-cost sales accounted for less than 20 percent of its sales (on a model-specific basis). Therefore, we did not disregard any of Rajinder's below-cost sales.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondents using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. We verified Lloyd's responses to the Department's questionnaires from March 24 to March 28, 1997, at the sales office in Bombay, India. We verified Rajinder's responses from March 31 to April 2, 1997, at its factory in Kanpur, India. Our verification results are outlined in the verification reports, the public versions of which are available in the Central Records Unit of the Department of Commerce, room B–099.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of the Review

As a result of our comparisons of CEP and EP with NV, we preliminarily determine that the following weighted-average dumping margins exist for the period May 1, 1995 through April 30, 1996:

Manufacturer/exporter	Margin
Lloyd's Metals and Engineers Ltd ..	0.00
Rajinder Pipes Ltd	0.00

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 34 days after the date of publication or the first business day thereafter. Case briefs from interested parties may be submitted not later than 20 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 27 days after the date of publication. The Department will issue the final results of this new shipper administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing, within 90 days of publication of these preliminary results.

Upon completion of this new shipper review, the Department will issue appraisement instructions directly to the Customs Service. The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Furthermore, upon completion of this review, the posting of a bond or security in lieu of a cash deposit, pursuant to

section 751(a)(2)(B)(iii) of the Act and section 353.22(h)(4) of the Department's interim regulations, will no longer be permitted and, should the final results yield a margin of dumping, a cash deposit will be required for each entry of the merchandise.

The following deposit requirements will be effective upon publication of the final results of this new shipper antidumping duty administrative review for all shipments of certain welded carbon steel standard pipes and tubes from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be those established in the final results of this new shipper administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.08 percent, the all-others rate established in the LTFV investigation (51 FR 17384, May 12, 1986).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.36 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper administrative review and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and Section 19 CFR 353.22(h) 1996.

Dated: April 23, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–11381 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 95–A0005.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to The Connell Company (''TCC''). Notice of issuance of the Certificate was published in the **Federal Register** on December 1, 1995 (60 FR 61682).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1996).

The Office of Export Trading Company Affairs is publishing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

TCC's Certificate has been amended to expand the covered Products to include all ''japonica rice (including rough/paddy, brown, and milled japonica rice).''

Effective Date: January 15, 1997.

Dated: April 24, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–11287 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No.97–00001.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Dairy Marketing Information Association. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1996).

The Office of Export Trading Company Affairs (''OETCA'') is publishing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade Products

Dry sweet whey; 35% whey protein concentrate (''WPC''), and edible grade lactose. (Standard Industrial Classification Code 202–2023)

Export Trade Facilitation Services (as they Relate to the Export of Products)

Export Trade Facilitation Services including professional services in the areas of consulting, marketing and trade promotion, legal assistance, communication and processing of sales leads and export orders, and negotiation of price to be paid by foreign buyer.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Subject to the requirements in Paragraph 14, as applicable,

DMIA and/or one or more Members may:

1. Enter into joint discussions, negotiations, and bidding with foreign buyers regarding the purchase of Products.

2. Act jointly to negotiate and establish export prices for Products to be marketed through DMIA's Export Trade Facilitation Services, in connection with actual or potential bona fide export opportunities, provided that each DMIA Member remains free to deviate from the joint export price in independently exporting its Products not dedicated to DMIA.

3. Act jointly to establish sales strategies for Products in the Export Markets.

4. Process export orders for Products on behalf of DMIA Members.

5. Exchange information regarding export transactions of Products, including:

a. information that is already available to the dairy industry or to the general public;

b. information on costs specific to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents, commissions, export sales documentation and service, and export sales financing);

c. information about U.S. and foreign legislation and regulations affecting sales of Products to Export Markets;

d. information about the price, quantity, and delivery dates of Products supplied by DMIA Members for export through DMIA's Export Trade Facilitation Services;

e. information about terms and conditions of contracts for sales of Products in the Export Markets to be considered by DMIA Members, including specifications from particular customers as well as customary terms and conditions;

f. information about DMIA's international marketing efforts and promotional activities regarding Products undertaken by DMIA on behalf of its Members;

g. information about orders for Products received by DMIA; and

h. information about the independent export operations of DMIA Members regarding Products, including but not limited to, sales and distribution networks established by DMIA Members, and prior export sales (including foreign customer and export price information).

6. Jointly sponsor promotional, sales and marketing efforts aimed at developing existing or new Export Markets for Products.

7. Provide through DMIA Export Trade Facilitation Services to assist the export of Members' Products.

8. Share among the Members, on the basis of each Member's proportionate supply of Product for a particular export transaction, the net revenue resulting from such export sale of Products through DMIA, and the cost of associated Export Trade Facilitation Services.

9. Select a Member to negotiate and arrange for transportation of Products.

10. Reimburse through DMIA the transport costs expended by the Member responsible for transporting the Products for a particular export sale transacted through DMIA's clearing services, where such transport costs are shared by the Members proportionate to the quantity of the Product that each Member supplies for that particular export transaction.

11. Meet to engage in the activities described in paragraphs one through ten above.

12. Utilize staff of the Wisconsin Federation of Cooperatives or, as needed the staff of a Member cooperative to implement the activities described in paragraphs one through eleven above.

13. Refuse to provide export clearing services for Products and participation in the other activities described in paragraphs one through twelve above to non-members.

14. DMIA may conduct the above mentioned Export Trade Activities provided, however, that:

a. each DMIA Member shall independently determine: (1) whether to participate in any particular export sale, and (2) the quantity of a Product that Member will make available for sale in the Export Markets; and

b. in the event of an overcommitment of the Products from the Members, DMIA may have subsequent communications with Members who have made commitments to reduce the quantities committed to meet the amount of the Products needed.

Terms and Conditions of Certificate

(a) Except as provided in paragraph 5(b) of Export Trade Activities and Methods of Operation, neither DMIA nor any member shall intentionally disclose, to any other Member any information about its costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies or methods that is not already generally available to the trade or public.

(b) Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments. A member may withdraw from coverage under this Certificate at any time by giving written notice to DMIA, a copy of which DMIA shall promptly transmit to the Departments of Commerce and Justice.

(c) DMIA and its members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Members (Within the Meaning of Section 325.2(1) of the Regulations)

Land O'Lakes, Inc., Minneapolis, MN; Foremost Farms USA, Baraboo, WI; Mid-America Dairymen, Inc., Springfield, MO; Ellsworth Cooperative Creamery Association, Ellsworth, WI; Darigold Farms, Seattle, WA; Associated Milk Producers, Inc. (AMPI), Arlington, TX; Alto Dairy Cooperative, Waupun, WI; Swiss Valley Farms, Co., Davenport, IA; First District Association, Litchfield, MN; and Dairymen's Cooperative Creamery Association, Tulare, CA.

Protection Provided by Certificate

This Certificate protects DMIA, its Members, and their directors, officers, employees and agents acting on their behalf, from private treble damage actions and governmental criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits DMIA or its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws. Notwithstanding the preceding sentence, nothing in this Certificate shall reduce, diminish or otherwise affect DMIA's or its members rights and protections under existing law, including the Cooperative Marketing Act of 1926, 7 U.S.C. Section 455 and the Capper-Volstead Act, 7 U.S.C. Section 291.

Disclaimer

The issuance of this Certificate of Review to DMIA by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly

or implicitly, an endorsement or opinion by the United States Government concerning either (a) The viability or quality of the business plans of DMIA or its Members or (b) the legality of such business plans of DMIA or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the ''Guidelines for Issuance of Export Trade Certificates of Review (Second Edition),'' 50 Fed. Reg. 1786 (January 11, 1985).

In accordance with the authority granted under the Act and Regulations, this Export Trade Certificate of Review is hereby granted to DMIA.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 25, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–11288 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Regulations Governing the Small Take of Marine Mammals

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kenneth Hollingshead, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–2055).

SUPPLEMENTARY INFORMATION:

I. Abstract

The harassment, injury or death of marine mammals is prohibited by the Marine Mammal Protection Act (MMPA), unless permitted, exempted, or otherwise authorized. Provided the taking (harassment, injury, mortality) is negligible, maritime activities that result in the incidental taking of marine mammals need an authorization under the MMPA to avoid prosecution under the MMPA. The Act requires applicants to submit information justifying the authorization. The MMPA also requires monitoring and reporting on marine mammal interactions with the activity.

II. Method of Collection

No forms are used. Applications and reports follow guidelines in the regulations or established with authorizations.

III. Data

OMB Number: 0648–0151.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Anyone, other than commercial fishermen, conducting activities that could result in an incidental take of marine mammals. The most common applicants are university researchers, oil and gas exploration companies, and Federal agencies.

Estimated Number of Respondents: 35.

Estimated Time Per Response: 60 hours (requests for regulations average 483 hours, applications for Letters of Authorization average 3 hours, applications for Incidental Harassment Authorizations average 200 hours, and reports range from 30–150 hours a response (depending upon the complexity of the activity).

Estimated Total Annual Burden Hours: 3,076.

Estimated Total Annual Cost to Public: $0 (no material or equipment will need to be purchased to provide information).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 24, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–11261 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042197B]

Environmental Impact Statement (EIS) for the Proposed Consolidation of NOAA Facilities in Juneau, AK

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

ACTION: Notice of Intent to Prepare a Supplemental Draft Environmental Impact Statement (SDEIS).

SUMMARY: NOAA announces its intention to prepare an SDEIS in accordance with the National Environmental Policy Act of 1969 for the proposed consolidation of NOAA/NMFS facilities in Juneau, AK. The University of Alaska may also jointly develop facilities as part of the proposed consolidation. NOAA will be considering five alternatives in the SDEIS: No action, expand Auke Bay Laboratory, North Mendenhall site, Auke Cape site, and the new Lena Point site. The purpose of issuing a SDEIS is to evaluate an additional project siting alternative at Lena Point in the City and Borough of Juneau, AK.

DATES: Written comments on the intent to prepare a SDEIS will be accepted on or before June 2, 1997. Scoping meetings are scheduled as follows:

1. May 21, 1997, 1 p.m., Federal Building, Juneau, AK.

2. May 21, 1997, 5 p.m., Travel Lodge, Juneau, AK.

3. May 22, 1997, 5 p.m., Chapel by The Lake, Juneau, AK.

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to John Gorman, Responsible Program Manager, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK, 99802–1668 or to Robb Gries, Contract Office Technical Representative, NOAA, Facilities and Logistics Division, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115.

Scoping meetings will be held as follows:

1. Scoping Session for Agencies—Wednesday, May 21, 1997, 1–4 p.m., 4th floor, Federal Building, 709 West 9th Street, Juneau, AK. (Note: security screening is necessary for access to the Federal Building.)

2. Public Scoping Session—Wednesday, May 21, 1997, 5–7 p.m. open house, 7–9 p.m. formal public scoping comments, Travel Lodge, 9200 Glacier Highway, Juneau, AK.

3. Public Scoping Session—Thursday, May 22, 1997, 5–7 p.m. open house, 7–9 p.m. formal public scoping comments, Chapel by The Lake, 11024 Auke Lake Way, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: John Gorman, 907–586–7641 or Robb Gries, 206–526–6018.

SUPPLEMENTARY INFORMATION: The proposed action involves consolidation of NOAA/NMFS office, laboratory, and enforcement facilities in Juneau, AK. The University of Alaska may also jointly develop facilities as part of the proposed consolidation. NOAA operations are currently in four space assignments in the Federal Building and at an aging overcrowded Commerce-owned laboratory facility (Auke Bay Laboratory). The NOAA/NMFS portion of the facility would be about 91,628 net square ft (8,512.5 square meters (m)) in size. With the addition of Lena Point, NOAA/NMFS will be considering five alternatives in the SDEIS: No action, expand Auke Bay Laboratory, North Mendenhall site, Auke Cape site, and the new Lena Point site. Proposed actions will also be evaluated with and without the University of Alaska being part of the project. Approximately 273 NOAA/NMFS related personnel would be housed in the consolidated facilties. The University of Alaska School of Fisheries and Ocean Sciences is interested in collocating 22,000 net square ft (2,044 square m) of laboratories, classrooms, and office space with NOAA/NMFS at Auke Cape. The University of Alaska space would house about 90 faculty, staff, and students. NOAA/NMFS has received numerous comments on the DEIS issued in September 1996. Many of the comments provided useful information and will be responded to in the final environmental impact statement. Therefore, there is no need to resubmit comments on the September 1996 DEIS. NOAA/NMFS will accept comments as part of the SDEIS for evaluation and response in the final environmental impact statement. NOAA/NMFS is especially interested in receiving comments on the new Lena Point alternative site, which will be useful in the agency decision making process. Additional details on the meetings will be published in the local newspaper.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to John Gorman or Robb Gries (see **ADDRESSES**) at least 5 days prior to meeting date.

Dated: April 25, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–11354 Filed 4–30–97; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Ballistic Missile Defense Advisory Committee

ACTION: Notice of advisory committee meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Colorado Springs, Colorado, on May 12–13, 1997.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense, through the Under Secretary of Defense (Acquisition and Technology), on all matters relating to BMD acquisition, system development, and technology.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended by 5 U.S.C., Appendix II, it is hereby determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C., 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: April 25, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–11301 Filed 4–30–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense, Defense Civilian Personnel Management Service.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered are the proposed amendments to the Council's by-laws and other matters related to the enhancement of Labor-Management Partnerships throughout DoD.

DATES: The meeting is to be held May 28, 1997, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by May 19, 1997, in order to be considered at the May 28 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd., Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: April 25, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–11303 Filed 4–30–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: DoD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets for the the schedule and summary agenda for the meeting of the National Defense Panel on May 5 and 6, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public from 0830–1700, May 5 and 6, 1997 in order for the Panel to discuss classified material.

DATES: May 5 and 6, 1997.

ADDRESSES: Suite 624, 1931 Jefferson Davis Hwy, Arlington VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 0830–1700 on May 5 and 6, 1997. The meeting will be held at Suite 624, 1931 Jefferson Davis Highway, Arlington, VA. During the closed sessions the Panel will be presented a summary of the Quadrennial Defense Review (QDR) (to include classified portions of the QDR) and discuss the NDP's response for inclusion into the Secretary of Defense's may 15, 1997 report. The NDP staff will provide presentations that will be used by the panel to formulate recommendations in the areas of the QDR required by the implementing legislation. This notice is late due to the delay in receiving the Secretary of Defense draft report which is due to Congress by May 15, 1997.

FOR FURTHER INFORMATION CONTACT:

Please contact the National Defense Panel at (703) 602–4175/6.

Dated: April 25, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–11302 Filed 4–30–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary proposes to add a routine use to an existing system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on June 2, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The complete inventory of Office of the Secretary record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on April 23, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: April 25, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 05

SYSTEM NAME:

Persian Gulf Veterans Illnesses Files *(April 11, 1997, 62 FR 17788).*

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Add a new paragraph 'To the Department of Veterans Affairs for use, in conjuction with the Persian Gulf Health Registry, to permit investigative, scientific, medical and other analysis regarding possible causes, symptoms, diagnoses, treatment, and other characteristics pertinent to Gulf War Illnesses.'

* * * * *

DHA 05

SYSTEM NAME:

Persian Gulf Veterans Illnesses Files.

SYSTEM LOCATION:

Department of Defense Persian Gulf Veterans Illnesses Investigative Team, 5205 Leesburg Pike, Falls Church, VA 22041–3881; and Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

Comprehensive Clinical Evaluation Program, 5205 Leesburg Pike, Skyline 1, Suite 1135, Falls Church, VA 22041–3802.

Commander, U.S. Army Center for Health Promotion and Preventive Medicine, ATTN: MCHB-DE-HR, Aberdeen Proving Ground, MD 21010–5422.

U.S. Army Joint Services Support Group, 7798 Cissna Road, Suite 101, Springfield, VA 22150–3197.

Naval Health Research Center, Division of Clinical Epidemiology, 271 Catalina Boulevard, Barracks Building 322, San Diego, CA 92152–5302.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who served in Operation Desert Storm and/or Operation Desert Shield who feel they may have been exposed to biological, chemical, disease, or environmental agents. Those individuals may contact the Persian Gulf Veterans Illnesses Investigative Team by dialing 1–800–472–6719 to report experiences of unusual illness or health conditions following service during the Persian Gulf conflict.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of individual's name, Social Security Number or service number, last known or current address, occupational information, date and extent of involvement in Persian Gulf military operations, perceived exposure information, medical treatment information, medical history of subject, and other documentation of reports of possible exposure to biological, chemical, disease, or environmental agents.

The system contains information from unit and historical records and information provided to the Department of Defense by individuals with first-hand knowledge of reports of possible biological, chemical, disease, or environmental incidents.

Information from health care providers who have evaluated patients with illnesses possibly related to service in the Persian Gulf is also included. Records include those documents, files, and other matter in the medical, operational, and intelligence communities that could relate to possible causes of Persian Gulf War Veterans illnesses.

Records of diagnostic and treatment methods pursued on subjects following reports of possible incidental exposure are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, 10 U.S.C. 136, and E.O. 9397 (SSN).

PURPOSE(S):

Records are collected and assembled to permit investigative examination and analysis of reports of possible exposure to biological, chemical, disease, or environmental agents incident to service in the Persian Gulf War and to conduct scientific or related studies or medical follow-up programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs and the Social Security Administration for appropriate consideration of individual claims for benefits for which that agency is responsible.

To the Department of Veterans Affairs for use, in conjuction with the Persian Gulf Health Registry, to permit investigative, scientific, medical and other analysis regarding possible causes, symptoms, diagnoses, treatment, and other characteristics pertinent to Gulf War Illnesses.

To the Presidential Advisory Committee on Gulf War Veterans' Illnesses for purposes of carrying out those functions as set forth in Executive Orders 12961 and 13034 or such further Order as directed by the President.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders; electronic records are stored on magnetic media; microfilm/microfiche are maintained in appropriate storage containers.

RETRIEVABILITY:

Records are retrieved by case number, name, Social Security Number or service number.

SAFEGUARDS:

Access to areas where records maintained is limited to authorized personnel. Areas are protected by access control devices during working hours and intrusion alarm devices during non-duty hours.

RETENTION AND DISPOSAL:

Files will be retained permanently. They will be maintained in the custody of the Persian Gulf Veterans Illnesses Investigative Team under the oversight of the Assistant Secretary of Defense (Health Affairs) until completion of the Team's investigative mission. Upon disbanding of the Team, custody of the records will be transferred to OASD(HA) where they will be held for five years, and then transferred to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Persian Gulf War Veterans Illnesses Investigative Team, Suite 810, 5205 Leesburg Pike, Falls Church, VA 22041–3881, or to the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Persian Gulf War Veterans Illnesses Investigative Team, Suite 810, 5205 Leesburg Pike, Falls Church, VA 22041–3881, or to the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

CONTESTING RECORDS PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is from the individuals themselves, witnesses to a possible agent event, health care providers who have evaluated patients with illnesses possibly related to service in the Persian Gulf, as well as extracts from historical records to include: personnel files and lists, unit histories, medical records, and related sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–11304 Filed 4–30–97; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

In compliance with Section 3502(c)(2)(A) of the Paperwork Reduction Act of 1995, the Associate Director for Civil Aviation, Directorate of Operations and Training, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) The accuracy of the agency's estimate of the burden of the proposed information collection; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 30, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to

HQ USAF/XOO–CA, 1480 Air Force Pentagon, Washington DC 20330–1480.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 697–5967.

Title, Associated Form, and OMB Number: Civil Aircraft Certificate of Insurance, DD Form 2400, OMB Number 0701–0050; Civil Aircraft Landing Permit, DD Form 2401, OMB Number 0701–0050; and DD Form 2402, Civil Aircraft Hold Harmless Agreement, OMB Number 0701–0050.

Needs and Uses: The collection of information is necessary to ensure that the security and operational integrity of military airfields are maintained; to identify the aircraft operator and the aircraft to be operated; to avoid competition with the private sector by establishing the purpose for use of military airfields; and to ensure the US Government is not held liable if the civil aircraft becomes involved in an accident or incident while using military airfields, facilities, and services.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–11267 Filed 4–30–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

DEPARTMENT OF ENERGY

Second Record of Decision for a Dry Storage Container System for the Management of Naval Spent Nuclear Fuel

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969; the Council on Environmental Quality regulations implementing NEPA procedures, 40 CFR Parts 1500–1508; Chief of Naval Operations Environmental and Natural Resources Program Manual, OPNAV Instruction 5090.1B; and the Department of Energy NEPA regulations (10 CFR Part 1021); the Department of the Navy and the Department of Energy, as a Cooperating Agency, announce their decisions regarding the location of temporary dry storage facilities for naval spent nuclear fuel and special case waste at the Idaho National Engineering and Environmental Laboratory (INEEL). The need for these decisions was identified in the final Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel (EIS) dated November 1996. The Department of Energy (DOE), which participated as a cooperating agency, formally adopted that final EIS on October 9, 1996 (designated as DOE/EIS–0251). The need for the decisions was also identified in the first Record of Decision (ROD) (62 FR 1095, January 8, 1997) for that EIS, in which the Department of the Navy and the Department of Energy announced their decision regarding selection of a dual-purpose canister system for the loading, storage, transport, and possible disposal of naval spent nuclear fuel following examination.

In this second ROD, the Navy and DOE announce their decision that the naval spent nuclear fuel which is, or which will be, stored at the Idaho Chemical Processing Plant (ICPP) will be loaded into dual purpose canisters at the Naval Reactors Facility (NRF). Both the ICPP and the NRF are located on the INEEL in southeastern Idaho. The Navy and DOE also announce the additional decision that all dual purpose canisters loaded with naval spent nuclear fuel and special case waste will be stored at a site adjacent to the Expended Core Facility (ECF) at the NRF. The storage of these canisters containing naval spent nuclear fuel at the NRF will occur regardless of whether the contained fuel had previously been stored at the ICPP, or had been received at INEEL before or after the dry storage facility at the NRF commenced operations. This Record of Decision neither decides nor presumes that naval special case waste will be shipped to a geologic repository or a centralized interim storage facility as will naval spent nuclear fuel.

ADDRESSES: Copies of the final EIS and other information related to this second Record of Decision or the first Record of Decision are available in the public reading rooms and libraries identified in the Navy's **Federal Register** notice that announced the availability of the Final EIS (61 FR 59423, November 22, 1996). For further information on the Navy's utilization of a dry storage container system for naval spent nuclear fuel, or to receive a copy of the final EIS and the first ROD, contact William Knoll, Department of the Navy, Code NAVSEA 08U, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160, (703)603–6126. For information on the DOE's NEPA process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202)586–4600 or leave a message at 1–800–472–2756.

Introduction

More than 40% of the Navy's principal combatant warships are nuclear powered. Since 1955, U.S. nuclear powered warships have steamed safely more than one hundred ten million miles and accumulated over 4,800 reactor years of safe operation. Continued operation of the Navy's nuclear powered warships remains a vital element of the Navy's ability to fulfill its national security mission in support of our nation's defense.

The Navy creates spent nuclear fuel through the operation of its nuclear powered warships and training reactors. When a warship is refueled for continued service or is defueled because it is being inactivated, its spent nuclear fuel is removed at a shipyard. Similarly, naval spent nuclear fuel is removed from afloat and land-based training reactors when they are refueled or deactivated. In all cases, the naval spent nuclear fuel is transported to the INEEL in southeastern Idaho where it is examined at the Expended Core Facility (ECF) located at the Naval Reactors Facility (NRF). This examination is essential to verify the performance of current naval nuclear fuel and to support the effort to design naval fuel with longer lifetimes. After examination, the naval spent nuclear fuel is transferred to the Idaho Chemical Processing Plant (ICPP) for storage in water pools pending final disposition. Currently, there are approximately 13 metric tons of heavy metal of naval spent nuclear fuel at the INEEL. A total of approximately 65 metric tons of heavy metal of naval spent nuclear fuel will exist by the year 2035.

The Navy is committed to ensuring that post-examination naval spent nuclear fuel is managed in a fashion which: (1) facilitates ultimate safe shipment to a permanent geologic repository or centralized interim storage facility outside the State of Idaho once one becomes available; (2) protects the environment while being temporarily stored at the INEEL; (3) is consistent with the DOE Programmatic Spent Nuclear Fuel Management and INEL Environmental Restoration and Waste Management Programs Final Environmental Impact Statement (April 1995) and Records of Decision dated May 30, 1995 and February 28, 1996; and (4) complies with the Settlement Agreement/Consent Order among the State of Idaho, the DOE, and the Navy, which is discussed in this Record of Decision under LEGAL AND REGULATORY CONSIDERATIONS.

Until a geologic repository or centralized interim storage facility

outside the State of Idaho (discussed in Section 2.8.2 of the final EIS) is available, the Navy is committed to a number of actions to ensure uninterrupted operation of the Navy's nuclear powered fleet. These actions include transfer of all naval spent nuclear fuel at the INEEL out of wet storage facilities into dry storage, completion of a Dry Cell expansion project at the ECF, completion of Hot Cell facility upgrades at the ECF, construction of an ECF dry storage container loading station, and performance of certain environmental restoration work at the NRF. The high integrity and rugged nature of naval spent nuclear fuel make it exceptionally well suited for safe transport, storage, and ultimate disposal after service. It is expected that the naval spent nuclear fuel will be stored at the INEEL until the time that a geologic repository or centralized interim storage facility is ready to accept it, and in any event not later than 2035.

To aid in determining the dry storage container system to be used in managing naval spent nuclear fuel, the Department of the Navy, with the Department of Energy (DOE) participating as a cooperating agency, prepared the final Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel (EIS) dated November 1996 (61 FR 59435, November 22, 1996). (The Department of Energy formally adopted that final EIS and designated it as DOE/EIS–0251.) In the first Record of Decision (ROD)(62 FR 1095) for that EIS, the Department of the Navy and the Department of Energy, as a cooperating agency, announced their decision regarding selection of a dual-purpose canister system for the loading, storage, transport, and possible disposal of naval spent nuclear fuel following examination. The EIS and the first ROD identified that a decision was still needed on the location(s) for the loading, into dual purpose canisters, of that naval spent nuclear fuel which is, or which will be, stored at the Idaho Chemical Processing Plant (ICPP). Those documents further stated that a decision was also needed on the location(s) for temporary storage of the dual purpose canisters loaded with naval spent nuclear fuel and special case waste.

Decisions

The Navy and DOE have determined the location where naval spent nuclear fuel which is, or which will be, stored at the ICPP will be loaded into dual purpose canisters, and the location where all dual purpose canisters loaded with naval spent nuclear fuel and special case waste will be temporarily stored prior to the naval spent nuclear fuel being shipped to a permanent geologic repository or centralized interim storage facility outside of the State of Idaho when one becomes available. In this second Record of Decision, the Navy and DOE announce the decision to load the naval spent nuclear fuel which is, or which will be, stored at the ICPP, into dual purpose canisters at the Naval Reactors Facility (NRF). Both the ICPP and the NRF are located on the INEEL in southeastern Idaho. The Navy and DOE also announce the additional decision that all dual purpose canisters loaded with naval spent nuclear fuel and special case waste will be stored at a developed area on the INEEL site to the east of the Expended Core Facility (ECF) at the NRF. This storage of canisters loaded with naval spent nuclear fuel at the NRF will occur regardless of whether the fuel had previously been stored at the ICPP, or had been received at INEEL before or after the dry storage facility at the NRF commenced operations. This location offers several important advantages, including immediate proximity to existing fuel handling facilities, rail access, and trained personnel. In addition, use of the site adjacent to ECF eliminates the need to develop previously undisturbed areas. Development of these undisturbed sites would incur increased adverse environmental impacts while offering no technical or other advantage. This Record of Decision neither decides nor presumes that naval special case waste will be shipped to a geologic repository or a centralized interim storage facility as will naval spent nuclear fuel.

When evaluating options for the above decisions, the Navy and DOE considered existing facilities at INEEL and currently undeveloped locations potentially not above the Snake River Aquifer. The technical feasibility of building a dry storage facility within INEEL at a point removed from above the Snake River Plain Aquifer was considered in the final EIS. Only two potential locations were identified, one along the west boundary of INEEL and the other in the northwest corner of the INEEL reservation. However, analyses in the final EIS indicate that neither of these locations is hydrologically removed from above the Snake River Plain and both would be closer to seismic faults than existing INEEL facilities. The State of Idaho, in its comments on the Final Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel, agreed that the seismic disadvantages of these locations would, in all probability, eliminate them from further consideration.

In addition, both of these locations are technically less desirable than locations at the NRF and the ICPP. A facility located at either of these remote sites would be closer to the site boundaries (approximately 1 mile from the INEEL boundary at its closest point) and the local population than existing INEEL facilities. Environmental impacts would result from construction of a road and possibly a rail spur to the location as well as construction of facilities at the location. An evaluation of these areas indicates that the development of a dry storage facility at either of these remote locations might have a greater impact on Native American cultural resources and ecological resources than providing for dry storage at a previously developed site adjacent to the ECF at the NRF or at an ICPP site.

A number of factors were considered in evaluating potential sites at the NRF and the ICPP for loading of naval spent nuclear fuel into canisters and the storage of the loaded canisters. These factors included: (1) The effort required for the Navy to achieve compliance with quality assurance requirements, such as verification of individual spent fuel unit identity and condition, recording of each spent fuel unit's permanent location in a storage canister, and the control of the resultant records; (2) minimization of the number of organizations needing to interact in connection with obtaining certifications for transportation of canisters loaded with naval spent nuclear fuel and for the acceptability of those loaded canisters for placement in a permanent geologic repository or a centralized interim storage facility outside the State of Idaho when one becomes available; (3) simplicity of procedures and facilities involved in loading and storage of the canisters; (4) operational flexibility, since facilities which would be built at ECF to accommodate the return of naval spent nuclear fuel from the ICPP for loading into dry storage canisters would be more easily used to support possible future emergent naval spent nuclear fuel loading or unloading/reloading needs than facilities which had been built at the ICPP; (5) the potential for delays and emergent problems caused by performing dry storage canister loadings of both naval and non-naval spent nuclear fuel at a single facility; (6) the amount of handling of the naval spent nuclear fuel required; (7) cost; (8) the time needed to load the existing inventory of naval spent nuclear fuel into dry storage canisters; (9) environmental

consequences, which were similar and small for both the NRF and the ICPP sites, thus both would be environmentally preferred to the remote undeveloped sites considered; and (10) the expected condition of the naval spent nuclear fuel which would be handled in the loading process. The evaluations of these factors supported the selection of the NRF as the location for loading the naval spent nuclear fuel from the ICPP and for storage of loaded canisters.

Mitigation

The DOE and the Navy have orders and regulations for conduct of spent nuclear fuel management operations and have adopted stringent controls for minimizing occupational and public radiation exposure. The policy of these programs is to reduce radiation exposures to as low as reasonably achievable (ALARA). Singly and collectively, these measures minimize potentially significant adverse environmental impacts from spent nuclear fuel management activities, including those associated with dry storage. The Navy and the DOE have not identified a need for additional mitigation measures.

Legal and Regulatory Considerations

The first Record of Decision for the DOE Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement was published on May 30, 1995 (60 FR 28680). On October 17, 1995, the Federal District Court entered a Consent Order that resolved all issues related to the EIS raised by the State of Idaho and the Governor of Idaho. The Consent Order incorporated as requirements all of the terms and conditions of the parties' Settlement Agreement, including a reduction in the number of spent nuclear fuel shipments coming to the State of Idaho.

The settlement agreement among the State of Idaho, the U.S. Navy, and the DOE included obligations to request funding for a dry storage container loading station and to commence moving DOE spent nuclear fuel currently in water pool storage into dry storage by July 1, 2003. Proposed actions by the Navy will commence placing naval spent nuclear fuel into dry storage on a schedule consistent with that required of the DOE in the Settlement Agreement/Consent Order and will be in full compliance with the requirements of that agreement.

No on-site land use restrictions due to Native American treaty rights would exist for any of the alternatives. The INEEL site does not lie within any of the land boundaries established by the Fort Bridger Treaty.

The Department of the Navy and DOE are mandated to comply with various laws, regulations and other requirements applicable to the management of naval spent nuclear fuel. The Department of the Navy Final Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel, in Chapter 8, identifies the major applicable laws and regulations. The selected dry storage loading and temporary storage locations provide for compliance with these and other applicable laws and regulations governing actions within the Navy's and DOE's responsibilities.

Public Involvement

On October 24, 1994, the DOE published a Notice of Intent in the **Federal Register** (59 FR 53442) to prepare an EIS for a multi-purpose canister system for the management of civilian spent nuclear fuel. As part of the public scoping process, the scope of the EIS for the multi-purpose canister system was broadened to include naval spent nuclear fuel. This determination was included in the Implementation Plan whose availability was announced in the **Federal Register** on August 30, 1995 (60 FR 45147). However, DOE halted its proposal to fabricate and deploy a multi-purpose canister based system and ceased preparation of that EIS.

On December 7, 1995 the Department of the Navy published a notice in the **Federal Register** (60 FR 62828) assuming the lead responsibility for an Environmental Impact Statement evaluating container systems for the management of naval spent nuclear fuel. The Department of the Navy assumed the lead responsibility from the DOE and narrowed the focus of the EIS to include only naval spent nuclear fuel. Despite the narrowing of the focus to only naval spent nuclear fuel and the change in lead agency, the range of container alternatives being considered did not change. Thus, the EIS did not require another scoping process. The DOE participated as a cooperating agency rather than the lead agency in the preparation of the EIS.

On May 1, 1996, the Navy distributed the Draft EIS. The Navy's Notice of Availability of the Draft EIS was published in the **Federal Register** on May 14, 1996 along with the locations and dates of the public hearings. The Draft EIS was widely distributed to public officials, tribal officials, and state agencies in the areas of potential interest, as well as to individuals requesting the document. The public comment period for the EIS was originally scheduled to be 45 days, but a 15-day extension was granted based on a request from the State of Nevada. During the public comment period, six public hearings were held and both written and oral comments were received. Oral and written comments were received from 51 parties, representing: federal, state, and local agencies and officials; special interest groups; and individuals. No substantive changes to the Draft EIS were needed as a result of public comments, although several clarifications and editorial changes were made in response to comments.

A new Chapter 11 was added to the Final Environmental Impact Statement in which each comment was reprinted in its entirety, followed immediately by individual responses to each of the major points. The Environmental Protection Agency formally announced the availability of the final EIS on November 22, 1996 (61 FR 59435). The Navy also announced the availability of the final EIS on November 22, 1996 (61 FR 59423).

Approval

This Record of Decision constitutes the Navy's and The Department Of Energy's final action with regard to a location where the naval spent nuclear fuel which is, or which will be, stored at the Idaho Chemical Processing Plant will be loaded into dual purpose canisters. It also constitutes final action for a location for the temporary dry storage of all dual purpose canisters containing naval spent nuclear fuel and special case waste.

Issued in Washington, D.C. this 16th day of April 1997.

Richard Danzig,

Acting Secretary of the Navy.

Alvin L. Alm,

Assistant Secretary for Environmental Management, U.S. Department of Energy.

[FR Doc. 97–11244 Filed 4–30–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information

collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 30, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 25, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Title: Fulbright-Hays Seminars Abroad Program.

Frequency: One Time.

Affected Public: Individuals or households.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 600

Burden Hours: 1,200

Abstract: Forms to be used by applicants under the Fulbright-Hays Seminars Abroad program which provides opportunities for U.S. educators to participate in short-term study seminars abroad in the subject areas of the social sciences, social studies and the humanities.

Office of Postsecondary Education

Title: Student Assistance General Provisions—Subpart E (Verification of Student Aid Application Information).

Frequency: Annually.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 2,099,000

Burden Hours: 365,833

Abstract: Verification of Application Information for Title IV Student Financial Assistance Programs. Applicants and, in some cases, the applicant's parent must provide documentation to support data listed on the Application for assistance.

[FR Doc. 97–11247 Filed 4–30–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1612–011]

Destec Power Services, Inc.; Notice of Filing

April 25, 1997.

Take notice that on March 17, 1997 Destec Power Services, Inc. tendered for filing notification of change in status merging its company with NGC Corporation.

Any person desiring to be heard or to protest said 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 the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 5, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11266 Filed 4–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–351–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

April 25, 1997.

Take notice that on April 17, 1997, Koch Gateway Pipeline Company (Koch Gateway), PO Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP97–351–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205, 157.211) under the Natural Gas Act (NGA) for authorization to operate existing delivery point facilities constructed under the authorization of Section 311 of the Natural Gas Policy Act of 1978 (NGPA) in St. Mary Parish, Louisiana, for Part 284 transportation services by Koch Gateway, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to operate the existing 2-inch tap, which was installed to make deliveries of gas transported under Koch Gateway's Part 284 blanket certificate to Trans-Louisiana Gas Company (Trans-La), an intrastate pipeline. It is stated that Koch Gateway was fully reimbursed for the cost of installing the tap by Trans-La. It is estimated that the average day and peak day requirements for this delivery point are 120 MMBtu equivalent and 1,200 MMBtu equivalent, respectively. It is asserted that the proposal would

provide Koch Gateway with additional flexibility in obtaining gas supplies.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11263 Filed 4–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER93–493–008]

Milford Power Limited Partnership; Notice of Filing

April 25, 1997.

Take notice that on January 31, 1997 Milford Power Limited Partnership tendered for filing its semi-annual report listing all of the service agreements the Partnership entered into between July 1, 1996, and December 31, 1996.

Any person desiring to be heard or to protest said 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 18 CFR 385.214). All such motions or protests should be filed on or before May 7, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11265 Filed 4–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–5–000]

Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, And the Toledo Edison Company; Notice of Filing

April 25, 1997.

Take notice that on April 21, 1997, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company (the Applicants) filed responses to the April 3, 1997, letter of the Commission's Chief Accountant requesting certain accounting information in this proceeding. Applicants state that they have served their filing on all parties of record.

Any party desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 6, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11310 Filed 4–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–356–000]

Ozark Gas Transmission System; Notice of Application

April 25, 1997.

Take notice that on April 21, 1997, Ozark Gas Transmission System (Ozark), 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval to abandon by removal one lateral line compressor located at Ozark's Carter Compressor Station in Franklin County, Arkansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Ozark seeks to abandon by removal one of the two compressors at the Carter Compressor Station. Ozark says the compressor is no longer needed because there has been a significant drop in gas volumes on the Carter Lateral. Ozark says the one remaining 300 HP compressor at the Carter Compressor Station will be sufficient to compress the remaining supply on the lateral. Ozark further states that after approval of abandonment, it will retain in the abandoned compressor for future use.

Any person desiring to be heard or to make any protest with reference to said application should, on or before May 16, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval of abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be

unnecessary for Ozark to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11264 Filed 4–30–97; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, April 22, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider certain administrative enforcement and supervisory matters.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8) and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9) (A) (ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: April 28, 1997.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 97–11517 Filed 4–29–97; 3:37 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: 97–10088.

PREVIOUSLY ANNOUNCED DATE & TIME: Wednesday, April 23, 1997, 10 a.m. Meeting closed to the public. This Meeting was Cancelled.

DATE & TIME: Tuesday, May 6, 1997 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, May 8, 1997 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Independent and Coordinated Expenditures by Party Committees—Notice of Proposed Rulemaking; (11 CFR § 100.7, § 100.23, § 104.4, § 109.1, § 110.1, § 110.2, § 110.7, and § 110.11). (Tentative).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–11509 Filed 4–29–97; 3:03 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1104–DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1104–DR), dated February 23, 1996, and related determinations.

EFFECTIVE DATE: April 22, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 23, 1996:

The counties of Blount, Colbert, Cullman, DeKalb, Etowah, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan and Winston for Hazard Mitigation (already designated for Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11319 Filed 4–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1108–DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1108–DR), dated March 20, 1996, and related determinations.

EFFECTIVE DATE: April 22, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 20, 1996:

Dallas, Macon and Montgomery counties for Hazard Mitigation (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11320 Filed 4–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1176–DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–1176-DR), dated April 14, 1997, and related determinations.

EFFECTIVE DATE: April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 21, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11330 Filed 4–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1175–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1175–DR), dated April 8, 1997, and related determinations.

EFFECTIVE DATE: April 22, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 8, 1997:

Beltrami County for Categories A and B under the Public Assistance program.

Pope and Douglas Counties for Categories A and B under the Public Assistance program, Individual Assistance, and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11328 Filed 4–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1175–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1175–DR), dated April 8, 1997, and related determinations.

EFFECTIVE DATE: April 18, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 8, 1997:

Cass, Clearwater, McLeod, Otter Tail, Todd, and Wadena counties for Individual Assistance, Hazard Mitigation and Categories A and B under the Public Assistance program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11329 Filed 4–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1173–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–1173–DR), dated April 7, 1997, and related determinations.

EFFECTIVE DATE: April 18, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 7, 1997:

The counties of Bennett, Butte, Corson, Custer, Dewey, Fall River, Gregory, Haakon, Harding, Jackson, Jones, Lawrence, Lyman, Meade, Mellette, Pennington, Perkins, Shannon, Stanley, Todd, Tripp, and Ziebach for Categories A and B under the Public Assistance Program (already designated for Individual Assistance and Hazard Mitigation.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11324 Filed 4–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1173–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–1173–DR), dated April 7, 1997, and related determinations.

EFFECTIVE DATE: April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota, is hereby amended to include Categories C through G under the Public Assistance program in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 7, 1997:

The counties of Aurora, Beadle, Bon Homme, Brookings, Brown, Brule, Buffalo, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Davison, Day, Deuel,

Dewey, Douglas, Edmunds, Faulk, Grant, Haakon, Hamlin, Hand, Hanson, Hughes, Hutchinson, Hyde, Jerauld, Jones, Kingsbury, Lake, Lincoln, Lyman, McCook, McPherson, Marshall, Miner, Minnehaha, Moody, Perkins, Potter, Roberts, Sanborn, Spink, Stanley, Sully, Tripp, Turner, Union, Walworth, Yankton and Ziebach for Categories C through G under the Public Assistance program (already designated for Individual Assistance, Hazard Mitigation and Categories A and B under the Public Assistance program).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11325 Filed 4–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1167–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1167-DR), dated March 7, 1997, and related determinations.

EFFECTIVE DATE: April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 7, 1997:

The county of DeKalb for Public Assistance, Individual Assistance, and Hazard Mitigation.

The counties of Benton and Decatur for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11321 Filed 4–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1171–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1171-DR), dated April 2, 1997, and related determinations.

EFFECTIVE DATE: April 22, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 2, 1997:

The county of Grundy for Categories A and B under the Public Assistance, Individual Assistance, and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11322 Filed 4–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1172–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1172–DR), dated April 2 1997, and related determinations.

EFFECTIVE DATE: April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include Public Assistance in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 2, 1997:

The counties of Grays Harbor and Mason for Public Assistance (already designated for Individual Assistance and Hazard Mitigation).

The counties of Lincoln, Pacific, Pend Oreille, and Stevens for Public Assistance, Individual Assistance and Hazard Mitigation.

The counties of Clallam, Kitsap, Snohomish, Spokane, and Thurston for Individual Assistance and Hazard Mitigation.

Jefferson County for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11323 Filed 4–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS96–1]

Appraisal Subcommittee; Appraisal Policy; Temporary Practice and Reciprocity; Correction.

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Adoption of amended policy statements; correction.

SUMMARY: On April 23, 1997, the Appraisal Subcommittee (''ASC'') of the Federal Financial Institutions Examination Council published a notice of amended policy statements respecting temporary practice and reciprocity in 62 FR 19755. We published an incorrect version of ''Statement 6: Reciprocity,'' and this notice corrects the Statement. The substantive portions of Statement 6 are unaffected.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT: Ben Henson, Executive Director, or Marc L. Weinberg, General Counsel, at (202) 634–6520, via Internet e-mail at benhl@asc.gov and marcw1@asc.gov, respectively, or by U.S. Mail at Appraisal Subcommittee, 2100 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20037.

SUPPLEMENTARY INFORMATION:

In the April 23, 1997 **Federal Register**, ''Statement 6: Reciprocity,'' which appears on page 19769 and continues until the end of the notice, is corrected to read as follows:

Statement 6: Reciprocity

Section 1122(b) of Title XI, 12 U.S.C. 3347(b), states that the ASC shall encourage the States to develop reciprocity agreements that readily authorize appraisers who are licensed or certified in one State (and who are in good standing with their State appraiser certifying or licensing agency) to perform appraisals in other States. Under reciprocity agreements, an appraiser who is certified or licensed in State A and is *also* reciprocally certified or licensed in State B must comply with both States' appraiser laws, including those requiring the payment of certification, licensing and Federal registry fees and continuing education. Indeed, the appraiser for all intents and purposes is treated as if he or she were separately certified or licensed in each of the States.

Each State should work expeditiously and conscientiously with other States with a view toward satisfying the purposes of § 1122(b). The ASC monitors each State's progress towards this goal and encourages States to work out issues and difficulties.

Specifically, the ASC encourages States to enter into reciprocity agreements that, at a minimum, contain the following features:

- Accomplish reciprocity with at least all contiguous States. For States not sharing geographically contiguous borders with any other State, such as Alaska and Puerto Rico, those States should enter into reciprocity agreements with States that certify or license appraisers who perform a significant number of appraisals in the non-contiguous States;
- Readily accepts other States' certifications and licenses without reexamining applicants' underlying education and experience, provided that the other State: (1) has appraiser qualification criteria that meet or exceed the minimum standards for certification and licensure as adopted by the AQB; and (2) uses appraiser certification or licensing examinations that are AQB endorsed;
- Eliminate retesting, provided that the applicant has passed the appropriate AQB-endorsed appraiser certification and licensing examinations in the appraiser's home State;
- Recognize and accept successfully completed continuing education courses taken to qualify for license or certification renewal in the appraiser's home State; and
- Establish reciprocal licensing or certification fees identical in amount to the corresponding fees for in-State appraisers.

By the Appraisal Subcommittee.

Dated: April 25, 1997.

Ben Henson,

Executive Director.

[FR Doc. 97–11259 Filed 4–30–97; 8:45 am]

BILLING CODE 6201–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 15, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Southerland Family Limited Partnership, Batesville, Arkansas; to retain a total of 30.96 percent of the voting shares of Citizens Bancshares of Batesville, Inc., Batesville, Arkansas, and thereby indirectly acquire Citizens Bank, Batesville, Arkansas.

2. Charles Leon Spangler, Aurora, Missouri; to acquire an additional 30.05 percent, for a total of 51.65 percent, of the voting shares of Seligman Bancshares, Inc., Seligman, Missouri, and thereby indirectly acquire First Independent Bank, Seligman, Missouri.

Board of Governors of the Federal Reserve System, April 25, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–11237 Filed 4–30–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Capitol Bancorp, Ltd., Lansing, Michigan, and Sun Community Bancorp, Ltd., Tucson, Arizona; to acquire 51 percent of the voting shares of Valley First Community Bank, Scottsdale, Arizona, a *de novo*.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Whipple Family Limited Partnership, Arkadelphia, Arkansas; to acquire up to 49.99 percent of the voting shares of Horizon Bancorp, Inc., Arkadelphia, Arkansas, and thereby indirectly acquire Horizon Bank, Inc., Malvern, Arkansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Hawkins Financial Corporation, Hawkins, Texas, and Hawkins Delaware Financial Corporation, Wilmington, Deleware; to become bank holding companies by acquiring 100 percent of the voting shares of The First State Bank of Hawkins, Hawkins, Texas.

Board of Governors of the Federal Reserve System, April 25, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–11236 Filed 4–30–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m. (EDT), May 12, 1997.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center record keeping.
2. Congressional/agency/participant liaison.
3. Benefits administration.
4. Investments.
5. Participant communications.
6. Approval of the minutes of the last meeting.
7. Thrift Savings Plan activity report by the Executive Director.
8. Approval of the update of the FY 1997 budget and FY 1998 estimates.
9. Investment policy review.
10. Status of audit recommendations.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Date: April 28, 1997.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 97–11503 Filed 4–29–97; 2:38 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

William G. McCown, Ph.D., Integra, Inc.: Based upon a report forwarded to the Office of Research Integrity (ORI) by Compass Information Services, Inc., and information obtained by ORI during its oversight review, ORI found that Dr. McCown, former Project Director at Integra, Inc. (now Compass Information Services, Inc.), engaged in scientific misconduct by falsifying answer sheets for an ''Item Count Substance Abuse Survey'' supported by a grant from the National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Dr. McCown has entered into a Voluntary Exclusion Agreement with ORI in which he does not admit to any acts of scientific misconduct but has voluntarily agreed, for the three (3) year period beginning April 17, 1997:

(1) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which Dr. McCown's participation is proposed or which uses him in any capacity on PHS supported research must concurrently submit a plan for supervision of his duties. The supervisory plan must be designed to ensure the scientific integrity of Dr. McCown's research contribution. The institution must submit a copy of the supervisory plan to ORI.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–11293 Filed 4–30–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–8–97]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Evaluation of the Field Epidemiology Training Program (FETP)—New—A questionnaire has been designed to collect information for the ''Evaluation of the Field Epidemiology Training Program'' project. The purpose of the project is to develop and implement a comprehensive evaluation strategy which will provide the International Branch, Division of Field Epidemiology, Epidemiology Program Office, with the capacity to assess the degree to which CDC's Field Epidemiology Training Program (FETP) has achieved its objectives: (1) To train public health professionals in applied epidemiological skills; (2) to promote the sustainability of autonomous FETPs; and (3) to develop a global network of national programs. The information gathered will be analyzed, in conjunction with data collected from other sources, to address these questions. The results of the project will assist the International Branch, Division of Field Epidemiology, Epidemiology Program Office, in accomplishing the part of its mission related to protecting the health of the public of the United States, through maintaining a strong international presence and an international network of public health professionals and officials. In order to focus its support to international training efforts and resource allocation, a representative view of the overall Field Epidemiology Training Program (FETP), which includes assessing the recruitment of countries, the sustainability of autonomous FETPs, the quality of training, the public health usefulness of FETP, and the international linkages of FETP is needed. The total annual burden hours are 265.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)
Form A	75	1	0.5

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)
Form B	75	1	1
Form C	200	1	0.5
Form D.1	5	1	0.5
Form D.2	5	1	0.5
Form D.3	5	1	0.5
Form E	50	1	1

Dated: April 24, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–11309 Filed 4–30–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ACF Annual Grantee Survey of the Low Income Home Energy Assistance Program.

OMB No.: 0970–0076.

Description: ACF is required by law to provide Congress with fiscal and caseload estimates of the Grantee LIHEA Programs. The Secretary is also required to submit a report to Congress each fiscal year, for the prior fiscal year, containing a compilation to the data requirements under subsection (b) as follows: ''number and income levels of households assisted; number of households which received such assistance . . .; the impact of each State's program on recipient and eligible households, and any other information which the Secretary determines to be reasonably necessary to carry out the provisions of this title.'' The data will be used to respond to inquiries from Congress, OMB, and the White House, displayed in tables in the Secretary's Annual LIHEA Report to Congress, and disseminated through information memoranda to grantees and other interested parties.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Survey	51	1	3.75	191.25

Estimated Total Annual Burden Hours: 191.25.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 24, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–11233 Filed 4–30–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Support Enforcement Program: State Plan Approval and Grant Procedures, State Plan Requirements, Standards for Program Operations, Federal Financial Participation, Optional Cooperative Agreements for Medical Support Enforcement, and Computerized Support Enforcement Systems.

OMB No.: 0970–0017.

Description: The Office of Child Support Enforcement is requesting public comments for the information collection requirements included in a Notice of Proposed Rulemaking issued January 29, 1996 in the **Federal Register** (61 FR 2774). As required by the Paperwork Reduction Act of 1995 (44

U.S.C. 3507 (d)), The Department of Health and Human Services is submitting a copy of the revised State plan preprint page to the Office of Management and Budget (OMB) for its review.

The State plan preprint and amendments serve as a contract with OCSE in outlining the activities the States will perform as required by law in order for States to receive federal funds to meet the costs of these activities. We are asking for approval of the revised State plan preprint page for Periodic Reporting to Consumer Reporting Agencies to reflect new Federal requirements. Procedures to Improve Program Effectiveness, is amended by adding a new section 7, Periodic Reporting to Consumer Reporting Agencies, which requires the State to have procedures, (1) to periodically report information regarding the amount of overdue support owed by an absent parent to consumer reporting agencies when such amount exceeds $1,000 and is at least two months in arrears in accordance with section 666(a)(7) of the Act; and 92) for making absent parent information available to Consumer Reporting Agencies in accordance with Sec. 302.70(d). The information collected on the State plan pages is necessary to enable OCSE to monitor compliance with the requirements in Title IV–D of the Social Security Act and implementing regulations.

Respondents: State governments.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan	54	1836	.717	1,316
Estimated Total Annual Burden Hours: 1,316.				

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, Larry Guerrero.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: April 25, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–11234 Filed 4–30–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97C–0171]

Closure Medical Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Closure Medical Corp. filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Violet No. 2 to color 2-octyl cyanoacrylate topical tissue adhesives.

DATES: Written comments on the petitioner's environmental assessment by June 2, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1)), notice is given that a color additive petition (CAP 7C0250) has been filed by Closure Medical Corp., 5265 Capital Blvd., Raleigh, NC 27616. The petition proposes to amend the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 to color 2-octyl cyanoacrylate topical tissue adhesives.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before June 2, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 16, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–11238 Filed 4–30–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–0097]

Agency Information Collection Activities: Proposed Collection; Comment Request

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 the 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: Extension of a currently approved collection; *Title of Information Collection:* Requirement to Disclose HMO Financial Information to Members, 42 CFR 417.124; HCFA–R–0097; *Use:* Federally qualified HMOs must meet the full and fair disclosure requirements at 42 CFR 417.124. It requires a written description of an HMOs benefits, coverage, procedures for obtaining benefits, circumstances under which benefits may be denied, premium rates, grievance procedures, service area, provider location(s), hours of service, participating providers, and the financial condition of the HMO. *Frequency:* On occasion; *Affected Public:* Business or other for profit, and Not for profit institutions; *Number of Respondents:* 386; *Total Annual Hours:* 193.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, 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 Financial and Human Resources, Management Analysis and Planning Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 23, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–11269 Filed 4–30–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–482]

Agency Information Collection Activities: Proposed Collection; Comment Request

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 the 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: Extension of a currently approved collection; *Title of Information Collection:* Methodology for Estimating Waiver Costs of HCFA Demonstration Projects; *Form No.:* HCFA–482; *Use:* The information collected is intended to provide guidance to individuals responsible for the preparation of waiver cost estimates for HCFA demonstrations. These estimates are used in analysis of potential costs and benefits associated with implementing a proposed policy. *Frequency:* On occasion; *Affected Public:* State, Local or Tribal Government, Business or other for profit, Not for profit institutions and, Individuals or Households; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 4000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, 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 Financial and Human Resources, Management Analysis and Planning Staff, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 22, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–11277 Filed 4–30–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

The Health Education Assistance Loan (HEAL) Program: Forms—0915–0034—Extension, No Change—This clearance request is for extension of approval for 4 HEAL forms. The forms are needed for lenders to make application to the HEAL insurance program; to report accurately and timely on loan actions including the lender currently holding the loan, and to establish the repayment status of borrowers. The reports assist the Department in protecting its investment in this loan insurance program. The estimate of burden for the forms are as follows:

HRSA Form	Number of respondents	Responses per respondents	Hours per response (min.)	Total burden hours
Form 504	32	1	8	4
Form 505	9	331	5	248
Form 507	32	265	10	1,413
Form 508:				
Borrowers	12,180	1	10	2,030
Employers	7,550	1.613	5	1,015

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 8, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–11291 Filed 4–30–97; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of Application Deadlines for Fiscal Year 1997 for Selected Programs of the Health Resources and Services Administration

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice of Application Deadline Dates for Fiscal Year 1997.

SUMMARY: The Health Resources and Services Administration's Bureau of Primary Health Care (BPHC) expects to provide funding, under Section 330 of the Public Health Service (PHS) Act (42 USC 254b), for new and expansion grant applications during fiscal year 1997 for Community, Migrant, and Homeless health centers. The purpose of this announcement is to inform potential applicants of estimated funding available and application deadlines.

FOR FURTHER INFORMATION CONTACT: Potential applicants may contact the appropriate individual as indicated below for program information.

For Community and Migrant Health Centers, contact: Richard C. Bohrer, Director, Division of Community and Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration 4350 East-West Highway, Bethesda, Maryland 20814, Phone: (301) 594–4300.

For Homeless Health Centers, contact: Nathan Stinson, Jr., M.D., Acting Director, Division of Programs for Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Phone: (301) 594–4420.

For application materials, contact: HRSA Grants Application Center, 40 West Gude Drive, Suite 100, Rockville, Maryland 20850, 1–888–300–4772.

SUPPLEMENTARY INFORMATION: Set forth below is the information for each of the identified BPHC programs.

Program Authority: Community Health Centers [Section 330(e) of the PHS Act (42 USC 254b(e)], New Starts and Expansions.

CFDA#: 93.224.

Application Deadline: June 1, 1997.

Estimated Number of Awards: 25.

Estimated Amounts Available: $14 million.

Program Authority: Migrant Health Program [Sec 330(g) of the PHS Act (42 USC 254b(g)], New Starts.

CFDA#: 93.246.

Application Deadline: June 1, 1997.

Estimated Number of Awards: 3–5.

Estimated Amounts Available: $1 million.

Program Authority: Health Care for the Homeless [Sec 330(h) of the PHS Act (42 USC 254b(h)], New Starts.

CFDA#: 93.151.

Application Deadline: June 16, 1997.

Estimated Number of Awards: 3–5.

Estimated Amounts Available: $1.5 million.

Separate application materials are available for (1) Community and Migrant Health Centers and (2) the Health Care for the Homeless Program. The application materials include a copy of the program guidance for each program. Further information on program requirements are in the HRSA Preview published in the **Federal Register** on April 22, 1997.

Dated: April 25, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–11292 Filed 4–30–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4222–N–01]

User Fee Schedule for the Technical Suitability of Products Program—Revisions in the User Fees Assessed Manufacturers of Materials and Products

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice revises the User Fee Schedule for the Technical Suitability of Products program published as a final rule on August 9, 1984, and later revised in notices published on January 22, 1985 and on August 1, 1990. This revised schedule increases the fees listed in the August 1, 1990 notice.

EFFECTIVE DATE: May 1, 1997.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director of the Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Room 9146, 451 7th Street, SW., Washington, DC 20410. Telephone (202) 708–4560. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Under the authority of section 7(j) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(j)), the Department issued a final rule on August 9, 1984 (49 FR 31854) establishing a system of fees to be charged to manufacturers of products and materials used on structures approved for mortgages or loans insured under the National Housing Act (12 U.S.C. 1701 *et seq.*). (That rule is codified at 24 CFR 200.934.) Under the rule, manufacturers that seek HUD acceptance of their materials and products under the Technical Suitability of Products (TSP) program (section 521 of the National Housing Act, 12 U.S.C. 1735e) will be charged fees for initial applications, renewals, and revisions with respect to documents

for technical suitability. Paragraph (c) of 24 CFR 200.934 provides, in relevant part, that the Department will establish and amend the fee schedule by publication of a notice in the **Federal Register**.

The Department has not amended the present fee schedule since August 1, 1990 (55 FR 31240). Income received as a result of the present User Fee Schedule does not maintain the current minimum level of support for the ongoing TSP program. A fee increase is necessary for the following reasons: (1) To maintain partial recovery of program costs, since fees have not been adjusted for nearly 7 years; (2) to compensate the Department more adequately for processing ''revisions,'' which require substantially more work than ''renewals''; (3) to bring the Department's fees more in line with, although significantly lower than, other nationally recognized technical evaluation programs; and (4) to recognize the fact that TSP renewals are for a 3-year period, which is a longer duration than provided by other nationally recognized evaluation programs.

Accordingly, notice is hereby given that the Department is revising the fee schedule published in the notice of August 1, 1990 (55 FR 31240), as set forth below. Additionally, the Department is modifying the designation ''Area Letter of Acceptance'' (ALA) to ''State Letter of Acceptance (SLA). The Department is discontinuing Regional Letters of Acceptance (RLA), and replacing them with State Letters of Acceptance (SLA). This modification reflects a change in Departmental procedures which authorize State Offices, in lieu of Regional Offices, to issue SLAs. This notice also clarifies that the renewal fee applies to Structural Engineering Bulletins (SEBs), Mechanical Engineering Bulletins (MEBs), Materials Releases (MRs), Administrators Review for Acceptance of UM Bulletins (ARAs), and SLAs only.

The complete fee schedule, as revised, is as follows:

(i) Initial Applications

Structural Engineering Bulletins (SEBs)—$4,000
Mechanical Engineering Bulletins (MEBs)—$4,000
Materials Releases (MRs)—$4,000
State Letters of Acceptance (SLAs)—$1,000
Use of Materials Bulletins Administrator Review for Acceptance (ARAs)—$3,000

(ii) Revisions

Structural Engineering Bulletins (SEBs)—$2,000
Mechanical Engineering Bulletins (MEBs)—$2,000
Materials Releases (MRs)—$2,000
State Letters of Acceptance (SLAs)—$800

(iii) Basic Renewal Fee Without Revision

The following fee schedule, as revised, will be assessed every three years for renewal without change:

Structural Engineering Bulletins (SEBs)—$800
Mechanical Engineering Bulletins (MEBs)—$800
Materials Releases (MRs)—$800
State Letters of Acceptance (SLAs)—$400

Authority: Sections 7 (d) and (j), Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d) and (j), and 24 CFR 200.934(c).

Dated: April 14, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–11275 Filed 4–30–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum to be held at 10 a.m. on May 21, 1997. The meeting will take place at the Anchorage Hilton Hotel, Alaska Ballroom, 500 West 3rd Avenue, Anchorage, Alaska. This meeting will be held to receive and discuss work group reports on recreation and tourism. The agenda will also include several briefing items.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

Deborah L. Williams

Special Assistant to the Secretary for Alaska.

[FR Doc. 97–11331 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–RP–M

DEPARTMENT OF THE INTERIOR

Western Water Policy Review Advisory Commission Meeting

AGENCY: Department of the Interior.

ACTION: Notice of open meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Western Water Policy Review Advisory Commission (Commission), established by the Secretary of the Interior under the Reclamation Projects Authorization and Adjustment Act of 1992, will meet to discuss draft Introduction, Historical Content, and West Today (chapters I, II, & III) of the Commission Report and meet on other Commission business.

DATES: Thursday, May 15, 1997, 8:30 a.m.–5 p.m., Friday, May 16, 1997, 8 a.m.–5 p.m., Saturday, May 17, 1997, 8 a.m.–12 p.m.

ADDRESSES: Location: SD–124 Dirksen Senate Office Building, First Street and Constitution Avenue, NE (May 15, 8:30 a.m.–12 p.m.) and Radisson Barcelo, 2121 P Street NW, Washington, DC (May 15, 1:30 p.m.–5 p.m., May 16 and May 17). Room locations in the hotel will be posted in the hotel lobby. Copies of the agenda re available from the Western Water Policy Review Office, D–5001; PO Box 25007; Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: The Commission Office at telephone 303–236–6211, FAX 303–236–4286, or E-mail to rgunnarson@do.usbr.gov.

SUPPLEMENTARY INFORMATION:

Public Participation: Written statements may be provided in advance to the Western Water Policy Review Office, address cited under the **ADDRESSES** caption of this notice, or submitted directly at the meeting. Statements will be provided to the members prior to the meeting if received by no later than May 7, 1997. The Commission's schedule will not allow time for formal presentations by the public during the meeting.

Dated: April 25, 1997.

Larry Schulz,

Administrative Officer.

[FR Doc. 97–11308 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of an Interagency Agreement for the Conservation of the Coral Pink Sand Dunes Tiger Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of conservation agreement and document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces agreement between the Utah Division of Parks and Recreation (Division); the U.S. Bureau of Land Management (BLM); the Kane County, Utah Commission; and the Service to the provisions of a conservation agreement and strategy to provide for the conservation of the Coral Pink Sand Dunes tiger beetle. The Service also announces the availability of the document containing that conservation agreement/strategy: *Conservation Agreement and Strategy for the Coral Pink Sand Dunes Tiger Beetle (Cicindela limbata albissima)* (Conservation Agreement). This species is currently a candidate for listing as endangered or threatened under the provisions of the Endangered Species Act of 1973, as amended (Act). The agreement focuses on identifying, reducing and eliminating significant threats to the tiger beetle that warrant its candidate status, and enhancing and maintaining the species population and habitat to ensure its long term conservation.

DATES: Parties to the Coral Pink Sand Dunes Tiger Beetle Conservation agreed to and signed the agreement on April 18, 1997.

ADDRESSES: Persons wishing to review the Conservation Agreement/Strategy may obtain a copy by contacting the Assistant Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Comments and materials received and information used in developing this agreement are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Williams, Assistant Field Supervisor (see **ADDRESSES** section) (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

The Coral Pink Sand Dunes (CPSD) tiger beetle (*Cicindela limbata albissima*) is a terrestrial, predaceous insect in the family Cicindelidae. The beetle occurs only at the Coral Pink Sand Dunes. The Coral Pink Sand Dunes comprise a dune field about 8 miles long and a little less than 1 mile wide. These dunes are located in Kane County about 7 miles west of Kanab, Utah. The southern portion of the Coral Pink Sand Dunes is within the State of Utah's Coral Pink Sand Dunes State Park, managed by the Division. The northern portion of the Dunes is on public land managed by the BLM, Kanab Resource Area. The BLM's portion of the Coral Pink Sand Dunes is within the Moquith Mountain Wilderness Study Area.

Previous Federal Action

The CPSD tiger beetle is currently a candidate species for listing under the provisions of the Act in the Service's most recent Notice of Review, February 28, 1996 (61 FR 7596). On April 19, 1994, the Southern Utah Wilderness Alliance petitioned the Service to list CPSD tiger beetle and designate critical habitat. On September 8, 1994, the Director of the Service approved the 90-day petition finding as providing substantive information that the species' listing may be warranted (59 FR 47293). On November 25, 1996, the Service published a Notice in the **Federal Register** (61 FR 59889) announcing the availability of the draft conservation agreement for public comment. Public hearings were, also, announced and held in: Kanab, Utah on December 4, 1996; in St. George, Utah on December 5, 1996; and in Salt Lake City, Utah on December 10, 1996. The Service published a notice inviting public comment on the draft conservation agreement in the following newspapers: Salt Lake Tribune/Deseret News, Southern Utah News (Kanab, Utah), St. George Daily Spectrum, and Las Vegas Review Journal/Las Vegas Sun. The announced comment period ended January 24, 1997.

Summary of Comments and Recommendations

During the comment period, the Service received both written and oral comments from 111 parties, including testimony presented at the public hearings. All comments received were from private individuals or groups. Written and oral comments from both the public hearing and the comment period are combined in the following discussion. Comments questioning the conservation agreement are organized into specific issues. These issues and joint response of the Service, BLM, and the Division to each are summarized as follows:

Issue 1: the Service and the BLM lack authority to enter into and implement conservation agreements under authority of the Act without first listing the species pursuant to section 4 of the Act.

Response: Section 2(b) of the Act declares the intent of the Act is to ''* * * provide as means whereby the ecosystems upon which endangered and threatened species depend may be conserved * * *'' and section 2(c)1 ''* * * all Federal departments and agencies shall seek to conserve endangered species and threatened species * * *''. Section 3(17) of the Act directs the Secretary of the Interior (through the Fish and Wildlife Service) to ''* * * establish a program to conserve fish and wildlife and plants * * *'' Nothing in the Act precludes the Service from proactive measures to provide early conservation to endangered or threatened species. The Service has in several instances developed conservation agreements with other parties responsible for the management of the habitat of those species. The conservation agreement approach enables land managing agencies such as the BLM and the Division, to use their authorities to implement conservation programs that have the potential to conserve and recover species that are tending toward endangerment. The BLM has broad authority under sections 201, 203, and 307 of the Federal Land Management Policy Act to plan for and manage ecosystems on lands under its jurisdiction. The conservation agreement and strategy has been clarified to more accurately reflect this information.

Issue 2: The Utah Division of Parks and Recreation lacks authority to enter into and implement conservation agreements under the authority of the Utah Off-Highway Vehicle Act (OHV).

Response: The Division has the authority to enter into and implement conservation agreements within both the Utah Off-Highway Vehicle Act, Utah Code Annotated (UCA) 41–22–1 and UCA 63–11–19 that authorize the Division to enter into contracts and agreements with the government of the United States. Additional discussion of the Division's authority has been added to the conservation agreement.

Issue 3: The draft agreement requires independent National Environmental Policy Act (NEPA) compliance. The agreement is not consistent with a similar BLM effort in Idaho.

Response: The Conservation Agreement and Strategy is being developed for planning purposes. Before any on-the-ground actions can occur on

BLM administrated lands, a determination must be made whether or not the Conservation Agreement and Strategy is consistent with BLM's Vermillion Land Use Plan and whether or not additional NEPA analysis is required. If the Conservation agreement is not consistent with the plan then it must be incorporated into the plan through an amendment process. NEPA compliance in the form of an environmental assessment would accompany this amendment. As a result of conversations (pers. comm. Ronald Bolander, Bureau of Land Management, Salt Lake City, Utah, 1997) with Idaho BLM personnel, Utah BLM has determined that this process is consistent with a similar action involving another species of tiger beetle that occurs in that State. The Conservation Agreement has been clarified to more accurately reflect this information.

Comment 4: Is this decision subject to administrative appeal and in what manner may affected parties pursue their appeal rights.

Response: Protest and appeal rights come at the point of decision following application of NEPA. In this situation the right to protest to the BLM Director would be initiated by a decision record for a land use plan amendment. If it is determined that the Conservation Agreement and Strategy is not consistent with the existing land use plan the right to appeal a decision to the Interior Board of Land Appeals would begin with the signing of a Decision Record for an on-the-ground action following the preparation of an Environmental Assessment with or without an accompanying plan amendment. The procedures for plan amendments, preparation of NEPA documents and protests and appeals are detailed in BLM's 1610 and 1792 Manuals and in 43 CFR Part 4.

Comment 5: Analysis of applicable BLM planning regulations prevents implementation of the draft agreement * * * the BLM managed lands lie within the Moquith Mountain Wilderness Study Area * * * The interim Wilderness Study Area policy precludes implementation of the proposed activity by BLM.

Repsonse: Wilderness Study Area designation does not preclude preparation of planning documents such as conservation agreements and strategies and land use plan amendments. Nor does it preclude any subsequent on-the-ground actions so long as they are nonimpairing as defined by the Interim Management guidelines. Preparation of the Conservation Agreement for the CPSD tiger beetle, subsequent land use planning evaluations and NEPA related actions fail within these guidelines.

Comment 6: Since the presence of the species has been known for years, why hasn't it been addressed through legally outline planning processes rather than through a special extra legal inter-agency agreement?

Response: The conservation of the CPSD tiger beetle has been recognized as an issue during public scoping for BLM and Division planning efforts for several years. Meetings from the late 1980's to present have recognized the presence of the species and the need for special conservation measures on the Coral Pink Sand Dunes. The Conservation Agreement and Strategy will provide useful guidelines for future management for both the State and Federal portions of the Coral Pink Sand Dunes.

Comment 7: There is no basis for a 10-year duration of the proposed conservation agreement.

Response: Ten years is a reasonable period of time to evaluate the species biological response to the intended land management actions. It is also an adequate time frame for agency land use actions to be implemented. The parties to the Conservation Agreement will review the success of the strategy annually to determine its adequacy and need.

Comment 8: Biological research data fails to show substantial jeopardy to tiger beetle populations to justify the proposed conservation actions.

Response: The scientific information on hand demonstrates that several biotic and abiotic factors are actively and potentially affecting the species including: recreational off-road vehicle use, parasitism, periodic climatic conditions, and over-collecting of specimens, resulting in a very small species population and restricted range.

Comment 9: The no-play restriction in the travel corridor comprising the eastern portion of ''Conservation Area A'' should be removed.

Response: The eastern portion of ''Conservation Area A'' contains occupied habitat of the CPSD tiger beetle. In reviewing the final boundary, the Conservation Planning team determined that it is essential for the conservation of the species that OHV use be kept to a minimum in this area.

Comment 10: The Conservation Agreement ignores collection threats to the CPSD tiger beetle.

Response: Collection threats are acknowledged in the studies that contributed to the biological basis for the conservation agreement. Control of collection is identified in ''Action 1'' of the ''Conservation Actions to be Implemented'' section of the agreement. The final conservation agreement explicitly provides for control of collection on both BLM and State Park portions of the Coral Pink Sand Dunes.

Comment 11: Implementation of the draft conservation agreement may tend to concentrate non-motorized visitors in the best occupied habitat of the CPSD tiger beetle.

Response: Visitor education is expected to develop knowledge of and sensitivity to critical areas within the conservation areas. Effective education along with adequate signing and both recreational and biological monitoring should avoid this potential problem. To date biological date has not indicated an existing problem with human foot traffic within the species habitat. However, monitoring will continue and if impacts to the species population become apparent the parties to the agreement will address them appropriately.

Comment 12: The parties to the agreement have inadequate resources to provide on-the-ground enforcement of the conservation agreement.

Response: The Conservation Agreement identifies the resources available to implement the agreement (see pages 6–8). The Division has two full time park rangers with law enforcement authority assigned to Coral Pink Sand Dunes State Park. These two rangers along with the Bureau's law enforcement officer in the Kanab Area Office will provide supervision of use within the species two conservation areas. The Division, Bureau, and Service will provide additional resources such as signing, visitor education, and strategic fencing to implement the conservation agreement and strategy.

Comment 13: The seasonal and weather effects on the CPSD tiger beetle vulnerability vary markedly from wet to dry periods. Therefore, restrictions on OHV use should be relaxed during dry summer periods.

Response: Degradation of larval interdunal swale habitat remains a significant concern regardless of current moisture conditions of the sand dunes. It is difficult and confusing to the publics to vary vehicle use restrictions during the recreational season. The approach taken by the Conservation Team is to provide maximum conservation area for the species while minimizing affects to off-road recreational use areas.

Comment 14: Coral Pink Sand Dunes tiger beetle habitat should be more narrowly defined to include only the occupied interdunal larval beds. That, with seasonal use restrictions, would

provide adequate protection for the species.

Response: Based on current research and principals of conservation biology, the planning team has established buffers around the species occupied larval habitat to protect aestivating adults. As more biological information becomes available these ares will be reviewed by the Conservation Team.

Comment 15: The CPSD tiger beetle population may lack genetic variability and the species inadequate heterozygosity may cause eventual extinction regardless of conservation measures.

Response: Many species, including tiger beetles, have persistent populations with low genetic variability. Recently, Volger and others (1993) showed that another endangered tiger beetle, *Cicindela d. dorsalis*, with a large historic range from Virginia to Massachusetts, has very low genetic variability both at present and historically. Nevertheless, as a precaution to prevent extinction of the CPSD tiger, it is essential that conservation efforts include maintaining, to the maximum extent possible those portions of the species natural environment.

Comment 16: The Conservation agreement improperly claims to implement safety regulations.

Response: The Utah Division of Parks and Recreation is motivated to conserve the Coral Pink Sand Dunes' biological resources as well as to enhance public safety. The Division disagrees that documented accidents must occur as justification for concern and management action in association with the conservation agreement. Both motorized and non-motorized user groups have articulated complaints regarding potential threats to safety. The Division is reasonable and prudent in responding proactively to minimize exposure to this risk. Improved safety for all park users is an important side benefit of the Conservation Agreement.

Comment 17: The Conservation Agreement impacts less experienced riders and children disproportionately due to the travel restrictions identified in Conservation Area ''A''.

Response: Inexperienced riders and children will continue to have opportunity to enjoy motorized recreation both on the BLM portion of the dunes near established access points as well as near the main access point near the State park campground. These areas provide easy to ride low angle dunes suitable to the novice rider.

Comment 18: The Conservation Agreement depends on narrow unpublished data insufficient to justify its proposed actions.

Response: The signatories to the Conservation Agreement have based the proposed actions on the best scientific information available. The Service finds the reports on the ongoing scientific research on the CPSD tiger beetle well documented and consistent with accepted biological research procedures and techniques. Population and habitat monitoring and scientific research will continue using the best techniques available. Additional biological and habitat information will be incorporated into the management of the species conservation areas.

Comment 19: The CPSD tiger beetle *(Cicindela limbata albissima)* occurs else where in western North America including sand dunes in Idaho.

Response: As described above in the background information, the CPSD tiger beetle is found nowhere else other than the Coral Pink Sand Dunes. The Idaho dunes tiger beetle (*Cicindela arenicola*) is a different species.

Comment 20: The Conservation Agreement cannot compromise CPSD tiger beetle conservation to accommodate OHV recreation.

Response: All parties to the agreement are convinced that the full implementation of the Conservation Agreement will provide protection to the CPSD tiger beetle equivalent to or greater than the species would receive if it were listed under the provisions of the Act. In addition, parties to the agreement have committed that if the conservation measures are not adequate, the agreement will be modified to remedy any shortcoming.

Comment 21: The Conservation Agreement does not provide a balanced approach to recreational opportunities.

Response: The stated purpose of the Conservation Agreement is to identify those areas crucial for the conservation of the CPSD tiger beetle and those activities consistent with the species conservation within those areas.

Comment 22: The Conservation Agreement allows OHV use to continue without critical information concerning specific needs of CPSD tiger beetle population and habitat. Information gaps include: demographic and other population measurement needs in defining and maintaining a minimum viable population; information supporting 2,000 adult individuals per population as a recovery goal; information indicating that a protected corridor of potential habitat between populations is or is not necessary.

Response: The parties to the Conservation Agreement have based the proposed conservation actions on the best scientific information available. Techniques for determining minimum viable population estimates for insects have not been developed. The immediate goal is to maintain its population at the optimum numbers consistent with the species occupied habitat. The species optimum population level may change as a consequence of additional research. The species has two known sub-populations. Each is protected in each of the two conservation areas. it is not known if other sub-populations occur. Currently no known high quality habitat occurs outside Conservation Area A. The maintenance of both populations within their respective conservation areas is critical as a hedge against a catastrophic event in either population. The Conservation Agreement requires the involved parties to adjust population numbers and habitat areas as new and refined information concerning the species population and ecology is acquired.

Comment 23: The draft conservation agreement does not promote the overall Coral Pink Sand Dunes ecosystem health by focusing only on the CPSD tiger beetle.

Response: Other Bureau and Division planning efforts are underway which will address conservation issues related to the Coral Pink Sand Dunes ecosystem as a whole. The CPSD tiger beetle conservation agreement will be incorporated into these other ecosystem planning efforts to benefit other species, thus effectively promoting ecosystem health.

Comment 24: Protect the CPSD tiger beetle and the natural environmental integrity of the Coral Pink Sand Dunes.

Response: The express purpose of the conservation agreement is the protection of the CPSD tiger beetle and its habitat. The involved parties are in agreement that with the implementation of the agreement, conservation will occur as a consequence of the efforts of all parties and the public at large.

Comment 25: Do not close the Coral Pink Sand Dunes to motorized recreation.

Response: The majority of the Coral Pink Sand Dunes will remain open to all recreational use including OHVs. Motorized travel will be restricted or prohibited in an area of less than 20 percent of the dunes.

Conservation Agreement

The Service has assessed existing and potential threats facing the species based on the five criteria as required by Section 4(a)(1) of the Act. Within each of these criteria, several factors which have contributed to the degradation of

CPSD tiger beetle habitat and its populations were identified (59 FR 47293). The Conservation Agreement provides conservation measures to adequately address each of those factors. The Conservation Agreement focuses on the following goals: (1) Permanently protect CPSD tiger beetle habitat in two designated conservation areas within the historical range of the species. (2) Establish a continuing management program that educates and enforces CPSD tiger beetle conservation measures within the Coral Pink Sand Dunes. (3) Monitor the CPSD tiger beetle population to demonstrate those conservation measures taken for the species are maintaining it at viable population levels. (4) Gain additional biological and ecological information concerning the beetle and its dune habitat. (5) Form a conservation advisory committee to coordinate all conservation actions and to act as an information gathering and dissemination center. (6) Provide for both motorized and non-motorized recreation within the Coral Pink Sand Dunes consistent with the conservation of the CPSD tiger beetle.

The Conservation Agreement will provide for the recovery of the CPSD tiger beetle by establishing a framework for cooperation and coordination among all involved parties. It will also establish a frame work for conservation efforts, setting recovery priorities, and establishing costs and responsibilities of the various tasks necessary to accomplish the recovery priorities.

Author: The primary author of this notice is John L. England (see **ADDRESSES** section) telephone 801/524–5001).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 21, 1997.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 97–11286 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Microsoft Corporation. The purpose of the CRADA is to jointly research and develop general public-oriented data browsing and retrieval capabilities. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Acting Chief of Research, U.S. Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4643, facsimile (703) 648–4706; Internet ''ebrunson@usgs.gov''.

FOR FURTHER INFORMATION CONTACT:

Ernest B. Brunson, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: April 24, 1997.

Wendy Budd,

Associate Chief, National Mapping Division.

[FR Doc. 97–11338 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–00: GP7–0168]

Notice of Meeting of John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District.

ACTION: Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon, June 3, 1997.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on June 3, 1997 from 8:00 am to 5:00 pm, at the Red Lion Inn, 304 SE Nye Ave., Pendleton, Oregon. Public comments will be received at 1:00 pm. Topics to be discussed include the Interior Columbia Basin Ecosystem Management Project, Standards for Rangeland Health and Guidelines for Livestock Grazing on public lands, current issues, and proposed recreation fees on Forest Service Lands.

FOR FURTHER INFORMATION CONTACT:

James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, Prineville, Oregon 97754, or call 541–416–6700.

Dated: April 22, 1997.

James L. Hancock,

District Manager.

[FR Doc. 97–11285 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV 910 0777 30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management.

ACTION: Resource Advisory Council's Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 USC., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for this meeting includes: approval of minutes of the previous meetings, update on land sales-exchanges-trades, Interior Columbia River Basin EIS Project, Final Mine Bonding Regulations, proposed 3809 Regulatory Revision (Hardrock Mining), Standards and Guidelines, Coordinated Resource Management Group reports (elk, fire management, grazing, South Fork recreation management plan), range issues (including, but not limited to, wild horses, unauthorized use, Bureau priorities for allotments), Vision of the Future, identification of additional issues to be resolved and determination of the subject matter for future meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the District Manager at the Battle Mountain District Office, 50 Bastion Road, PO Box 1420, Battle Mountain, Nevada 89820, telephone (702) 635–4000.

DATES, TIMES: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, Eureka Opera House (lower floor conference room), Eureka, Nevada,

89316; May 9, 1997, starting at 9 am; public comments will be at 11 am and 3 pm; tentative adjournment 5 pm. If additional time is required to complete the scheduled business, the meeting may continue on May 10, 1997 following the same meeting and public comment time schedule until the meeting is adjourned.

FOR FURTHER INFORMATION CONTACT: Curtis G. Tucker, Team Leader for the Northeastern Resource Advisory Council, Ely District Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the 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 public lands.

Gerald M. Smith,

District Manager, Battle Mountain.

[FR Doc. 97–11290 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–065–07–1990–02; CACA–37875]

Notice of Realty Action; California

ACTION: Notice

SUMMARY: The Bureau of Land Management is offering the following lands in Kern County, California for direct sale.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management at 300 S. Richmond Road, Ridgecrest, CA 93555, ATTN: Linn Gum, Ph: 760–384–5450.

SUPPLEMENTARY INFORMATION: Under the Land Tenure Adjustment Element entitled ''Needs of Desert Communities'', the California Desert Protection Plan of 1980 provides guidance allowing the Bureau of Land Management to consider the special needs of desert communities by the transfer of ownership of key public land parcels in and around these communities. The following public lands have been found suitable for sale under Section 203 of the Federal Land Policy and Management Act of 1976 for non-competitive Direct Sale to the current residents, structure owners and/or mining claimants. The appraisal was completed in accordance with the Federal Uniform Appraisal Standards of 1992 and the United States Professional Appraisal Practices of 1997.

Mount Diablo Meridian, California

T. 29S., R. 40E.,

Sec. 35.

Lot No.	Acreage	Fair Market Value
48	1.31	$1,000
49	.96	500
50	.48	500
53	.65	500
54	.25	500
55	.11	500
56	.31	500
57	.19	500
58	8.19	4,100
59	.02	500
60	.12	500
61	.41	500
62	.23	500
63	.21	500
64	.20	500
65	.30	500
66	.38	500
67	.32	500
68	.36	500
69	.52	500
70	.48	500
71	.43	500
72	.09	500
73	.32	500
74	.22	500
75	.20	500
76	.18	500
77	.11	500
78	.33	500
79	.21	500
80	.20	500
81	.20	500
82	.55	500
83	.35	500
84	.50	500
85	.54	500
86	.38	500
87	.35	500
88	.11	500
89	.19	500
90	.23	500
91	.14	500
92.	19	500
93	.04	500
94	.06	500
95	.02	500
96	.04	500
97	.23	500
98	.10	500
99	.25	500
100	.11	500
101	1.51	1,000
102	.34	500
103	.45	500
104	.02	500
.....	.....	.....

Sale Procedures and Requirements

Direct Sale of most of the lots that are encumbered by surface occupancy and use also have current mining claims encumbering the subsurface estate. The Sale procedures have been specifically designed to ensure that either the surface user or mining claimant has first and/or second rights of acceptance, respectively. Upon the 61st day following receipt of this notice, BLM will offer the lots to the designated buyers.

First Right of Acceptance: The surface occupant will have the first opportunity to purchase their lot(s) from the Bureau of Land Management. The purchase is for the fair market value as determined by appraisal completed on April 8, 1997.

Failure by the surface occupant to accept the offer in writing, within 30 days from the date of its receipt, and to submit full payment for the fair market value price of the lot(s) offered will be considered a refusal of the Sale Offer. Such a refusal will result in the lots(s) being offered for sale to the underlying mineral interest owner (mining claimant), if one exists.

All payments for the offered lots must be in the form of a certified or Cashiers check, bank draft or money order which is made payable to the U. S. Department of the Interior, Bureau of Land Management (USDI–BLM). Payment will also be accepted via Mastercard or Visa.

Second Right of Acceptance: In the event the surface estate is not purchased on the initial offering to the surface improvements owner/occupant of record, a second sale offer will be made to the underlying mineral interest owner (mining claimant) if one exists. This offer will be in accordance with the same criteria as set out above. Should the Second Right of Acceptance be refused, the effected parcel(s) will be held for competitive sale at a future date.

In either case described above, a failure to accept an offered parcel is described as: 1) failure to meet or accept any of the terms and conditions of the sale or the encumbrances to the surface estate; 2) failure to pay in full the Fair Market Appraised Value; and 3) failure to timely file with the Bureau of Land Management the Sale Offer Acceptance form. Due to the nature of this type of Sale Offer, the Bureau of Land Management will strictly adhere to the timeframes for offers, no exceptions will be permitted.

Terms and Conditions Applicable to the Sale Are

1. The subsurface estate and all minerals, subject to valid existing rights, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

2. A reservation for road rights-of-way will be incorporated into each affected patent in conjunction with the Kern County road network.

3. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890, 43 U.S.C. 945.

4. The patent will be subject to any rights-of-way for the purposes of utilities (Electric, Telephone, Water and Cable) as they affect the lots.

5. The patent will be subject to an easement for historical access for roads commonly known as Jewel, Lexington Place and Beck Road. These roads will not be part of the Kern County Road inventory and network, unless added at a later date by Kern County.

The purchaser, by accepting the land patent, will indemnify the United States against any current or future liability pertaining to Hazardous Materials and underlying mine shafts, tunnels or adits, known or unknown.

The purchaser, by accepting the land patent, acknowledges when accepted that the specific property is encumbered by mining claims filed pursuant to the mining laws of the United States. The conveyance of the property by a land patent is made subject to those claims and to any and all rights that the holders thereof may have pursuant to the laws of the United States and the State of California.

Federal law requires that participants in a Direct Sale be citizens of the United States and 18 years of age or older. Proof of Citizenship must accompany the acceptance of Sale Offer. Unsold lots will be offered competitively at a future date to be set by the Bureau of Land Management.

Grazing Issues

The land sale discussed herein, involves lands inside the Cantil Common Allotment. These lands are withdrawn under Section three of the Taylor Grazing Act. It has been determined that the lands contribute no forage for the Cantil Common Allotment and their sale will not result in the loss of grazing preference for any of the permittees.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Bureau of Land Management, Ridgecrest Resource Area office, 300 S. Richmond Road, Ridgecrest, CA 93555.

For a period of 45 days from the date of this Notice in the **Federal Register**, interested parties may submit comments to the Area Manager, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Linn Gum,

Acting Area Manager.

[FR Doc. 97–11307 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–00; N–56714]

Amended Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes, N–56714

AGENCY: Bureau of Land Management.

ACTION: Amended recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The additional lands are needed as a result of the Beltway alignment through the area. The Clark County School District proposes to use the additional lands for a senior high school.

Mount Diablo Meridian, Nevada

T. 19 S., R. 59 E.,
Sec. 24, N½SW¼SE¼,
W½SW¼SW¼SE¼.
Containing 25 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. An easement in favor of Clark County for roads, public utilities and flood control purposes.

2. All valid and existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 Vegas Dr., Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a senior high school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a senior high school.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: April 16, 1997.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 97–11271 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–01; CACA 37718]

DEPARTMENT OF AGRICULTURE

Forest Service

[CACA 37717]

Notice of Land Exchange Proposal and Notice of Intent To Prepare BLM RMP Amendment; California

AGENCIES: Bureau of Land Management, Interior, and Forest Service, Agriculture.

ACTION: Notice.

SUMMARY: This document contains information regarding a proposed land exchange between the United States, the State of California, MAXXAM, Inc. and Pacific Lumber Company, under which the governments would acquire two of the most ecologically significant tracts of privately owned old growth redwood trees. The tracts are commonly known as the Headwaters Forest and Elk Head Springs. It also contains a notice of intent to prepare an amendment to BLM's Caliente Resource Area's Resource Management Plan.

DATES: Comments regarding either the proposed land exchange or the plan amendment must be submitted on or before June 16, 1997.

ADDRESSES: Interested parties are invited to submit written comments concerning the proposed exchange, including advising as to any liens, encumbrances, or other claims relating to the lands being considered for exchange; and the proposed plan amendment. Comments must be submitted in writing and must be sent to the following addresses: For the Forest Service portions of the proposed land exchange, Forest Service (ATTN: Headwaters), 630 Sansome Street, San Francisco, CA 94111, and for the Bureau of Land Management portions of the proposed land exchange and the proposed plan amendment, Bureau of Land Management (ATTN: Headwaters), 2135 Butano Drive, Sacramento, CA 95825–0451.

FOR FURTHER INFORMATION CONTACT: More detailed information for the Forest Service portions may be obtained from the Forest Service at the above address or telephone 415–705–2772; or for the Bureau of Land Management portions, from the Bureau of Land Management (ATTN: Headwaters), 2135 Butano Drive, Sacramento CA 95825–0451; telephone 916–979–2800.

SUPPLEMENTARY INFORMATION: On September 28, 1996, the United States, the State of California, MAXXAM, Inc. and Pacific Lumber Company signed an agreement to complete a land exchange under which the governments would acquire two of the most ecologically significant tracts of privately owned old growth redwood trees. The tracts are commonly known as the Headwaters Forest and Elk Head Springs. The agreement also contemplated that the governments would acquire the timberlands to the north of the Headwaters Forest from another landowner, the Elk River Timber Company. It is intended that part of the Elk River property would remain in government ownership as a northern buffer to the Headwaters tract, and part would be transferred to Pacific Lumber in partial compensation for its property.

Additionally, in exchange the Bureau of Land Management (BLM) would convey to the Pacific Lumber Company Federal lands or interests in lands for private lands of equal value. Federal assets to be exchanged by BLM will include producing oil and gas interests in the public lands. The exchange will also involve the State of California inasmuch as they are part of the overall agreement and will be involved in the transfer of state owned assets for a portion of the value of the Headwaters Forest. As envisioned in the agreement the exchange will require several federal actions:

(1) An exchange of Forest Service (FS) administered federal lands for lands owned by Elk River Timber Company near the Headwaters Forest;

(2) From lands acquired from the Elk River Timber Company, the United States will retain a habitat corridor along the South Fork of Elk River and a buffer of timbered properties around the Headwaters Forest;

(3) The remaining acquired Elk River Timber Company lands will be exchanged to Pacific Lumber Company for an equal value of land in the Headwaters Forest area;

(4) Producing federal oil and gas assets will be exchanged to Pacific Lumber Company for an equal value of the Headwaters Forest and Elk Head Springs property. The value of the oil and gas assets will be determined by appraisal and competitive auction. The auction will be conducted by the General Services Administration and a marketing plan will be developed and advertised by them.

(5) BLM will amend the Caliente Resource Area's Resource Management Plan (RMP), modifying the land tenure decisions of the approved RMP to the extent necessary to ensure conformity of the proposed land exchange with the RMP. An amendment is being proposed in order to allow for appropriate public involvement.

Forest Service Exchange

Notice is hereby given that FS, United States Department of Agriculture (USDA), is considering an exchange of land with Elk River Timber Company under the authority of the General Exchange Act of March 20, 1922; the Weeks Law of March 1, 1911; the Act of August 3, 1956; and the Act of October 21, 1976, as amended.

(1) The following described federal lands are being considered for disposal by exchange by FS, USDA:

Mount Diablo Meridian

T. 22 N., R. 4 E.,
  Sec. 12, lots 1–5, 8, 9, 11–14, and 16.
T. 23 N., R. 4 E.,
  Sec. 2, lots 3 and 4, S½NW¼ and SW¼;
  Sec. 26, S½S½;
  Sec. 36, all.
T. 23 N., R. 11 E.,
  Sec. 1, all.
T. 24 N., R. 11. E.,
  Sec. 36, W½.
T. 19 N., R. 8 E.,
  Sec. 21, SW¼NE¼, SE¼NW¼, N½SW¼, and part of the SE¼.
T. 16 N., R. 10 E.,
  Sec. 14, lot 4, NW¼, W½SW¼, and SE¼SW¼.
T. 19 N., R. 11 E.,
  Sec. 15, NE¼SW¼.
T. 20 N., R. 12 E.,
  Sec. 25, SW¼SE¼NW¼ and NW¼NE¼SW¼.
T. 15 N., R. 12 E.,
  Sec. 20, N½.
T. 4 N., R. 15 E.,
  Sec. 11, NE¼SE¼.
T. 4 N., R. 16 E.,
  Sec. 1, lots 3 and 4, S½NE¼, SE¼NW¼, and NE¼SE¼;
  Sec. 2, lots 1 and 2;
  Sec. 4, lot 4;
  Sec. 10, NE¼NW¼;
  Sec. 12, SE¼SW¼, SW¼SE¼, and E½SE¼;
  Sec. 13, NE¼NE¼, W½NE¼, NE¼NW¼, SW¼NW¼, and W½SW¼;
  Sec. 15, SW¼SW¼;
  Sec. 17, NW¼NE¼.
T. 4 N., R. 17 E.,
  Sec. 4, lot 1, S½NE¼ and SE¼;
  Sec. 5, lots 1–4, S½N½, and N½SE¼;
  Sec. 6, lot 1, 2, 6, and 7, S½NE¼, and N½SE¼;
  Sec. 7, lot 1;
  Sec. 8, S½NE¼;
  Sec. 9, NE¼, S½NW¼, and S½;
  Sec. 18, SE¼.
T. 5 N., R. 17 E.,
  Sec. 17, SW¼NE¼, SE¼SW¼, SW¼SE¼, and E½SE¼;
  Sec. 18, NE¼SE¼;
  Sec. 19, SE¼NE¼ and NE¼SE¼;
  Sec. 20, NE¼NE¼, S½N½, and S½;
  Sec. 21, all;
  Sec. 28, all;
  Sec. 29, all;
  Sec. 30, all;
  Sec. 31, all;
  Sec. 32, all;
  Sec. 33, all.
T. 5 N., R. 16 E.,
  Sec. 4, SE¼SW¼.
T. 12 N., R. 12 E.,
  Sec. 6, lots 1–3, S½NE¼, and SE¼;
  Sec. 13, SE¼NE¼, SW¼SE¼, and E½SE¼;
  Sec. 18, lots 1–3;
  Sec. 23, E½NE¼;
  Sec. 24, N½N½, SW¼NE¼, S½NW¼, and W½SE¼;
  Sec. 28, S½NW¼ and SW¼;
  Sec. 29, E½SE¼;
  Sec. 30, Lots 1–4, E½W½, and W½SE¼;
  Sec. 32, NE¼, SW¼SW¼, N½SE¼, and SW¼SE¼;
  Sec. 33, NW¼ and NW¼SW¼;

Sec. 34, S½;
Sec. 35, E½NE¼ and S½;
Sec. 36, SW¼, W½SE¼, and E½SE¼.
T. 12 N., R. 13 E.,
Sec. 2, W½ lot 1, W½ lot 7, E½ lot 8, and N½SW¼;
Sec. 8, S½N½ and NW¼NW¼;
Sec. 18, Lot 2:
Sec. 28, NW¼SW¼, NW¼SE¼, and S½S½;
Sec. 29, NE¼SE¼, and S½SE¼;
Sec. 31, lots 3 and 4, E½SW¼, and SE¼.
Sec. 32, E½ and SW¼;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.
T. 12 N., R. 14 E.,
Sec. 6, lots 1 and 2, and S½NE¼.
T. 13 N., R. 14 E.,
Sec. 31, S½NE¼ and SE¼.

Subject to valid existing rights, the federal lands identified above have been segregated from appropriation under the public land laws and mineral laws for a period of 5 years beginning February 10, 1997.

In exchange, FS, USDA, would acquire the following described lands from Elk River Timber Company.

Humboldt Meridian

T. 3 N., R. 1 E.,
Sec. 3, SW¼, NW¼SE¼, and S½SE¼;
Sec. 4, a portion;
Sec. 5, all;
Sec. 6, N½;
Sec. 8, N½, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 9, all;
Sec. 10, N½, N½SW¼, SW¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 11, W½W½;
Sec. 15, S½NE¼, NW¼, and SE¼.
T. 3 N., R. 1 W.,
Sec. 1, a portion;
Sec. 2, E½ and NW¼;
Sec. 3, fractional NW¼.
T. 4 N., R. 1 W.,
Sec. 25, a portion;
Sec. 26, a portion;
Sec. 27, a portion;
Sec. 34, all;
Sec. 35, a portion of the E½, and W½;
Sec. 36, all.
T. 4 N., R. 1 E.,
Sec. 31, all;
Sec. 32, all;
Sec. 33, S½NW¼ and SW¼.

(2) The United States will retain a wildlife habitat corridor along the South Fork Elk River and the Little South Fork drainage from Section 35, T. 4 N., R. 1 W., MDM, south easterly toward SW corner of Section 11, T. 3 N., R. 1 E., MDM, and a buffer of timbered properties around the Headwaters Forest parcel. The exact land description of these lands will be developed as a result of further study.

(3) The remaining lands, that are not retained, will be exchanged immediately to MAXXAM, Inc. for an equal value of MAXXAM, Inc. controlled lands known as the Headwaters Forest parcel and described below.

Humboldt Meridian

T. 3 N., R. 1 E.,
Sec. 8, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 14, all;
Sec. 15, SW¼;
Sec. 16, all;
Sec. 17, all;
Sec. 18, SE¼;
Sec. 19, NE¼, N½SE¼;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, W½;
Sec. 26, NW¼;
Sec. 27, N½, N½S½; S½SW¼;
Sec. 28, E½, N½NW¼;
Sec. 29, NE¼NE¼.

BLM Exchange

In order to acquire the balance of the Headwaters Forest, BLM will exchange the federal oil and gas mineral estate located under the following legal descriptions, but the surface estate will remain with the United States. The conveyance documents will be issued subject to the existing oil and gas leases issued under the authority of the Mineral Leasing Act of 1920, as amended. Additional reservations will be made to the United States for all other minerals and non-producing oil and gas zones within the leases. In exchange for the value of the above described lands and proposed exchanges, BLM will acquire those certain properties by exchange, generally described locally as the Headwaters Forest and the Elk Head Springs parcels, and described specially under paragraph number 3 above.

Lease	Town	Range	Sec.	Acres
Mount Diablo Meridian				
CAS–019382	T. 31 S.	R. 22 E.	Sec. 22, 23, 25	850
	T. 32 S.	R. 23 E.	Sec. 9	
			Sec. 10	
CAS–019392	T. 31 S.	R. 22 E.	Sec. 27	160
CAS–019381A	T. 31 S.	R. 22 E.	Sec. 27	280
CAS–021592	T. 31 S.	R. 22 E.	Sec. 21	210
			Sec. 29	
CAS–019357	T. 32 S.	R. 23 E.	Sec. 35	230
CAS–023382B	T. 20 S.	R. 16 E.	Sec. 8	
			Sec. 18	
			Sec. 28	
			Sec. 30	
			Sec. 34	1047
CAS–021130	T. 32 S.	R. 23 E.	Sec. 35	115
CACA–028423	T. 26 S.	R. 21 E.	Sec. 18	318
CAS–019389A	T. 31 S.	R. 22 E.	Sec. 23	30
CAS–021593	T. 31 S.	R. 22 E.	Sec. 21	30
CAS–023382A	T. 20 S.	R. 16 E.	Sec.18	501
CAS–019349	T. 31 S.	R. 22 E.	Sec. 35	160
CAS–019266A	T. 20 S.	R. 16 E.	Sec. 6	168
CAS–019266B	T. 20 S.	R. 16 E.	Sec. 6	360
CAS–019376	T. 26 S.	R. 21 E.	Sec. 30	
			Sec. 32	801
CAS–020995	T. 30 S.	R. 22 E.	Sec. 6	67
CAS–019636	T. 31 S.	R. 22 E.	Sec. 2	200
San Bernardino Meridian				
CALA–076208	T. 11 N.	R. 23 W.	Sec. 24	640

Lease	Town	Range	Sec.	Acres
CALA–0149681	T. 5 N.	R. 9 W.	Sec. 16	880
			Sec. 21	
			Sec. 28	
			Sec. 33	
			Sec. 34	
CALA–033569	T. 11 N.	R. 20 W.	Sec. 28	160
CALA–033068	T. 11 N.	R. 23 W.	Sec. 18	200
	T. 12 N.	R. 23 W.	Sec. 32	
CALA–0055052	T. 3 N.	R. 20 W.	Sec. 19	160
CACA–4969	T. 3 N.	R. 16 W.	Sec. 1	33
CACA–12855A	T. 11 N.	R. 23 W.	Sec. 10	40

Subject to valid existing rights, the federal lands identified above have been segregated from appropriation under the public land laws and mineral laws for a period of 5 years beginning March 24, 1997.

Caliente RMP Amendment

In the plan amendment, the federal oil and gas estate within the Caliente Resource Area will be identified for conveyance by means of exchange and the exchange value determined by appraisal and subsequent auction. The environmental effects of the proposed exchange, as well as the amendment to the Caliente RMP, will be addressed within the joint Headwaters EIS/EIR. This additional scoping opportunity is presented for the public to address the proposed amendment to the Caliente RMP. Any additional scoping comments relating to the plan amendment must be submitted on or before June 16, 1997 to BLM's office in Sacramento at the address listed above.

A Notice of Intent to prepare an EIS/EIR for the Headwaters exchange was published in the **Federal Register** on December 27, 1996 at page 68285 (61 FR 68285) by U. S. Fish and Wildlife Service. A series of six public meetings to solicit public comments were held in January of 1997. The subsequent public scoping period was completed on February 18, 1997.

Dated: April 21, 1997.

David McIlnay,

Chief, Branch of Lands (CA–931), Bureau of Land Management.

Dated: April 21, 1997.

G. Lynn Sprague,

Regional Forester, Pacific Southwest Region (R–5), Forest Service.

[FR Doc. 97–11327 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1910–00–4369]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. April 23, 1997.

The plat representing the dependent resurvey of portions of the subdivisional lines, the 1893 meanders of the right bank of the Snake River, the subdivision of section 15, and a metes-and-bounds survey in section 16, T.9 S., R. 27 E., Boise Meridian, Idaho, Group No. 950, was accepted April 23, 1997.

This plat was prepared to meet certain administrative needs of the Bureau of Reclamation.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: April 23, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–11336 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1110–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. April 21, 1997.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, 1891 meanders of the left bank of the Salmon River, and tract 37 in section 7, the subdivisional of section 7, and the survey of the 1993–1996 meanders of the left bank of the Salmon River and islands in the Salmon River in section 7, T. 22 N., R. 22 E., Boise Meridian, Idaho, Group No. 849, was accepted April 21, 1997.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: April 21, 1997.

Duane E. Olsen,

Chief, Cadastral Surveyor for Idaho.

[FR Doc. 97–11337 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–07–1420–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat(s) of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on June 9, 1997.

New Mexico Principal Meridian, New Mexico

T. 20 N., R. 8 W., accepted April 21, 1997, for Group 899 NM.

If a protest against a survey, as shown on any of the above plat(s) is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys

must file a written protest with the State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plat(s) represent dependent resurveys, and surveys.

These plats will be in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: April 23, 1997.

John P. Bennett,

Chief Cadastral Surveyor for New Mexico.

[FR Doc. 97–11349 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–930–1920–00–4373; IDI–31741]

Notice of Addition of Lands to Proposed Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Air Force has filed a request to add 10.85 acres to their withdrawal application for the Enhanced Training in Idaho (ETI) site. The original Notice of Proposed Withdrawal was published in the **Federal Register**, 61 FR 15513, April 8, 1996.

DATES: Comments and requests for a meeting should be received on or before July 30, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, 1387 South Vinnell Way, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Jon Foster, BLM Idaho State Office, 1387 South Vinnell Way, Boise, Idaho, 83709, 208–373–3813.

SUPPLEMENTARY INFORMATION: On April 16, 1997, the Department of Air Force filed a request to add certain lands to their existing withdrawal application. These lands are in addition to those published in the **Federal Register**, 61 FR 15513, April 8, 1996. The following described public lands are withdrawn from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws, subject to valid existing rights:

Boise Meridian

Grasmere No-Drop/Emitter Site: (Two locations)

T. 13 S., R. 4 E.,
sec. 13, W½SW¼ ND–8 (No Drop)

Further described:

Beginning at the SW corner of said Section 13, thence N. 0°09′13″ E. along the west line of said Section 13 a distance of 1,984.85 ft.; thence E., 866.61 ft. to the TRUE POINT OF BEGINNING; thence S. 0°07′39″ E., 1,700 ft.; thence N. 89°52′21″ W., 150 ft. to the TRUE POINT OF BEGINNING.

sec. 13, S½SW¼NE¼NW¼SW¼ (AU) (Emitter)

The areas described aggregate 8.35 acres in Owyhee County.

Hagerman Emitter Site:

T. 8 S., R. 13 E.,
sec. 7, lot 3.

Further described:

SE¼SE¼SW¼NW¼SW¼ (BK) (Emitter)

The area described contains 2.5 acres in Twin Falls County.

This withdrawal will be authorized under the Act of February 28, 1958, 43 U.S.C. 155–158, and requires legislative action by Congress.

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 addition of lands to the proposed withdrawal may present their views in writing to the Idaho State Director at the address shown above.

If a public meeting is required a notice of time and place will be published in the **Federal Register** and newspapers in the general vicinity at least 30 days before the scheduled date of a meeting.

Nine public meetings were held in June and July 1996 for the purpose of scoping the environmental documentation to meet National Environmental Policy Act requirements for the proposed withdrawal. The draft environmental impact statement currently under preparation includes the addition of the 10.85 acres described in this notice.

This application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the additional described lands will be segregated, as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses that will be permitted during this segregative period are rights-of-way, leases, permits, licenses or discretionary land use authorizations that do not significantly disturb the surface of the land or impair values of the resources, but will be coordinated with the Installation Commander, Mountain Home Air Force Base, Idaho.

The temporary segregation of the additional land in connection with the withdrawal application shall not affect administrative jurisdiction over the land, and segregation shall not have the effect of authorizing any use of the land by the Department of the Air Force.

Dated: April 21, 1997.

Jimmie Buxton,

Acting Deputy State Director for Resource Services Division.

[FR Doc. 97–11280 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Services

Native American Graves Protection and Repatriation Review Committee: Findings

AGENCY: National Park Service, Department of the Interior

ACTION: NAGPRA Review Committee Advisory Findings And Recommendations Regarding a Carved Wooden Figure from the Hawaiian Islands.

After full and careful consideration of the information and statements submitted and presented by representatives of the City of Providence, RI, the Office of Hawaiian Affairs, and Hui Malama I Na Kupuna 'O Hawai 'i Nei, at its meetings on November 23, 1996, and March 27, 1997, the Native American Graves Protection and Repatriation Review Committee (NAGPRA Review Committee) considers:

(1) The Office of Hawaiian Affairs and Hui Malama I Na Kupuna 'O Hawai 'i Nei are Native Hawaiian organizations;

(2) The carved wooden figure currently in the possession of the City of Providence (catalogue number E2133) is a specific ceremonial object needed by traditional Native Hawaiian religious leaders for the practice of traditional Native Hawaiian religion by its present-day adherents;

(3) There is a relationship of shared group identity that can be reasonably traced between the Office of Hawaiian Affairs and Hui Malama I Na Kupuna 'O Hawai'i Nei and the Native Hawaiians who created and used the carved wooden figure;

(4) The carved wooden figure cannot be identified as an item that, as part of the death rite or ceremony of a culture,

is reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains;

(5) The carved wooden figure cannot be identified as an object of ongoing importance to a Native Hawaiian organization itself rather than property owned by an individual member; and

(6) There was insufficient information presented regarding the circumstances of the acquisition of the carved wooden figure to make an advisory finding concerning right of possession to the object as defined by NAGPRA and its implementing regulations.

In arriving at these advisory findings, the NAGPRA Review Committee noted that:

(1) The carved wooden figure is believed to have been collected in Hawaii;

(2) Several recognized authorities on Hawaiian sculpture, including William H. Davenport, Norman Hurst, Adrienne L. Kaeppler, Herb Kawainui Kane, and Rubellite Kawena Johnson, identified the carved wooden figure as a decorated canoe *haka*, a utilitarian object used to hold spears or fishing poles, rather than a sacred object.

(3) Edward Dodd, another recognized authority on Hawaiian sculpture, describes the carved wooden figure as a curious and rare mixture of utilitarian function with some stylistic features traditionally associated with god images.

(4) Pualani Kanaka'ole Kanahele, Kunani Nihipali, and Edward Halealoha Ayau are recognized by members of the Office of Hawaiian Affairs and Hui Malama I Na Kupuna 'O Hawai'i Nei as traditional religious leaders responsible for performing duties related to Hawaiian ceremonial or religious traditions.

(5) The three traditional religious leaders identified the carved wooden figure as an *'aumakua*, an ancestral deity who is called upon by its present-day descendants for guidance and protection;

(6) Little is known regarding the circumstances of the carved wooden object's original acquisition in the 19th Century.

Based on these advisory findings, the NAGPRA Review Committee recommends that the City of Providence reconsider its determination regarding the definition of the carved wooden figure. The carved wooden figure should be considered a sacred object as defined by the Native American Graves Protection and Repatriation Act [25 U.S.C. 3001 (3)(C) and 43 CFR 10.2 (d)(3)]. The NAGPRA Review Committee also recommends that the City of Providence repatriate the carved wooden object to a Native Hawaiian organization in the spirit of NAGPRA and its implementing regulations.

These advisory findings and recommendations do not necessarily represent the views of the National Park Service or Secretary of the Interior. The National Park Service and the Secretary of the Interior have not taken a position on these matters.

Dated: April 16, 1997.

Ms. Tessie Naranjo,

Chair,

Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 97–11278 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meetings

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: an update of public workshops on Impact Assessment and Assurances; descriptions of the draft alternatives and operating parameters; an overview of the alternatives evaluation process; an update on the activities of the Ecosystem Restoration program and the Ecosystem Roundtable subcommittee; and other issues. The Ecosystem Roundtable (a subcommittee of the BDAC) will meet to discuss the following issues: project selection criteria, output from the technical teams, development of the annual workplan, the upcoming release of the requests for proposals for Category III, public outreach and funding coordination. Interested persons may make oral statements to the BDAC or to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9:30 a.m. to 5:00 p.m. on Thursday, May 22, 1997. The Ecosystem Roundtable will meet from 9:30 a.m. to 12:30 p.m. on Friday, May 9, 1997.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Sacramento Convention Center, 1400 J Street, Sacramento, CA. The Ecosystem Roundtable will meet in Room 1131, 1416 Ninth Street, Sacramento, CA.

CONTACT PERSON FOR MORE INFORMATION: For the BDAC meeting, contact Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666. For the Ecosystem Roundtable meeting contact Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual work plans to implement

ecosystem restoration projects and programs.

Minutes of the meetings will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 25, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–11306 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States* v. *Reynolds Metals Co. and Westvaco Corp.*, Civil Action No. 3:97–CV–226 (E.D. Va.) was lodged on March 28, 1997.

The proposed decree resolves the claims of the Untied States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. §§ 9606 and 9607, for past response costs and certain response actions at the HH Burn Pit Superfund Site in Hanover County, Virginia. The decree obligates the Settling Defendants to reimburse $1.5 million of the United States' past response costs and to perform the remedial action the U.S. Environmental Protection Agency has selected for the site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Reynolds Metals Corporation*, DOJ Ref. #90–11–3–1408.

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $24.25 (25 cents per page reproduction costs), payable to the Consent Decree Library. Attachments to the proposed consent decree can be obtained for additional amount.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–11341 Filed 4–30–97; 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—CommerceNet Consortium

Notice is hereby given that, on April 8, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), CommerceNet Consortium, (''CommerceNet'') has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. 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, the following organizations have joined CommerceNet as Sponsor Members: Ameritech, Chicago, IL; Bay Networks, Inc., Santa Clara, CA; Fleet Financial Group, Boston, MA; and Visa International, Foster City, CA. The following organizations have upgraded their memberships from Associate to Sponsor: Cable & Wireless plc, Menlo Park, CA; National Institute of Standards Technology, Gaithersburg, MD; Tashiba, Tokyo, JAPAN; and USWeb, Santa Clara, CA.

The following organizations have joined CommerceNet as Portfolio Members: Acquion, Inc., Greenville, SC; Fruit of the Loom, Bowling Green, KY; and Trusted Information Systems, Inc., Glenwood, MD.

No other changes have been made in either the membership or planned activities of CommerceNet. Membership remains open and CommerceNet intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, CommerceNet filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on August 31, 1994 (59 FR 45012). The last notification was filed with the Department on March 17, 1997. This notice has not been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–11340 Filed 4–30–97; 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

Notice is hereby given that, on March 17, 1997, 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 Portland Cement Association (''PCA'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing PCA's proposed R&D work programs for 1997 and the minutes of PCA meetings in 1996. 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.

No other changes have been made in either the membership or planned activity of PCA.

On January 7, 1985, 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 5015). The last notification was filed with the Department on February 21, 1997. A notice was published in the **Federal Register** on March 20, 1997 (62 FR 13395).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–11339 Filed 4–30–97; 8:45 am]

BILLING CODE 4410–11–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

Sunshine Act Meeting; [F.C.S.C. Meeting Notice No. 7–97]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral

hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Thursday, May 8, 1997, 10 am.

Subject Matter: Consideration of Proposed Decisions on Claims of Holocaust Survivors Against Germany.

Status: Closed.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, April 29, 1997.

David E. Bradley,

Chief Counsel.

[FR Doc. 97–11502 Filed 4–29–97; 2:37 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Wilderness Mining Company, Inc.

[Docket No. M–97–17–C]

Wilderness Mining Company, P.O. Box 459, Lyburn, West Virginia 25632 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its Alloy No. 1 Mine (I.D. No. 46–08007) located in Fayette County, West Virginia. The petitioner requests a modification of the standard to allow the use of a methane detector with a visible digital readout attached with a magnet to the side of the miner ripper head while it is trammed to the face, to conduct a methane test in intervals not to exceed 20 minutes during the mining of each extended cut; to take a methane test at the completion of mining each extended cut to preclude the roof bolter operator from having to take a test prior to entering the area; to conduct a methane test using a 20 foot extendable probe, from the second row of bolts inby prior to any electrical equipment being operated in this working place; to have a methane monitor with a digital readout located on every roof bolting machine with the sensor head on the ATRS unit and set to deenergize when the methane reading is 1.0 percent or more; and to conduct a test for methane on the return side of all face line curtains at the second row of bolts in areas where the faces are not bolted when on-shift examinations are made. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Meadow River Coal Company, Inc.

[Docket No. M–97–18–C]

Meadow River Coal Company, Inc., P.O. Box 459, Lyburn, West Virginia 25632 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its Meadow River No. 1 Mine (I.D. No. 46–03467) located in Fayette County, West Virginia. The petitioner requests a modification of the standard to allow the use of a methane detector with a visible digital readout attached with a magnet to the side of the miner ripper head while it is trammed to the face, to conduct a methane test in intervals not to exceed 20 minutes during the mining of each extended cut; to take a methane test at the completion of mining each extended cut to preclude the roof bolter operator from having to take a test prior to entering the area; to conduct a methane test using a 20 foot extendable probe from the second row of bolts inby prior to any electrical equipment being operated in this working place; to have a methane monitor with a digital readout located on every roof bolting machine with the sensor head on the ATRS unit and set to deenergize when the methane reading is 1.0 percent or more; and to conduct a test for methane on the return side of all face line curtains at the second row of bolts in areas where the faces are not bolted when on-shift examinations are made. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. C & H Mining Company

[Docket No. M–97–19–C]

C & H Mining Company, HC 73, Box 168, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 8 Mine (I.D. No. 15–17882) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators instead of machine mounted methane monitors on permissible three-wheel tractors. The petitioner asserts that this petition is based on the safety of miners.

4. Becky Coal Company, Inc.

[Docket No. M–97–20–C]

Becky Coal Company, Inc., P.O. Box 171, Siler, Kentucky 40763 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(I) (escapeways; bituminous and lignite mines) to its Blue Gem Mine (I.D. No. 15–16247) located in Whitley County, Kentucky. The petitioner proposes to install two number five or one number ten portable chemical fire extinguisher in the operator's deck of each Mescher tractor operated at its mine; to have the fire extinguisher readily accessible to the operator; and to have each fire extinguisher inspected daily by the equipment operator prior to entering the escapeway and if any defects are found replace the extinguisher before entering. The petitioner asserts that this petition is based on the safety of the miners.

5. D.J.T Coal Company

[Docket No. M–97–21–C]

D.J.T Coal Company, R.D. #4, Box 358–d, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its D.J.T Slope (I.D. No. 36–08454) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the use of an alternative method of compliance for the mines existing 480 volts 3-phase ungrounded Delta system providing power to the underground stationary electrical equipment instead of installing steel armored or grounded rigid steel conduit. The petitioner has outlined in this petition specific procedures for implementing its alternative method. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Brookside Coal Company

[Docket No. M–97–22–C]

Brookside Coal Company, General Delivery, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Diamond Vein Slope Mine (I.D. No. 36–08456) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the use of bar and pin or link and pin

couplers on its underground haulage equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. E & E Fuels

[Docket No. M–97–23–C]

E & E Fuels, P.O. Box 265, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Orchard Slope Mine (I.D. No. 36-08346) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the use of bar and pin or link and pin couplers on its underground haulage equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. RoxCoal Incorporated

[Docket No. M–97–24–C]

RoxCoal Incorporated, P.O. Box 149, Freudians, Pennsylvania 15541 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its Diamond T B Mine (I.D. No. 36–08223); its Diamond T C Mine (I.D. No. 36–08214); and its Longview Mine (I.D. No. 36–03248) all located in Somerset County, Pennsylvania. The petitioner proposes to use a 20 foot probe to make methane tests from the last row of permanent roof supports when the roof bolting machine enters a working place and to conduct the required twenty minute tests for the roof bolter. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. CONSOL of Kentucky, Inc.

[Docket No. M–97–25–C]

CONSOL. of Kentucky, Inc., Consol. Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its E3RF Mine (I.D. No. 15–17894) located in Knott County, Kentucky. The petitioner proposes to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, located to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt, with actuation temperatures between 200 and 230 degrees Fahrenheit, and with water pressure equal to or greater than 10 psi; and to have the sprinklers located not more than 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Kiah Creek Mining Company

[Docket No. M–97–26–C]

Kiah Creek Mining Company, P.O. Box 1409, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its No. 14 Mine (I.D. No. 15–16501) located in Pike County, Kentucky. Due to a roof fall in front of the No. 3 Seal, traveling the area to physically examine the seal would be unsafe. The petitioner proposes to check the inby and outby sides of the entry daily to determine air quality, quantity, and the percentage of methane on each side of the fall in the entry. The petitioner asserts that its alternative method would provide a safe procedure without having to clean up the fall.

11. Arclar Company

[Docket No. M–97–27–C]

Arclar Company, 29 West Raymond, P.O. Box 444, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Big Ridge Mine (I.D. No. 11–02879) located in Saline County, Illinois. The petitioner proposes to use intake air from belt haulage entries to ventilate the active working places. The petitioner proposes to install and maintain a carbon monoxide monitoring system along the beltline. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Maple Meadow Mining Company

[Docket No. M–97–28–C]

Maple Meadow Mining Company, General Delivery, Fairdale, West Virginia 25839 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Maple Meadow Mine (I.D. No. 46–03374) located in Raleigh County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load. The petitioner states that application of the standard would result in a diminution of safety to the miners.

13. Apogee Coal Company d/b/a Arch of Illinois

[Docket No. M–97–29–C]

Apogee Coal Company d/b/a/ Arch of Illinois, P.O. Box 308, Percy, Illinois 62272–0308 has filed a petition to modify the application of 30 CFR 75.323 (actions for excessive methane) to its Conant Mine (I.D. No. 11–02886) located in Perry County, Illinois. Due to the layout of the Archveyor® system and its corresponding section power system, the petitioner proposes to have the section's transformer located in the intake air/power entry and maintained at least 300 feet away from any type of mining (development or secondary mining/winging). The petitioner states that the intake would feed the air to the active working face, the gob area, and around the bleeder system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. Bridger Coal Company

[Docket No. M–97–30–C]

Bridger Coal Company, P.O. Box 2068, Rock Springs, Wyoming 82902 has filed a petition to modify the application of 30 CFR 77.1607(n) (loading and haulage equipment; operation) to its Bridger Mine (I.D. No. 48–00677) located in Sweetwater County, Wyoming. The petitioner requests a modification of the standard to allow light and medium duty mobile equipment of 50,000 pounds MGVW or less, on which the park brake function is a component of the transmission, to be stabilized when left unattended: (a) with one set of double chock blocks, connected as a single unit, placed around (in front and in back of) one tire of the equipment; or (b) setting the brakes. The petitioner states that whether chock blocks or brakes are used, the front wheels of the equipment would be turned into a bank or berm if parked on a grade. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. Bear Ridge Mining, Inc.

[Docket No. M–97–31–C]

Bear Ridge Mining, Inc., P.O. Box 255, Tazewell, Virginia 24651 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies or cabs; self-propelled electric face equipment; installation requirements) to its No. 1

Mine (I.D. No. 44–06227) located in Tazewell County, Virginia. The petitioner proposes to operate self-propelled electric face equipment without cabs or canopies. The petitioner states that application of the standard would result in a diminution of safety to the miners.

16. Eastern Associated Coal Corporation

[Docket No. M–97–32–C]

Eastern Associated Coal Corporation, 800 Laidley Tower, 500 Lee Street, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Harris/Rocklick Coal Handling Facility (I.D. No. 46–08610) located in Boone County, West Virginia. The petitioner proposes to mine using a two-entry system with the conveyor haulageway located in the return air course, during development of a coal handling facility (tunnel) between two (2) existing preparation plants; the Harris Preparation Plant, MSHA I.D. No. 46–03135, WVDEP 0–72–82; and the Rocklick Preparation Plant, MSHA I.D. No. 46–06448. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in the belt entry and primary escapeway of all two-entry developments; and to install sensors in the belt entry and primary escapeway near the center and in the upper third of the entry in a location where exposure to unsafe situations by personnel working on the system would be prevented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

17. Peabody Coal Company

[Docket No. M–97–33–C]

Peabody Coal Company, 1214 Marissa Road, Marissa, Illinois 62257 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Marissa Mine (I.D. No. 11–02440) located in Washington County, Illinois. The petitioner proposes to use high-voltage trailing cables (2400-volt) inby the last open crosscut at the sections where continuous miners are working. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

18. Tanoma Mining Company

[Docket No. M–97–34–C]

Tanoma Mining Company, 1809 Chestnut Avenue, P.O. Box 25, Barnesboro, Pennsylvania 15714 has filed a petition to modify the application of 30 CFR 75.326 (now 75.350) (air courses and belt haulage entries) to its Tanoma Mine (I.D. No. 36–06967) located in Indiana County, Pennsylvania. The petitioner requests that paragraph 1B of petition for modification, docket no. M–90–78–C be amended to add the following sentence at the end of the paragraph: When pillaring, the inby sensor is to be located at least 150 feet but no more than 160 feet from the inby end of the RFM. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

19. Birdeye Coal Company, Inc.

[Docket No. M–97–35–C]

Birdeye Coal Company, Inc., HC 66, Box 494, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (escapeways; bituminous and lignite mines) to its No. 4 Mine (I.D. No. 15–17676) located in Knox County, Kentucky. The petitioner proposes to install two number five or one number ten portable chemical fire extinguisher in the operator's deck of each Mescher tractor at its mine; to have the fire extinguisher readily accessible to the operator; and to have each fire extinguisher inspected daily by the equipment operator prior to entering the escapeway. If any defects are found, the extinguisher will be replaced before entering the escapeway. The petitioner asserts that this petition is based on the safety of the miners.

20. Long Branch Energy

[Docket No. M–97–36–C]

Long Branch Energy, P.O. Box 776, Danville, West Virginia 25053 has filed a petition to modify the application of 30 CFR 75.503(18.41)(f) (permissible electric face equipment; maintenance) to its No. 22 Mine (I.D. No. 46–08583) located in Logan County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

21. Texas Utilities Mining Company

[Docket No. M–97–37–C]

Texas Utilities Mining Company, 1601 Bryan Street, Energy Plaza, 18th Floor, Dallas, Texas 75201 has filed a petition to modify the application of 30 CFR 77.807–3 (movement of equipment; minimum distance from high-voltage lines) to its Beckville Strip Mine (I.D. No. 41–02632), and its Tatum Strip Mine (I.D. No. 41–03659) located in Panola County, Texas; its Oak Hill Strip Mine (I.D. No. 41–03660) located in Rusk County, Texas; its Winfield South Strip Mine (I.D. No. 41–03658), and its Winfield North Strip (I.D. No. 41–01900) located in Titus County, Texas. The petitioner requests a modification of the standards to permit various pieces of equipment to pass under or by the overhead high voltage power lines (25,000 volts) used in TUMCO's electric railway/catenary system (the ''Electrified Railroad'') with a minimum of three feet of clearance between the equipment and the power line. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

22. Lion Mining Company

[Docket No. M–97–38–C]

Lion Mining Company, P.O. Box 209, Jennerstown, Pennsylvania 15547 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its Grove No. 1 Mine (I.D. No. 36–02398) located in Somerset County, Pennsylvania. The petitioner proposes to use a 20-foot probe to make methane tests from the last row of permanent roof supports when the roof bolting machine enters a working place and to conduct the required twenty minute tests for the roof bolter. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

23. Spruce Fork Coal Company, Inc.

[Docket No. M–97–39–C]

Spruce Fork Coal Company, Inc., Route 6, Box 543, Buckhannon, West Virginia 26201 has filed a petition to modify the application of 30 CFR 75.503(b)(2) (permissible electric face equipment; maintenance) to its Spruce Fork Mine No. 1 (I.D. No. 46–08622) located in Upshur County, West Virginia. The petitioner proposes to use a spring loaded locking device, instead of padlocks to secure battery plugs to

machine mounted receptacles, that would prevent the threaded lock ring on a plug from turning and becoming loose unintentionally. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

24. Barrick Goldstrike Mines, Inc.

[Docket No. M–97–02–M]

Barrick Goldstrike Mines, Inc., P.O. Box 29, Elko, Nevada 89803 has filed a petition to modify the application of 30 CFR 56.6309(b) (fuel oil requirements for ANFO) to its Barrick Goldstrike Mine (I.D. No. 26–01089) located in Elko County, Nevada. The petitioner requests a modification of the standard to allow the use of used crankcase oil blended with diesel fuel to prepare ammonium nitrate/fuel oil (ANFO) for blasting. The petitioner has listed in this petition specific details for using crankcase oil, and steps that would be taken to ensure the continued health and safety of the miners.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 2, 1997. Copies of these petitions are available for inspection at that address.

Dated: April 24, 1997.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 97–11342 Filed 4–30–97; 8:45 am]

BILLING CODE 4510–43–P

MERIT SYSTEMS PROTECTION BOARD

Opportunity To File Amicus Briefs in Swentek v. Office of Personnel Management, MSPB Docket No. DC–831E–94–0584–A–1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board is providing interested parties with an opportunity to submit amicus briefs on whether the Board may grant attorney fees to prevailing appellants under two new criteria proposed by the appellant in *Swentek* v. *Office of Personnel Management,* MSPB Docket No. DC–831E–94–0584–A–1.

SUMMARY: The appellant in *Swentek* v. *Office of Personnel Management,* MSPB Docket No. DC–831E–94–0584–A–1, filed a Board appeal of the reconsideration decision of the Office of Personnel Management (OPM) dismissing his application for a disability retirement annuity as untimely filed. The apparently mentally incompetent appellant was represented by pro bono counsel obtained for him under *French* v. *Office of Personnel Management,* 810 F.2d 1118, 1120 (Fed. Cir. 1987), reh'g denied, 823 F.2d 489 (Fed. Cir. 1987). The Board reversed OPM's reconsideration decision, finding that the filing deadline should be waived because of the appellant's mental incompetence during the filing period.

In his pending attorney fees motion, the appellant has argued that attorney fees are warranted in the interest of justice under 5 U.S.C. § 7701(g)(1). He has proposed two criteria for awarding fees in addition to those set forth in *Allen* v. *U.S. Postal Service,* 2 M.S.P.R. 420, 434–35 (1980). He describes those two criteria as follows:

1. Where the appellant presented to OPM some evidence of mental incompetence and OPM failed to pursue the matter by undertaking prehearing discovery and did not actively contest the claim of mental incompetence at the Board hearing; and

2. Where the evidence of current mental incompetence persuaded the Board to seek counsel for the appellant. See French, 810 F.2d at 1120; *French* v. *Office of Personnel Management,* 37 M.S.P.R. 496, 499 (1988).

The Board is inviting interested parties to submit amicus briefs addressing whether the Board may grant fees under these criteria.

DATES: All briefs in response to this notice shall be filed with the Clerk of the Board on or before May 30, 1997.

ADDRESSES: All briefs shall include the case name and docket number noted above (*Swentek* v. *Office of Personnel Management,* MSPB Docket No. DC–831E–94–0584–A–1) and be entitled ''Amicus Brief.'' Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653–7200.

Dated: April 25, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97–11243 Filed 4–30–97; 8:45 am]

BILLING CODE 7400–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Government Performance and Results Act of 1993

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of request for comments.

SUMMARY: The Government Performance and Results Act of 1993 (GPRA), Pub. Law 103–62, codified in part at 31 U.S.C. 1115–1119, instructs federal agencies to develop performance goals and objectives in order that an agency's actual performance may be measured and compared against those goals and objectives, thus enhancing the effectiveness and efficiency of an agency's work. In developing its goals and objectives under GPRA, the Federal Mine Safety and Health Review Commission solicits the views of those who practice before it and those who are affected by its case dispositions.

DATES: Comments should be received by June 16, 1997.

ADDRESSES: Comments should be sent to Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, Office of the General Counsel, 1730 K Street, NW., 6th Floor, Washington, DC 20006, telephone: 202–653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: GPRA charges federal agencies with formulating strategic plans, preparing annual plans setting performance goals, and reporting annually the actual agency performance compared to those goals. In considering how best to formulate its goals and objectives, the Commission has sought to develop measures that would allow it to better evaluate its performance and, ultimately, accomplish its statutory mission under the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 *et seq.* The Commission solicits the views of those who practice before it and those who are directly or indirectly affected by its case disposition to assist the Commission in developing goals and objectives to measure agency performance. Consideration should be given to how these goals will assist in evaluating the Commission's performance and ultimately enhance the accomplishment of its statutory objectives under the Mine Act.

In responding to this notice, the Commission requests that those

submitting comments consider some or all of the following issues:

(a) Are there quantifiable goals and objectives that would be appropriate measures of the Commission's performance under the Mine Act for purposes of GPRA? If so, what are they?

(b) Are the following viable measures of performance for the Commission's administrative law judges: (1) Volume of outputs (number of dispositions), compared to previous years; (2) timeliness of outputs, including average inventory age and average age of decisions issued; and (3) quality of outputs, based on the number of appealed decisions in which the judges were reversed or affirmed by the Commission?

(c) Are the following viable measures of performance at the Commission level: (1) Volume of outputs (number of dispositions), compared to previous years; (2) timeliness of outputs, including average inventory age and average age of decisions issued; and (3) quality of outputs, based on the number of decisions in which the Commission was reversed or affirmed in the courts of appeals?

(d) In addition to quantifiable measures of performance, or in lieu of such measures, are there descriptive measures of the Commission's performance that would permit an accurate, independent determination of whether that performance meets the Commission's goals under the Mine Act?

The Commission requests that responses to this solicitation for comments be submitted by June 16, 1997.

Dated: April 22, 1997, at Washington, DC.

Mary Lu Jordan,

Chairman.

[FR Doc. 97–11284 Filed 4–30–97; 8:45 am]

BILLING CODE 6735–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–053)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that HITCO Technologies, Inc., of Gardena, California 90249–2506; Materials and Electrochemical Research Corporation of Tucson, Arizona 85706; P & P Machine Tool, Inc., of Cleveland, Ohio 44146, and Zollner Pistons of Fort Wayne, Indiana 46803, has applied for a partially exclusive license to practice the invention described and claimed in NASA Case No. LAR–15643–1, entitled ''CHOPPED–FIBER COMPOSITE PISTON ARCHITECTURE,'' for which a United States Patent Application was filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001, telephone (757) 864–9260; (757) 864–9190.

Dated: April 24, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–11355 Filed 4–30–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL BANKRUPTCY REVIEW COMMISSION

Meeting

AGENCY: National Bankruptcy Review Commission.

ACTION: Notice of public meeting.

TIMES AND DATES: Wednesday, May 14, 1997; 8:15 a.m. to 5:00 p.m., Thursday, May 15, 1997; 8:00 a.m. to 5:30 p.m. and Friday, May 16, 1997; 8:00 a.m. to 3:30 p.m.

PLACE: The meeting site for Wednesday, May 14, 1997 will be the George Washington University Law School, Room LL101, 720 20th Street, N.W., Washington, D.C. It is recommended that the public use the entrance located at the corner of 20th and H Streets. The handicap entrance is located on 20th Street.

The meeting site for Thursday, May 15, 1997, and Friday, May 16, 1997, will be at the Grand Hyatt Hotel, 1000 H Street, N.W., Washington, D.C. The location of the Meeting Room will be posted at the Hotel.

STATUS: The meeting will be open to the public.

NOTICE: At its public meeting, the Commission will consider general administrative matters and substantive agenda items including conflicts of interest, consumer bankruptcy, corporate/small business bankruptcies, Sections 105 and 362(b), and tax issues; Commission working groups will consider the following substantive matters: Chapter 11, government, jurisdiction and procedure, and transnational issues. An open forum session devoted to issues related to consumer bankruptcy for public participation is tentatively scheduled for May 14, 1997 from 8:30 a.m. to 10:15 a.m. In addition, a general open forum for public participation that will include issues related to the United States Trustee Program is tentatively scheduled for May 16, 1997 from 3:00 p.m. to 3:30 p.m. Dates and times for the open forum sessions are subject to change.

SUPPLEMENTARY INFORMATION: Any individual or organization who wants to make an oral presentation to the National Bankruptcy Review Commission concerning the Commission's statutory responsibilities may do so at the open forum sessions. Persons who would like to make an oral presentation to the Commission at the open forum sessions should register in advance by contacting the National Bankruptcy Review Commission at (202) 273–1813 no later than 5:00 P.M. EST on May 13, 1997 or register in person at the National Bankruptcy Review Commission registration desk at the meeting site. Open forum registrants are asked to provide name, organization (if applicable), address and phone number. If the volume of requests to speak at the open forum sessions exceeds the time available to accommodate all such requests, the speakers will be chosen on the basis of order of registration.

Oral presentations will be limited to five minutes per speaker. Persons speaking at the open forum sessions are requested, but not required, to supply twenty (20) copies of their written statements prior to their presentations to the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite 5–130, Washington, DC 20544. Written submissions are not subject to any limitations.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite 5–130, Washington, D.C. 20544; Telephone Number: (202) 273–1813.

Susan Jensen-Conklin,

Deputy Counsel.

[FR Doc. 97–11289 Filed 4–30–97; 8:45 am]

BILLING CODE 6820–36–P

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances and Revocation of Class III Tribal Gaming Ordinance

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

FOR FURTHER INFORMATION CONTACT: The NIGC at (202) 632–7003, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. § 2701 *et seq.*, was signed into law on October 17, 1988. the IGRA established the National Indian Gaming Commission (the Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR § 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register,** approved class III gaming ordinances. Section 522.12 of the Code of Federal Regulations requires the Chairman to publish all class III gaming ordinance revocations.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. § 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to: National Indian Gaming Commission, 1441 L Street, N.W., 9th Floor, Washington, D.C. 20005.

The Chair has approved tribal gaming ordinances authorizing class III gaming for the following Indian tribes:

Hopland Band of Pomo Indians
Little River Band of Ottowa Indians
Mooretown Rancheria
Picayune Rancheria of the Chukchansi Indians
Quinault Indian Nation
Round Valley Indian Tribes
Salt River Pima-Maricopa Indian Community
Shingle Springs Rancheria
Tonkawa Tribe of Oklahoma

The following tribe has revoked its class II and class III ordinance:

Ponca Tribe of Nebraska

Ada E. Deer,

Acting Chair.

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NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences Fiscal-Year 1996; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (PL 93–438) identifies an abnormal occurrence (AO) as an unscheduled incident or event that the Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (PL 104–66) requires that AOs be reported to Congress on an annual basis. During fiscal-year 1996, eighteen events which occurred at NRC licensed facilities were determined to be AOs. These events are discussed below. As required by Section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG–0090, Vol. 19, ''Report to Congress on Abnormal Occurrences, Fiscal Year 1996.'' This report will be available at NRC's Public document Room, 2120 L Street NW. (Lower Level), Washington, DC, about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

96–1 Plant Trip With Multiple Complications at Wolf Creek Nuclear Generating Station

One of the AO reporting criteria notes that major deficiencies in design, construction, use of, or management controls for licensed facilities or material can be considered an AO.

Date and Place

January 30–31, 1996; Wolf Creek Nuclear Generating Station, a Westinghouse-designed pressurized water reactor nuclear power plant, operated by the Wolf Creek Nuclear Operating Corporation and located about 5.63 kilometers (3.5 miles) northeast of Burlington, Kansas.

Nature and Probable Consequences

One train of the essential service water system (ESWS) was inoperable due to frazil [1] ice blockage of the intake trash racks, and the second train was degraded. The ESWS removes heat from plant components which require cooling for safe shutdown of the reactor or following a design basis accident. The ESWS consists of two redundant trains, provides emergency makeup to the spent fuel pool and component cooling water systems, and is the safety related water supply to the auxiliary feedwater system. Freeze protection for the ESWS is a design provision, and is provided by a warming line from each ESWS train which discharges directly in front of the train's trash rack.

At approximately 2:00 a.m. on January 30, 1996, operators at Wolf Creek received alarms indicating that the traveling screens for the circulating water (CW) system were becoming blocked. The site watch reported that the traveling screens for Bays 1 and 3 were frozen and that water levels in these bays were approximately 2.44 meters (8 feet) below normal. The ESWS was started with the intent to separate the ESWS from the service water (SW) system. However, the ESWS was incorrectly aligned, which reduced warming flow to the ESWS suction bays (the lineup was corrected approximately 6 hours later). At approximately 3:30 a.m., operators received a service water low pressure alarm (CW system bays were subsequently determined to be at 3.66 meters (12 feet) below normal) and an electric fire pump started. The shift supervisor then directed a manual reactor/turbine trip. Following the scram, five control rods failed to fully insert (from 12 to 30 steps out). The event was further complicated because the turbine driven auxiliary feedwater pump developed a packing leak and was declared inoperable. The loss of CW system bay level was subsequently determined to be caused by ice blockage of the traveling screens, which was caused by freezing water from the spray wash system.

Train ''A'' ESWS pump was tripped and declared inoperable at 7:47 a.m. due to low discharge pressure and high strainer differential pressure. At about 5:45 p.m. the operators declared Train ''A'' operable based on an engineering evaluation. However, the pump was

[1] Minute ice crystals called frazil were formed when wind and temperature conditions caused water in the ultimate-heat-sink reservoir to become supercooled (cooled to a few hundredths of a degree below the freezing point without solidification). The frazil ice crystals mixed with the supercooled water, and adhered to the objects (i.e., trash racks) with which they collided.

stopped 1½ hours later at approximately 7:30 p.m. when the pump exhibited further oscillations in flow and pressure. At approximately 8:00 p.m., operators noted that ESWS Train ''B'' suction bay level was 4.57 meters (15 feet) below normal and decreasing slowly. Operators placed additional heat loads on Train ''B'' and the suction bay levels subsequently recovered. At 10:14 p.m., the operators again started Train ''A'' ESWS, but later secured it, at 10:27 p.m., due to decreasing flow and pressure. At about 9:00 a.m. on January 31, 1996, divers inspected the suction bay of Train ''A'' and noted complete blockage of the trash racks by frazil ice. The condition of the Train ''B'' trash racks was not determined because the pump was running. The ice blockage was cleared later that day using heating, and air sparging of the trash racks.

Cause or Causes

The root cause of this event was deficiencies in the ESWS warming line design. This problem was exacerbated by the initial incorrect alignment of the ESWS. A 1976 design calculation specified a warming line flow rate of 15,142 liter/minute (4000 gpm) to prevent frazil ice. This calculation assumed a warming line temperature of 2°C (3°F) above freezing. This assumption was never validated: The warming line temperature during the event was only approximately 0.5°C (1°F) above freezing. Additionally, due to the elevations and configuration of the warming line, portions of the line operated with partial pipe flows. Flow through the lines was estimated to have been 9464 liter/minute (2500 gpm) and, with the initial improper lineup, warming flow was estimated to be 6435 liter/minute (1700 gpm), less than half the design specification.

Actions Taken to Prevent Recurrence

Licensee

The hydraulics of the ESWS discharge to the ultimate heat sink, and the warming line to the ESWS pumphouse, have been changed to establish and distribute the proper amount of flow to the ESWS warming line. The licensee has installed back pressure orifices to establish the required flow rates. This work was completed by October 1, 1996.

NRC

NRC entered a monitoring phase following the Notification of an Unusual Event at 9:00 a.m. on January 30, 1996. During February 6 through February 15, 1996, NRC conducted an Augmented Inspection Team inspection at Wolf Creek as a result of this event. NRC issued a civil penalty of $300,000 because of violations as a result of this event.

96–2 Containment-Bypass Leakage via Disconnected Hydrogen-Monitor Lines at Braidwood Units 1 and 2

One of the AO reporting criteria notes that a major reduction in the degree of protection to public health and safety from a major degradation of essential safety-related equipment can be considered an AO.

Date and Place

February 15, 1995; Braidwood Unit 2, a Westinghouse-designed pressurized water nuclear reactor plant, operated by Commonwealth Edison Company and located about 38.6 kilometers (24 miles) south southwest of Joliet, Illinois.

Nature and Probable Consequences

On November 9, 1994, the licensee completed a containment integrated leak rate test (ILRT). For this test, the 6.35-millimeter (0.25-inch) containment penetration hydrogen sensing lines for trains ''A'' and ''B'' were disconnected and a balloon placed on the end to identify any leakage. The procedure did not specify whether to disconnect the sensing line inside the hydrogen monitor cabinet or outside. The operators who lined up the test disconnected the lines inside the cabinet. The licensee's investigation concluded that when other operators restored the system from the test, they observed the exterior sensing lines and assumed that the lines were reconnected. Therefore, the sensing lines remained disconnected inside the cabinet.

On January 31, 1995, the operations department wrote a problem identification report to identify a growing difference in the hydrogen readings on the ''A'' and ''B'' trains which are taken during each shift. On February 15, 1995, during troubleshooting, the ''A'' train lines were found to be disconnected, approximately 3 months after being disconnected. Surveillance tests performed on December 11, 1994, and January 25, 1995, provided opportunities to detect the deficiency with the ''A'' train but were missed. It could not be conclusively determined when the ''B'' train was restored. Two maintenance workers had a recollection of discovering balloons on the sensing lines in a hydrogen monitoring cabinet in late 1994. Maintenance records indicate these individuals worked on the ''B'' train on December 20, 1994. However, computer and operator logs for the ''B'' train appear to have been accurately reading containment hydrogen following the ILRT.

The hydrogen monitors are normally isolated. However, during a loss of coolant accident, the Emergency Operating Procedures direct the operators to put them into service to monitor containment hydrogen concentration. This would create an unfiltered release path from the containment to the auxiliary building. The licensee calculated that, under worst case conditions using guidance from NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' regulatory dose limits could be exceeded within approximately 3 hours. NRC review found the licensees calculations to be conservative.

There are area radiation monitors near the hydrogen monitors. These area radiation monitors alarm in the control room and the alarm response procedures call for notification of Radiation Protection personnel to survey the area. Additionally, there are radiation monitors in the auxiliary building exhaust that would assist the operators in identifying the leak. The containment bypass flow path could be isolated remotely from the control room and it appears credible that the leak could be isolated prior to exceeding regulatory limits.

Cause or Causes

The cause of this event was a procedural deficiency in that the ILRT procedure did not provide adequate guidance on where the containment penetration hydrogen sensing lines should be disconnected. Additionally, the operator tasked with reconnecting the containment penetration hydrogen sensing lines, after the ILRT was completed, did not display a questioning attitude when he found that the lines appeared to be reconnected.

Actions Taken to Prevent Recurrence

Licensee

Corrective actions included revision of ILRT line up and restoration sheets to provide adequate guidance on where disconnections and connections are to be performed. Additionally, a General Information Notice was issued to all site personnel highlighting the human performance problems identified from this event.

NRC

Escalated enforcement was exercised on this issue and the licensee was assessed a $100,000 civil penalty. Information Notice 96–13, ''Potential Containment Leak Paths Through

Hydrogen Analyzers,'' was issued to alert other licensees to this event.

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

96–3 Medical Brachytherapy Misadministrations by José L. Fernández, M.D., in Mayagüez, Puerto Rico

One of the AO reporting criteria notes that administering therapeutic radiation such that the actual dose is greater than 1.5 times the prescribed dose, or the event (regardless of any health effects) affects two or more patients at the same facility, should be considered an AO.

Date and Place

Between January 14, 1994, and October 10, 1995; José L. Fernández, M.D.; Mayagüez, Puerto Rico.

Nature and Probable Consequences

On January 14, 1994, Dr. Fernández acquired an eye applicator device, which contained a strontium-90 (Sr–90) source of approximately 3219 megabecquerel (87 millicurie) activity, from the estate of a deceased licensee in Mayagüez, Puerto Rico. (Eye applicator devices are used for the supplemental treatment of non-malignant growths on the eye after surgery is performed.) NRC knew that Dr. Fernández acquired the Sr–90 source because the estate was acting under a Confirmatory Action Letter (CAL) to maintain control of the Sr–90 source and to either dispose of it or transfer control of it to an authorized recipient. Since Dr. Fernández was already an NRC licensee for another Sr–90 source in San Juan, Puerto Rico, his license was amended so that he was an authorized recipient when the transfer took place. (After the transfer took place, Dr. Fernández was licensed to have two sources.) NRC did not require Dr. Fernández to receive additional training in the use of the Sr–90 source after he acquired it from the estate because he was already an authorized user for a Sr–90 eye applicator as defined by 10 CFR 35.

When Dr. Fernández took possession of the eye applicator device, it was in the manufacturer's carrying case. A label attached to the carrying case contained the following hand written information: (1) the dose rate for the device, which was calibrated as 24 centigray (cGy) per second (24 rad per second); (2) the instrument used to calibrate the dose rate; (3) the date when the dose rate was calibrated; and (4) the name of the individual who performed the calibration. Dr. Fernández assumed that the hand written information on the label attached to the manufacturer's carrying case was correct and proceeded to treat patients.

On October 18, 1995, during a routine inspection, an NRC inspector questioned the labeled dose rate on the eye applicator device and the resultant administered doses. Dr. Fernández was unable to provide documentation to answer the questions. He then voluntarily ceased the administration of radiation doses and requested a calibration of the device by the manufacturer. The actual dose rate was found by the manufacturer to be 53 cGy per second (53 rad per second); i.e., more than twice the assumed dose rate.

Dr. Fernández and NRC reviewed the computer sorted records of all administrations using the eye applicator device and determined that between October 24, 1994, and October 10, 1995, 87 patients had received radiation doses which were approximately twice the prescribed dose. However, the computer sort was not complete, since Dr. Fernández later discovered an additional 17 cases which occurred between January 1994 and October 1995. Dr. Fernández notified the patients about the misadministrations. NRC contracted a medical consultant to review the medical aspects of the misadministrations.

The NRC medical consultant, who reviewed patient records for the 87 patients initially identified, determined that 25 of the patients were at higher risk for complications. These 25 patients were initially prescribed treatment doses of 1500 to 2880 cGy (1500 to 2880 rad), but received doses of 3312 to 6360 cGy (3312 to 6360 rad) instead. Of these 25 patients, 12 were then prescribed second treatment doses of 1000 to 2160 cGy (1000 to 2160 rad), but received doses of 2208 to 4770 cGy (2208 to 4770 rad) instead. Additionally, two of these 25 patients were prescribed third treatment doses of 1500 to 3000 cGy (1500 to 3000 rad), but received doses of 3313 to 6625 cGy (3313 to 6625 rad) instead. The highest total dose received by a patient was 13,603 cGy (13,603 rad) to the surface of the eye, with an estimated 544 cGy (544 rad) to the lens of the eye.

The NRC medical consultant believes that the long-term consequences of the misadministrations to the 25 highest dose patients could include: (1) increased risk of cataracts; and (2) increased risk of infections, due to severe thinning or ulceration of the sclera, which could cause blindness if not detected early and aggressively treated. No adverse health effects were reported during a reexamination of seven of these 25 patients by Dr. Fernández. However, the NRC medical consultant indicated that the possible adverse consequences to these patients may not appear for a period of up to 10 years after irradiation.

Cause or Causes

Dr. Fernández used an incorrect dose rate for the Sr-90 source, as calibrated by a medical physics consultant employed by the deceased former licensee, to develop treatment plans.

The incorrect dose rate calibration occurred when the former licensee had a medical physics consultant calibrate the Sr-90 source, after the original calibration certificate was lost. The medical physics consultant used an inappropriate measurement instrument for the calibration, which gave an erroneous dose rate calibration of 24 cGy per second (24 rad per second). (The label attached to the carrying case of the eye applicator device indicated that the medical physics consultant calibrated the Sr-90 source in September 1990.)

Also, Dr. Fernández had no Quality Management Program (QMP) as required by 10 CFR 35.32, which could have helped in detecting the calibration error. Medical use licensees, as required under 10 CFR 35.32, must establish a QMP to provide high confidence that radiation will be administered as directed by the authorized user.

Actions Taken to Prevent Recurrence

Licensee

Dr. Fernández initially ceased operations until the eye applicator device was properly calibrated; reliable dosimetric data was available to perform the dose administrations; and a QMP was developed and submitted to NRC for review. Dr. Fernández subsequently decided to cease using the Sr-90 source and to terminate his license. (The QMP was never implemented.)

NRC

A CAL was issued to confirm that Dr. Fernández would submit a QMP for use of the eye applicator device, and that he would cease operations until approval was received from NRC to resume operations. A second CAL was issued confirming that Dr. Fernández would perform an in-depth review of his records to identify the misadministrations and to notify the patients.

After Dr. Fernández requested termination of his license, NRC issued an order, which required him to maintain the Sr-90 sources in locked, safe storage until the sources were transferred to an authorized recipient, to

transfer the Sr-90 source within 90 days, to identify and notify any additional patients who may have received misadministrations, to obtain the services of an independent medical physics consultant with expertise in therapy dosimetry calculations, and to perform several other tasks specified in the order. Dr. Fernández currently has a possession only license until his sources are properly transferred and his request for termination has been granted by the NRC. In addition, NRC is requesting that the Puerto Rico Health Department perform a long-term follow-up of these patients.

NRC also issued Information Notice 96–66, ''Recent Misadministrations Caused by Incorrect Calibrations of Strontium-90 Eye Applicators,'' on December 13, 1996, to alert all medical use licensees authorized to use Sr-90 eye applicators of misadministrations caused by incorrect source strength determinations of Sr-90 eye applicators.

Dr. Fernández purchased the medical practice and the Sr–90 source from the estate of the deceased former licensee, Dr. Luis A. Vázquez of Mayagüez, Puerto Rico. Consequently, Dr. Fernández has the records of all of the administrations that were made using the Sr–90 source while it was licensed to Dr. Vázquez. In a letter to Dr. Fernández dated October 28, 1996, NRC confirmed with Dr. Fernández that he would preserve the patient records of the former licensee and perform a computer search to identify the patients who were treated with the eye applicator. NRC is considering options for the review of these records to determine how many additional misadministrations occurred when the incorrectly calibrated Sr–90 source was in the possession of the former licensee.

96–4 Medical Brachytherapy Misadministrations by Phillip J. W. Lee, M.D., in Honolulu, Hawaii

One of the AO reporting criteria notes that administering a therapeutic dose from a sealed source such that the errors in source calibration and time of exposure result in a calculated total treatment dose differing from the prescribed treatment dose by more than 10 percent, and the event (regardless of any health effects) affects two or more patients at the same facility, can be considered an AO.

Date and Place

May 6, 1995, through November 16, 1995; Phillip J. W. Lee, M.D.; Honolulu, Hawaii.

Nature and Probable Consequences

During an NRC inspection, it was determined that the licensee had incorrectly performed calculations for the decayed activity of a strontium-90 (Sr–90) source in an eye applicator. Consequently, the licensee had the Sr–90 eye applicator calibrated by the National Institute of Standards and Technology (NIST). Based on calibration data provided by NIST, NRC and the licensee determined that 17 misadministrations involving 16 patients had occurred between May 6 and November 16, 1995. (Two of the misadministrations involved one patient who was treated on both eyes.) The delivered doses were from 21.1 to 22.7 percent greater than the prescribed total dose of 4000 centigray (cGy) (4000 rad). (The total dose was to be delivered in four fractions of 1000 cGy [1000 rad] each.)

The licensee and referring physicians did not observe any adverse consequences to the patients. The licensee noted that the misadministered doses were within the ranges recommended for this type of treatment. NRC contracted a medical consultant to review the cases and make an independent assessment of the potential health effects to the patients. As of the date of this report, the reviews of the NRC and its consultant were ongoing.

The licensee notified the patients of the misadministration.

Cause or Causes

The licensee did not know how to calculate the decay of the Sr–90 source, and used a linear function rather than a logarithmic function. In addition, the licensee used an incorrect half-life for Sr–90; however, this error was less significant.

Actions Taken to Prevent Recurrence

Licensee

The licensee had the Sr–90 eye applicator calibrated at NIST and learned how to calculate the decay of the Sr–90 source.

NRC

NRC requested that the licensee have the Sr–90 eye applicator calibrated at NIST and taught the licensee how to calculate the decay of the Sr–90 source. NRC is conducting an inspection, which will remain open until the NRC medical consultant finishes reviewing the cases and provides an assessment of the potential health effects to the patients. Enforcement action may be taken in the future if necessary.

96–5 Medical Brachytherapy Misadministration at Harper Hospital in Detroit, Michigan

One of the AO reporting criteria notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

Date and Place

November 24, 1995; Harper Hospital; Detroit, Michigan.

Nature and Probable Consequences

A patient was being treated with a strontium-90 eye applicator for pterygium (a growth over the eye which causes gradual blindness). The patient was prescribed three 800-centigray (800 rad) treatments lasting 30 seconds each. Each of the treatments was to be administered to the medial side of the left eye. However, the second treatment was mistakenly administered to the lateral side of the left eye. The physician realized the error and immediately treated the correct side with the prescribed dose.

The patient was notified of the misadministration and given a written report. The patient's referring physician was notified. An NRC medical consultant evaluated the effects of the misadministration and concurred with the licensee that the patient was not expected to suffer any adverse health effects.

Cause or Causes

The patient's chart was upside down and the treating physician incorrectly interpreted the sketch of the left eye on the diagram that specified the treatment site. (The diagram was part of the written directive for treatment using the strontium-90 eye applicator; however, it did not show the nose, top of the page, or bottom of the page.) Also, the second treatment was administered by a different physician and physicist than the first treatment.

Actions Taken To Prevent Recurrence

Licensee

The licensee revised the diagram so that it shows the nose, thereby making it obvious which is the left eye and which is the right eye.

NRC

NRC conducted a special safety inspection. A Notice of Violation was issued for failing to ensure that the administration was in accordance with the written directive. Since the inspection showed that actions had been taken to correct the violation and to prevent recurrence, no reply to the violation was required.

96–6 Medical Brachytherapy Misadministration at New England Medical Center in Boston, Massachusetts

One of the AO reporting criteria notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

Date and Place

November 10, 1993; New England Medical Center; Boston, Massachusetts.

Nature and Probable Consequences

A patient with carcinoma of the cervix metastatic to the brain was being treated with an intercavity implant using cesium-137 sources in a gynecological applicator. During treatment a source became dislodged and delivered radiation to the patient's thigh, which was an unprescribed treatment site.

The licensee subsequently calculated that the consequent dose to the patient's thigh was 71 centigray (cGy) (71 rad), as compared to 65 cGy (65 rad) which would have been delivered to the thigh at 20 centimeters (7.87 inches) distance from the applicator during the total procedure if performed as prescribed.

During a routine NRC inspection conducted on April 10–12, 1995, the NRC inspector noted the incident report and brought it to the attention of NRC management. NRC subsequently determined that the event was a misadministration and notified the licensee. The licensee consequently submitted the required notifications to NRC, and notified the patient in writing of the misadministration.

Cause or Causes

A malfunction of the aging gynecological applicator and a possible lack of attention to details by the personnel involved in loading the applicator caused the misadministration.

Actions Taken to Prevent Recurrence

Licensee

The licensee replaced the malfunctioning gynecological applicator. In addition, the licensee now requires that two persons perform loading of the gynecological applicator to insure that the sources are in and that the ovoids are taped to insure that the sources do not come out inadvertently.

NRC

The NRC again reviewed the information provided by the licensee and determined that a violation of the licensee's Quality Management Plan had occurred. An NRC medical consultant reviewed the circumstances of the misadministration, determined that the licensee had used an inaccurate source-to-thigh distance in its dose calculation, and determined that the patient received a dose of 864 cGy (864 rad) to the thigh instead of 71 cGy (71 rad) as calculated by the licensee. The medical consultant stated that the patient experienced no ill effects.

96–7 Medical Brachytherapy Misadministration at William Beaumont Hospital in Royal Oak, Michigan

One of the AO reporting criteria notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

Date and Place

March 19, 1996; William Beaumont Hospital; Royal Oak, Michigan.

Nature and Probable Consequences

A patient with cancer of the vagina was prescribed treatment with a high dose rate (HDR) remote afterloader brachytherapy unit having an iridium-192 source. The treatment plan specified a step size of 2.5 millimeters (mm) (0.098 inches). A wrong step size of 5.0 mm (0.197 inches) was entered into the HDR unit's computer control program. Therefore, a part of the body not scheduled to receive radiation was exposed.

The licensee calculated that the skin of the patient's thighs, which was the wrong treatment site, received a maximum unintended dose of 500 centigray (500 rad) because of the misadministration. An NRC medical consultant determined that the patient should have no side effects as a consequence of the misadministration. The patient and the referring physician were notified of the misadministration.

Cause or Causes

The wrong step size was entered into the HDR remote afterloader brachytherapy unit's computer control program.

Actions Taken To Prevent Recurrence

Licensee

The licensee revised its ''physics worksheet'' to include the step length as an additional entry; developed a checklist for the physicist/dosimetrist to verify the treatment plan parameters, and posted it on the treatment console; and instituted a policy that all treatment plan parameters must be verified, and the verification recorded, prior to each treatment.

NRC

NRC conducted a special safety inspection, where one apparent violation was noted. This was the failure of the licensee's Quality Management Program to provide assurance of correct administration of the prescribed dose in compliance with the physician's written directive.

96–8 Medical Brachytherapy Misadministration at Community Hospitals of Indiana in Indianapolis, Indiana

One of the AO reporting criteria notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

Date and Place

August 16, 1996; Community Hospitals of Indiana; Indianapolis, Indiana.

Nature and Probable Consequences

A patient was prescribed a 500 centigray (cGy) (500 rad) treatment for an esophageal tumor using a high dose rate remote afterloader unit having an iridium-192 source. Because of a treatment planning error, a non-prescribed treatment area approximately 27 millimeters (mm) (1.06 inches [in]) below the tumor volume received a maximum dose of 465 cGy (465 rad) instead of the estimated dose of 50 to 100 cGy (50 to 100 rad).

The patient was notified of the misadministration. The licensee expects no adverse health effects to the patient. A NRC medical consultant was retained to review the case.

Cause or Causes

Because of a treatment planning error, the source was placed approximately 27 mm (1.05 in) below the tumor volume.

Actions Taken To Prevent Recurrence

Licensee

A table of offset distances for the various sources and catheter lengths used by the licensee was placed in the licensee's quality control manual.

NRC

NRC conducted a special safety inspection.

96–9 Medical Brachytherapy Misadministrations at EquiMed, Inc., in Lehighton, Pennsylvania

One of the AO reporting criteria notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

Date and Place

December 31, 1995; EquiMed, Inc.; Lehighton, Pennsylvania.

Nature and Probable Consequences

Two patients were prescribed vaginal treatment with a high dose rate (HDR) remote afterloader brachytherapy unit having an iridium-192 source. The prescribed total dose for each patient was between 2000 and 2200 centigray (cGy) (2000 and 2200 rad), and was to be delivered in five fractional doses over a period of several weeks. Each fractional dose was to be between 400 and 500 cGy (400 and 500 rad).

For one of the treatment fractions, 500 cGy (500 rad) was to be delivered to each patient over a treatment length of 5 centimeters (cm) (1.97 inches [in]) using a step size of 5 millimeters (mm) (0.197 in). However, a wrong step size of 10 mm (0.394 in) was entered into the HDR unit's control console, and a length of 10 cm (3.94 in) was treated instead of the prescribed length of 5 cm (1.97 in). Therefore, radiation was delivered to the wrong treatment site for each patient.

The licensee concluded that each patient received 312 cGy (312 rad) instead of the prescribed dose of 500 cGy (500 rad) (an underdose of 37.6 percent), and an additional length of 5 cm (1.97 in) received an unintended dose of 312 cGy (312 rad).

The licensee did inform the patients of the misadministrations, and does not expect the patients to have any adverse effects from the misadministrations.

Cause or Causes

A wrong step size was entered into the HDR unit's control console because the licensee did not follow its Quality Management Procedures (QMP). The QMP requires that treatment planning information be checked by the person entering the data in the control console, and then verified by the authorized user.

Actions Taken to Prevent Recurrence

Licensee

The licensee's authorized user and the HDR physicist will extract the pre-treatment printout of the input parameters from the HDR treatment console, review the input data for accuracy, and compare it with the written directive. Both the authorized user and the HDR physicist will then initial the printout before the HDR treatment is initiated.

NRC

NRC determined that the incidents occurred because the licensee did not follow its QMP. NRC contracted a medical consultant to evaluate the health effects on the patients from the misadministrations. Subsequently, the consultant determined no probable deterministic effects of the radiation exposure to the unintended site were expected.

96–10 Medical Brachytherapy Misadministration at the University of Wisconsin in Madison, Wisconsin

One of the AO reporting criteria notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

Date and Place

October 19, 1995; University of Wisconsin; Madison, Wisconsin.

Nature and Probable Consequences

A patient had two separate lung tumors, one in the lower section of the right lung and one in the middle section of the left lung. The patient was prescribed a total treatment dose of 1600 centigray (cGy) (1600 rad), with each tumor to receive a total dose of 800 cGy (800 rad). The total treatment dose was to be administered in four fractions of 400 cGy (400 rad) each over 2 days using a high dose rate (HDR) remote afterloader unit having an iridium-192 source. Each fraction was to be administered in two parts; a 200 cGy (200 rad) dose to the lower section of the right lung followed by a 200 cGy (200 rad) dose to the middle section of the left lung. Catheters of appropriate length were inserted into each lung to guide the source during treatment; i.e., a long catheter was inserted into the right lung and a short catheter was inserted into the left lung.

While the HDR controller was inserting the source into the left lung during the first treatment fraction, the source stopped moving when it touched the bottom of the short catheter in the left lung even though the HDR controller was attempting to move it further into the left lung. Because the intended treatment sites had been reversed during treatment planning and were subsequently programmed into the HDR controller, the controller had positioned the source in the middle of the right lung during the first part of the first treatment fraction and was attempting to position the source in the lower part of the left lung during the second part of the first treatment fraction. Consequently, the middle of the right lung had received an unintended dose of 200 cGy (200 rad) during the first part of the first treatment fraction.

After the error was discovered, the correct treatments were delivered. The patient was notified of the misadministration both verbally and in writing. The referring physician was also notified.

An NRC medical consultant evaluated the misadministration and concluded that the patient would not have organ damage or long term biological effects.

Cause or Causes

When planning the treatment, the treating physicist deviated from standard protocol and used different dummy sources to obtain clearer opaque x-ray markers for source location. Upon recording the data, the planned source locations for each treatment fraction were reversed. An independent verification of the treatment plan by a second physicist did not include a review of the x-rays for proper source location, so the error was not immediately discovered.

Actions Taken To Prevent Recurrence

Licensee

The licensee revised its Quality Management Program to include an independent review of the x-rays for source location by a second physicist. Also, when there is a deviation from the protocol, the results must be documented and reviewed by a second physicist.

NRC

NRC conducted a special safety inspection in conjunction with a routine inspection. A Notice of Violation was issued for failing to establish adequate procedures to ensure that final treatment plans were in accordance with the written directive. The licensee responded in writing and no additional actions were required.

96–11 Medical Brachytherapy Misadministration at Thomas Jefferson University Hospital in Philadelphia, Pennsylvania

One of the AO reporting criteria notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

Date and Place

August 14, 1995; Thomas Jefferson University Hospital; Philadelphia, Pennsylvania.

Nature and Probable Consequences

A patient was undergoing brachytherapy treatment of the palate; i.e., the roof of the mouth. A total of 64 iridium-192 seeds, having a total activity of 1102.6 megabecquerel (29.8 millicurie), were inserted into six

catheters. Four of the catheters were sutured inside the mouth, and two were placed in the nostrils.

While making a routine visit to the patient, the prescribing physician noticed that two catheters were outside of the patient's mouth and had been taped to the patient's right cheek. Also, one of the two catheters remaining in the mouth was loose and its sutures were removed. Because the catheters were not properly positioned, the physician terminated the treatment.

The radioactive seeds were subsequently removed. The patient was informed both verbally and in writing that the sources had become dislodged and had consequently delivered radiation to the wrong treatment site. It was determined that the patient's cheek received a dose of 70 centigray (70 rad).

Cause or Causes

While responding to a call from the patient, a nurse noticed that two of the catheters were loose and subsequently taped them to the patient's cheek. The nurse had not been trained to recognize that the radioactive seeds were moved from their intended positions.

Actions Taken to Prevent Recurrence

Licensee

Refresher in-service training was given to the nurses who care for brachytherapy patients. Emphasis was placed on identifying radioactive sources and handling them properly under normal and emergency conditions. Also, the nurses will be briefed on the details of a planned treatment at the time the sources are implanted with emphasis on radiation safety issues. Finally, physicians will visit implant patients at least twice daily during treatment.

NRC

After conducting an investigation, NRC determined that the event was a misadministration. An NRC medical consultant concluded that no significant injury would be expected. A Notice of Violation was issued with one Severity Level IV violation.

96–12 Medical Brachytherapy Misadministration at Macombe Hospital Center in Warren, Michigan

One of the AO reporting criteria notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

Date and Place

March 11, 1996; Macombe Hospital Center; Warren, Michigan.

Nature and Probable Consequences

A patient was undergoing a cervical boost brachytherapy treatment with a manually afterloaded standard gynecological applicator using cesium-137 sources. Approximately 100 minutes after the treatment was started, a nurse found one of the sources from the applicator lying on the sheet between the patient's legs. The dislodged source contained 1.29 gigabecquerel (34.8 millicurie) of cesium-137 and was intended for the right ovoid of the applicator. The nurse placed the source into the portable shielding that was available in the room and notified the radiation safety officer. The radiation safety officer immediately returned to the patient's room with the physician, who inserted the source into the right ovoid for the remainder of the prescribed 48 hours of treatment.

The licensee calculated that the unintended skin dose to the patient's upper inner thighs was 5 centigray (cGy) (5 rad). NRC concurred with the licensee's calculation and did not obtain a medical consultant. The dose of 5 cGy (5 rad) is within the occupational exposure limit and is not expected to result in deleterious effects to the patient. The patient and physician were notified of the misadministration.

Cause or Causes

When the radiation oncologist manually afterloaded the sources from the right and left carriers into the ovoids, difficulty was encountered in identifying the correct carrier for the right ovoid. Also, the hinge on the correct carrier for the right ovoid was tight. The radiation oncologist believed that the sealed source dislodged from the carrier bucket when the problem with the hinge was encountered.

Actions Taken To Prevent Recurrence

Licensee

To prevent recurrence, the licensee will: (1) ensure that the carrier bucket hinges are working properly prior to loading the source into the bucket; (2) inscribe the handles of the ovoid carriers, with ''R'' for right ovoid and ''L'' for left ovoid, so that they can be readily identified without difficulty; (3) require the physicist to observe the radiation oncologist during the afterloading procedure in order to detect a dislodged source; and (4) require that the radiation oncologist complete a visual check of the bed sheets and immediate area before leaving the room.

NRC

NRC conducted a special safety inspection. NRC issued a Notice of Violation for failing to meet the objective that each administration is in accordance with a written directive. The inspection showed that actions had been taken to correct the violation and to prevent recurrence.

96–13 Medical Brachytherapy Misadministration at Unity Hospital in Fridley, Minnesota

One of the AO reporting criteria notes that administering a therapeutic dose such that the actual dose is less than 0.5 times the prescribed dose should be considered an AO.

Date and Place

August 19–20, 1996; Unity Hospital; Fridley, Minnesota.

Nature and Probable Consequences

A patient was prescribed a dose of 2500 centigray (cGy) (2500 rad) for a gynecological brachytherapy procedure, using a gynecological applicator containing cesium-137 sources in two ovoids. Because 3-centimeter (cm) diameter caps had been used on the ovoids of the gynecological applicator, instead of the intended 2-cm diameter caps, the patient received a dose of 1186 cGy (1186 rad) to the vaginal surface.

With the addition of the external beam therapy that the patient had received prior to this treatment, the total administered dose was 5680 cGy (5680 rad). The treating physician determined that the total administered dose was within the medically accepted range of treatment, and that no negative effects to the patient were expected. The treating physician did not plan to administer any further radiation treatments to the patient to compensate for the underdose.

The patient was notified of the misadministration both verbally and in writing. The referring physician was also notified.

Cause or Causes

There was poor communication between the treating physician and the dosimetrist who prepared the treatment plan regarding the size of the ovoid caps to be used for the treatment. (The treating physician may select 2-cm diameter caps, 3-cm diameter caps, or no caps at all from an applicator kit, depending on the anatomy of the patient.) In addition, licensee personnel may have become desensitized to the possibility that an ovoid cap size different than 2-cm in diameter could be used; the treating physician failed to follow-up on earlier instructions to the dosimetrist to verify the correct cap size used; and the applicator kit was not returned immediately to the radiation

oncology department following the implant of the applicator device.

Actions Taken To Prevent Recurrence

Licensee

The licensee revised its written-directive form to require the treating physician to enter the cap size when ovoids are used, and for a second person to verify that the information was entered. If the entry on the form is not made, the person confirming the information must independently verify which size ovoid caps were used.

NRC

NRC conducted a special safety inspection on September 9, 1996. No violations of NRC requirements were identified during the course of this inspection.

96–14 Radiopharmaceutical Misadministration at Universal Imaging in Taylor, Michigan

One of the AO reporting criteria notes that administering a radiopharmaceutical other than the one intended, where the actual dose is greater than five times the prescribed dose, can be considered an AO.

Date and Place

March 18, 1996; Universal Imaging, Inc.; Taylor, Michigan.

Nature and Probable Consequences

A patient was prescribed a 7.4 megabecquerel (MBq) (200 microcurie [μCi]) dosage of iodide-123 (I–123) for a thyroid scan, but was administered 7.4 MBq (200 μCi) of iodide-131 (I–131) instead.

The referring physician's directive stated that I–123 was to be used. (This is the only isotope of iodine used at the facility.) A technologist then accidently ordered the I–131 from the nuclear pharmacy. A second technologist recognized that the I–131 was different from the I–123 routinely used, but assumed that it was prescribed and administered it anyway.

The licensee estimated that the dose to the patient's thyroid was 104 centigray (104 rad).

The referring physician was notified of the misadministration. The referring physician decided not to notify the patient because the information would be harmful to the patient.

An NRC medical consultant reviewed the event and determined that the impact of the misadministration on the status of the patient's health was very low, and that no specific medical follow-up care was necessary.

Cause or Causes

The misadministration was apparently caused by a lack of sufficient oversight of licensed activities, inadequate training, and failure to establish a written protocol for ordering and verifying radiopharmaceuticals.

Actions Taken To Prevent Recurrence

Licensee

The licensee implemented the following corrective actions: (1) All technologists were informed not to use any radiopharmaceutical that was not listed in the licensee's ''Prescribed Dosage List''; (2) orders must be sent to the nuclear pharmacy via facsimile, rather than over the telephone; (3) the nuclear pharmacy was instructed not to deliver I–131, I–125, or any other therapeutic radiopharmaceutical to the licensee; (4) all technologists were informed in writing not to proceed if they were unsure of any procedure; and (5) copies of radiopharmaceutical orders and their activities were to be checked against receipts.

The licensee is not required to have written directives to follow. This is because it does not perform therapy of any kind, does not use I–125 or I–131 in quantities greater than 1.11 MBq (30 μCi), and has no Quality Management Program.

NRC

NRC conducted an inspection. Based on the results of the inspection, eight apparent violations were identified and are being considered for escalated enforcement action. A predecisional enforcement conference was held to discuss the apparent violations and any potential enforcement action is pending.

96–15 Radiopharmaceutical Misadministration at Miami Valley Hospital in Dayton, Ohio

One of the AO reporting criteria notes that if an actual diagnostic dose of a radiopharmaceutical is greater than five times the prescribed dose it can be considered an AO.

Date and Place

September 21, 1995; Miami Valley Hospital; Dayton, Ohio.

Nature and Probable Consequences

A patient was administered a 2.8 megabecquerel (MBq) (77 microcurie [μCi]) dosage of iodine-131 (I–131) for a thyroid uptake study, rather than the prescribed dosage range of 0.19 to 0.37 MBq (5 to 10 μCi) of I–131. The licensee determined that the dose to the patient's thyroid was 80.85 centigray (80.85 rad).

The patient was informed of the misadministration in writing. The patient's referring physician was also notified.

An NRC medical consultant determined that no adverse health effects are expected from the additional dosage.

Cause or Causes

A nuclear medicine technologist inadvertently picked-up the wrong capsule, and in accordance with the licensee's practice did not calibrate the dosage in the dose calibrator prior to administration. The licensee's staff did not believe there was a requirement to assay dosages below 1.11 MBq (30 μCi).

Actions Taken To Prevent Recurrence

Licensee

The licensee implemented procedures to require that all dosages must be assayed regardless of their activity, and to review the assay of dosages on a quarterly basis.

NRC

NRC conducted a special safety inspection. NRC issued a Notice of Violation for failing to measure dosages containing less than 1.11 MBq (30 μCi) before they were administered to patients for medical use. The licensee responded in writing and no additional actions are required.

96–16 Radiopharmaceutical Misadministration at St. Joseph Mercy Hospital in Ann Arbor, Michigan

One of the AO reporting criteria notes that if an actual diagnostic dose of a radiopharmaceutical is greater than five times the prescribed dose it can be considered an AO.

Date and Place

April 9, 1996; St. Joseph Mercy Hospital; Ann Arbor, Michigan.

Nature and Probable Consequences

A patient was administered a 596 megabecquerel (MBq) (16.1 millicurie [mCi]) dosage of iodine-131 rather than the prescribed 122 MBq (3.3 mCi) dosage of I–131 for a diagnostic study of the neck and chest.

The misadministration was discovered after a vial, intended for another patient, was assayed and found to contain 122 MBq (3.3 mCi) instead of the expected 633 MBq (17.1 mCi). The patient was notified of the misadministration. The patient's referring physician was also notified.

The patient's thyroid gland had been removed previously and therefore the licensee anticipated minimal medical consequences. NRC contracted with the Oak Ridge Institute for Science and Education to conduct an assessment of

the I–131 dose to the patient. The assessment concluded that since the patient had no thyroid, the maximum dose was misadministered to the patient's bladder wall and was equal to 48.3 centigray (48.3 rad).

Cause or Causes

The technologist, when administering the dosage, mistakenly picked up a wrong radiopharmaceutical vial.

Actions Taken To Prevent Recurrence

Licensee

Licensee personnel failed to completely follow the written Quality Management Program.

NRC

NRC conducted a special safety inspection. NRC issued a Notice of Violation for failure of the supervised user (technologist) to follow instructions in accordance with the written directive.

96–17 Radiopharmaceutical Misadministration at the Veteran Affairs Medical Center in Charleston, South Carolina

One of the AO reporting criteria notes that administering a therapeutic dose such that the actual dose is less than 0.5 times the prescribed dose should be considered an AO.

Date and Place

January 9, 1996; Veteran Affairs Medical Center; Charleston, South Carolina.

Nature and Probable Consequences

An outpatient was administered 277.5 megabecquerel (MBq) (7.5 millicurie [mCi]) of a prescribed 573.5 MBq (15.5 mCi) dosage of iodine-131 (I–131) in liquid form. The error was discovered when the licensee rechecked the prescription vial with a dose calibrator after the administration to verify that the patient had received all of the prescribed dose. The licensee discovered that approximately 296 MBq (8 mCi) of the prescribed dosage had been retained in the vial cap, and consequently was not administered to the patient. The patient was informed of the event and was subsequently administered an additional 296 MBq (8 mCi) to make up for the underdosage. The licensee also notified the referring physician of the misadministration. The licensee expects no adverse effects to the patient from the misadministration.

Cause or Causes

The root cause for the misadministration was a pronounced reaction of the I–131 with the vial cap, thereby allowing a significant portion of the radioactive material to bind itself to the cap.

Actions Taken to Prevent Recurrence

Licensee

The licensee's Radiation Safety Officer investigated the incident. Bioassays were conducted on the individuals who handled and administered the I–131 dose, and all were found to be negative. The licensee also revised its policy and procedures to require that only I–131 in capsule form be used in the future.

NRC

NRC conducted a special inspection to review the circumstances surrounding the misadministration, and identified no violations of NRC requirements.

The State Agency is working with the nuclear pharmacy that filled the prescription and the intermediate processor of the I–131, both South Carolina state licensees, to determine the cause of event. The nuclear pharmacy informed its customers of the event.

96–18 Radiopharmaceutical Misadministration at Queen's Medical Center in Honolulu, Hawaii

One of the AO reporting criteria notes that administering a therapeutic dose of a radiopharmaceutical differing from the prescribed dose by more than 10 percent, and the actual dose is less than 0.5 times the prescribed dose, can be considered an AO.

Date and Place

December 8, 1995; Queen's Medical Center; Honolulu, Hawaii.

Nature and Probable Consequences

A patient was prescribed a dosage of 18.5 megabecquerel (MBq) (0.5 millicurie [mCi]) of phosphorus-32 (P–32) to be administered to the wrist for treatment of symptoms related to rheumatoid arthritis, but was administered 6.179 MBq (0.167 mCi) instead. The dosage was administered via a saline solution.

Prior to treatment, the volume of the patient's wrist-joint space was to be determined using fluoroscopy so that the proper volume of liquid would be injected. Also, two syringes were to be prepared. One was to contain 18.5 MBq (0.5 mCi) of P–32 in a 0.25 milliliter (ml) volume, and the other was to contain 18.5 MBq (0.5 mCi) of P–32 in a 0.5 ml volume. The appropriate syringe was to be chosen based upon the results of the fluoroscopy.

Because of poor communication, a technologist erroneously prepared one syringe containing 6.179 MBq (0.167 mCi) in a 0.25 ml volume and another syringe containing 12.32 MBq (0.333 mCi) in a 0.5 ml volume. The syringes were not labeled.

Based upon the results of the fluoroscopy, the administering physician chose the syringe with the 0.25 ml volume, believing that it contained 18.5 MBq (0.5 mCi) of P–32. However, the 0.25 ml volume contained only 6.179 MBq (0.167 mCi), which was one-third of the intended dosage. After the administration, the technologist who prepared the dosages asked why both syringes had not been used and explained how they were prepared.

The patient was notified of the misadministration in writing.

The two physicians involved with the misadministration have not observed any adverse health effects to the patient, and do not expect any. NRC determined that a medical consultant would not be required to review the case.

Cause or Causes

The details of the prescribed dosages were not properly communicated to the technologist who prepared the two syringes, the details were not independently confirmed by other licensee personnel, and the written procedure for preparing the dosages did not specify multiple syringe volumes.

Actions Taken to Prevent Recurrence

Licensee

The licensee now requires the prescribing physician to establish a standard activity and volume for each treatment site, and the injecting physician to verbally repeat this information and ask the technologist to verbally confirm it prior to the administration.

NRC

NRC conducted a special inspection and issued a Notice of Violation for deficiencies in the Quality Management Program.

Dated at Rockville, Maryland, this 25th day of April, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–11295 Filed 4–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–10 and NPF–15, issued to Southern California Edison Company (the licensee) for operation of the San Onofre Nuclear Generating Station (SONGS), Unit Nos. 2 and 3, located in San Diego County, California.

The proposed amendment would revise Surveillance Requirement (SR) 3.8.1.8 and applicable Bases to Technical Specification (TS) 3.8.1, ''AC Sources—Operating.'' This change will allow credit for overlap testing for performance of SR 3.8.1.8.

The exigent circumstances for this TS amendment request exists because it is needed by mid-May 1997 to avoid an unnecessary challenge to safety systems by performing an actual transfer of the safety-related buses of the operating unit to the unit auxiliary transformer of the shutdown unit. This TS amendment will permit preventive maintenance on the SONGS Unit 3 reserve auxiliary transformers and associated hardware during this unit's ongoing refueling outage. Performance of preventive maintenance on these transformers during the current outage will maintain these components in optimum operational condition.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change has no impact on any previously evaluated accident. It allows overlapping testing to assure operation of different AC power source alignments which have been previously evaluated.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect facility operation. It only changes the method of testing of AC power sources.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change allows overlapping testing to assure operation of different AC power source alignments. Overlap testing provides an equally valid test of the capability of the alternate offsite power source.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 2, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, PO Box 19557, Irvine, California 92713. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to T. E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated April 15, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 25th day of April 1997.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–11294 Filed 4–30–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of Information Collection, OPM Form 805 Series

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted simultaneously with publication of this notice a request to the Office of Management and Budget for reclearance of the OPM Form 805 Series that collects information from the public. OPM Form 805, Application to be Listed Under the Voting Rights Act of 1965, is used to elicit information from persons applying for voter registration under the authority of the Voting Rights Act of 1965. The requirements for voter eligibility vary from State to State; therefore, OPM Form 805 is a blanket number covering a number of forms which conform to the individual State's requirements. For a number of years, there have been forms for 10 States: Alabama, Arizona, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, Texas (English and Spanish language versions), and Utah. Because OPM has never been asked to list voters in Arizona, New Mexico, North Carolina, and Utah, the approval of these four forms is being permitted to lapse at the request of the Voting Rights Section in the Civil Rights Division of the Department of Justice. The form requires 20 minutes to complete. Approximately 10 individuals complete the form annually for a total public burden of 4 hours.

For copies of this proposal call James M. Farron on (202) 418–3208 or e-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before May 31, 1997.

ADDRESSES: Send or deliver comments to—

Anna Marie Schuh, Acting Assistant Director for Merit Systems Oversight, Office of Personnel Management, 1900 E Street, NW., Room 7677, Washington, DC 20415–0001 and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: P. Kaziah Clayton on (202) 606–2531.

U.S. Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–11312 Filed 4–30–97; 8:45 am]

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POSTAL SERVICE

Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Complaint of the Coalition Against Unfair USPS Competition, Docket No. C96–1

AGENCY: Postal Service.

ACTION: Notice of decision.

SUMMARY: Notice is hereby given of the Decision of the Governors in the complaint brought to the Postal Rate Commission concerning the packaging service known as Pack & Send. By direction of the Governors, their Decision is published in the **Federal Register** following this notice.

FOR FURTHER INFORMATION CONTACT: Scott L. Reiter, (202) 268–2999.

Stanley F. Mires,

Chief Counsel, Legislative.

April 8, 1997.

With this decision, the Governors exercise their authority to act in rate complaints brought to the Postal Rate Commission under the Postal Reorganization Act (''the Act''). 39 U.S.C. §§ 3625, 3662. The circumstances in this case are unprecedented and unusual. The complainant challenged rates charged by the Postal Service for a packaging service known as Pack & Send. The complaint's principal allegation was that Pack & Send is a postal service for which a classification and fees must be recommended by the Commission. After hearings, the Commission determined that the complaint was justified, but declined to issue a Recommended Decision to us regarding the status of Pack & Send. Instead, the Commission elected to characterize its conclusion as a ''declaratory order.''

We believe that the Commission's obligation under the Act and its own rules was to issue a Recommended Decision. Taken at face value, the Commission's action would effectively deprive us of our role in the statutory scheme. We have thus construed the Commission's order to be a Recommended Decision. For the reasons expressed below, we hereby reject it. By separate action the Postal Service has decided to discontinue the Pack & Send service.

Statement of Explanation and Justification

Background

This docket was initiated as the result of a complaint filed under 39 U.S.C. section 3662 by the Coalition Against Unfair USPS Competition (''Coalition'' or ''CAUUC''). The Coalition is a trade association representing operators of commercial mail receiving agencies (''CMRAs''), who, among other things, offer mail boxes, shipping services, packaging materials and packaging services in competition with the Postal Service. For the past two years, the Postal Service has offered Pack & Send as a pilot test, extending it over that time to approximately 260 selected postal facilities in a few geographic areas. The Coalition claimed that this service was unlawful, because the Postal Service had not first sought a recommended decision from the Commission to establish it and to set appropriate fees. Conversely, the Postal Service contended that packaging service is not required by the Act to be recommended by the Commission. All parties and the Commission agreed that the only issue that needed to be resolved to determine whether the complaint was justified was whether Pack & Send was a ''postal service.'' According to the Commission, if it made this finding, then the complaint was necessarily justified, because the service had not been established through proceedings before the Commission.

Testimony was filed on behalf of the Coalition and the Postal Service. The Postal Service provided the testimony of its Vice President for Retail, explaining the nature and operation of Pack & Send, and the reasons why it did not have to be recommended by the Commission. The Commission held hearings on the testimony under its rules governing complaints filed under 39 U.S.C. section 3662. The Commission ultimately found that the service was a postal service, and concluded that the complaint was justified. It made this determination in the form of a ''Declaratory Order,'' PRC Order No. 1145, issued on December 16, 1996. The Postal Service moved for reconsideration of the Order. In Order No. 1156, issued on February 3, 1997, the Commission affirmed both its substantive view regarding the status of Pack & Send, and its procedural view that it need not issue a recommended decision.

As had been suggested by the Commission's Office of the Consumer Advocate (OCA), the Coalition threatened to initiate federal court litigation seeking to enjoin the Postal Service from continuing to provide the service in the face of the Commission's findings. (Letter of January 29, 1997, from Chair of the Coalition to Chairman of the Board of Governors.) In part because such litigation would have made resolution of this matter more complicated than it needed to be, the Postal Service, with our concurrence, discontinued offering Pack & Send service as of February 14, 1997.

Statutory Scheme

The Commission's handling of this matter, both substantively and procedurally, raises several serious concerns. Initially, we believe that the form of the Commission's action is fundamentally inconsistent with the statutory scheme governing the Postal Service, and the respective roles of the Commission and the Governors under the Postal Reorganization Act.

The Act gives the Postal Service both general and specific powers, including the specific authority to provide and establish nonpostal services. 39 U.S.C. §§ 401, 404(a)(6). Nowhere in the statute is there any reference to Commission action in connection with nonpostal services. For postal services, the Governors are given the final authority to establish rates, fees, and mail classifications in accordance with applicable provisions in chapter 36, which generally provide for Commission proceedings leading to a recommended decision on these matters for postal services. 39 U.S.C. §§ 3621'3625. The Postal Service alone may initiate proceedings to establish or change postal rates or fees. 39 U.S.C. § 3622. Under section 3662, interested parties may challenge postal rates or services alleged not to be in accordance with the policies of the statute, but there is no explicit reference in that provision to any activity that is not a domestic postal service. The Act, in fact, does not create an explicit mechanism for challenging the legal status of services as postal or nonpostal.

In our opinion, the suitability of section 3662 to challenge the legal status of Postal Service activities only

makes sense if it is done in a way that respects the roles of the Postal Service and the Governors in the statutory scheme.[1] Section 3662 states that in the case of a rate complaint filed with the Commission, if the Commission ''determines the complaint to be justified, it shall, after proceedings in conformity with section 3624 of this title, issue a recommended decision which shall be acted upon [by the Governors] in accordance with the provisions of section 3625 of this title, and subject to review in accordance with the provisions of section 3628 * * *.'' 39 U.S.C. § 3662 (emphasis added). The Commission's own procedural rules state that ''[i]f the Commission determines, after the completion of proceedings which provide an opportunity for hearing, that a complaint is justified in whole or in part, the Commission shall issue a recommended decision to the Postal Service, if the complaint involves a matter of rates and fees or mail classification * * *.'' 39 CFR § 3001.87 (emphasis added).

In this proceeding, the Commission has held hearings in conformity with its rules implementing section 3624. It has made a determination concerning the only question that was before it, and has determined the complaint to be justified. No further issues remain to be determined to reach a final conclusion on the merits of the complaint. The Commission should therefore have issued its finding in the form of a recommended decision to us, as required by the plain language of the statute and its own rules. The action it took does not allow for the exercise of our statutory authority in this complaint case.

The Commission's conclusions regarding the status of Pack & Send raise issues that we would have addressed had the Commission properly issued a recommended decision. Accordingly, we are treating the Commission's Orders as a recommended decision. In this regard, section 3625 gives us a number of options. For the reasons set forth in this Decision, we are exercising our option to reject.

Principles at Issue

The first principle at issue is that we and the Commission are intended to be partners in the ratemaking process. With regard to this relationship, courts have concluded that ''one partner does not regulate another,'' and that ''Congress did not intend that the Postal Rate Commission regulate the Postal Service.'' *Governors of United States Postal Service* v. *Postal Rate Commission*, 654 F.2d 108, 114–15 (D.C. Cir. 1981); *Mail Order Association of America* v. *United States Postal Service*, 986 F.2d 509, 524 (D.C. Cir. 1993). The statute establishes the Commission as the body with primary expertise in classification and ratemaking, but, even on such matters, gives the Governors the authority to make a final decision. There is, however, no basis in the statute or in judicial precedent to support the proposition that the Commission has primary expertise in determining the nature of the services offered by the Postal Service. Indeed, the absence of any provision for it in the statute suggests that the Commission was not intended to play a role in the creation and operation of nonpostal services. It does not have unilateral authority in the area of its primary expertise, but rather shares that authority in a partnership with us. The Postal Service has the primary expertise and authority in determining the nature of the services it offers.

The second principle is one which derives from general notions of public policy: that an administrative agency should attempt to resolve issues before it in a way that avoids needless federal court litigation, or, at the very least, is not designed explicitly for the purpose of fostering such litigation. In this case, the course that the Commission has taken by choosing not to issue a recommended decision appears to respond to the OCA's argument that the Commission should not issue a recommended decision, because of the possibility that the Governors would exercise their lawful statutory option to reject it. According to the OCA, this would leave the complainant with no way to appeal our decision, since a rejection decision is not appealable under section 3628.[2] Instead, the OCA urged the Commission to issue a ''declaratory jurisdictional order'' that could be the basis for the Coalition to ask a federal district court to enjoin the Postal Service from continuing to offer packaging service.[3] That is precisely what the Commission did, and what the Coalition has threatened.

The third principle is that the statutory scheme embodies the Governors' and postal management's responsibilities for managing the Postal Service. If sound policy leads to a determination that section 3662, as a practical matter, should be adapted to enable interested persons to challenge the nonpostal status of Postal Service activities, it must accommodate the authority for making management decisions that the Act entrusts to the Governors and postal management. In this instance, the Commission justified its decision not to issue a recommended decision on its belief that ''there is no substantive recommendation for the Commission to make'' to the Governors. The Commission stated that ''a recommended decision simply declaring that Pack & Send is a postal service, and thus subject to the Commission's jurisdiction, would be a hollow vessel lacking any recommendation of substance upon which the Governors could act under § 3625.'' Order No. 1145, at 24.

It is not clear precisely what is meant by this. If the Commission is suggesting that a recommendation can only pertain to changes in rates or in the Domestic Mail Classification Schedule (DMCS), we do not agree, at least in the context of this complaint.[4] Here, the only issue

[1] The Postal Service did not challenge the Commission's jurisdiction under 39 U.S.C. § 3662 to resolve the question of whether a service is postal or nonpostal within the meaning of the Act. Since the statute contemplates that the Commission's resolution of the proceeding would be in the form of a recommended decision, rather than a unilateral ''declaratory order,'' it expected that the Governors would have an opportunity to act in accordance with sections 3662 and 3625. We do not concede that section 3662 gives the Commission jurisdiction to review new products and services to establish their status as postal or nonpostal service.

[2] The OCA characterized this sequence of events as a ''pit'' that the Postal Service was luring the Commission to ''fall in[to].'' See OCA Response in Support of Complainant's Motion for Summary Judgment at 5–6 (September 27, 1996); OCA Brief at 15–16 (November 22, 1996). The Commission, furthermore, in Order No. 1156, noted that parties aggrieved by the interlocutory Order might avail themselves of the federal district courts. Order No. 1156, at 16 & n. 6.

The OCA's concern was apparently that the Governors would take action under 39 U.S.C. § 3625 that would not be reviewable under § 3628, and that Pack & Send would thereby be immune from judicial review. OCA Motion at 6 & n.2; OCA Brief at 16 n.8. In this regard, we note that courts have been known to assume jurisdiction to review agency action where the claim is made that an agency's conduct exceeds its statutory authority, even where review would otherwise be precluded by statute.

[3] Id.

[4] It is not the case that a meaningful or appropriate recommendation could only be to change rates or classifications. The Commission has often recommended maintaining the status quo, sometimes based on a legal conclusion that a proposal would violate the policies of the Act, or that existing classifications were not unlawful. The Governors, furthermore, have in the past approved such recommendations. E.g., Docket No. MC76–1–4 (The Commission recommended that Mailgram service not be included in the Domestic Mail Classification Schedule; the Governors approved that recommendation.); Docket No. R77–1 (Based in part on a legal conclusion, the Commission recommended to the Governors that the Postal Service's proposed citizens' rate mail not be adopted; the Governors approved). In complaint cases as well, the Commission has based a recommendation on its legal conclusion that a challenged classification did not violate law. Docket

was the legal status of a particular activity, i.e., whether it was postal in nature. The Commission's recommendation and opinion, although embodied in the form of a ''declaratory order,'' created constraints and options for management decisionmaking. In our opinion, this is a situation for which Governors' action responding to the Commission's determination is both logical and mandated under sections 3662 and 3625.

Had the Commission issued a recommended decision, it would have given us a number of options.[5] One that we might have chosen would have been to accept the Commission's recommendation. This would have given the Board the further options of instructing postal management either to discontinue the service or to prepare to file a case seeking the Commission's recommendation of a classification and fees for the service. To assume that we would under no circumstances agree with the Commission that substantial evidence supported its substantive finding, or that we would not seek to exercise a role in the permanent establishment of this service, essentially mischaracterizes the Governors' role with respect to both the Commission and postal management.

A recommended decision affords us other options which the Commission sought to foreclose. We would have had the opportunity to accept the recommendation under protest and return it to the Commission with our request for reconsideration, or clarification, perhaps on bases different from those already expressed by the Postal Service. Alternatively, we could have sought judicial review under section 3625(c). We may or may not have chosen to exercise these options; but we believe we have the statutory right to make that decision.

Finally, we could have rejected the recommendation. Indeed, we have now chosen to do so. In this instance, however, our rejection occurs under circumstances in which the Board and postal management decided to discontinue the challenged service. This action, which effectively afforded the complainant the relief it sought, does not reflect on the merits of their challenge,[6] but is based on a recognition that the short-term and long-term costs of further controversy in this matter may be too high.

Other Considerations

Another serious concern is that the outcome in this case may signal a bias against Postal Service activities that might be considered to be in competition with private sector entities.[7] The general question embodied in the debate over the scope of Postal Service activities involves a complex inquiry into important policy issues. For example, we understand that CAUUC, the complainant in this case, is currently advocating legislation that would curtail the Postal Service from offering services that compete with private businesses. This, in fact, was also a theme running throughout the proceedings before the Commission. In this regard, we acknowledge that those and other issues are matters about which individual Governors might hold differing views. Nevertheless, as officials who are mandated by statute to represent the public interest generally, and not particular interests, we are acutely aware of our duty to ensure that the Postal Service lives up to the obligations and responsibilities conferred upon it by the Postal Reorganization Act. In other words, whether the Postal Service competes with private entities in any given instance is a question of fundamental policy that lies ultimately with Congress. How that policy is manifested in Postal Service activities has been entrusted by the Act to postal management and the Governors.

Scope of Review

Because Pack & Send has been discontinued, we need not engage in a comprehensive analysis and discussion of the record. However, important policy considerations arising in the Pack & Send matter are likely to come up again in the future as new services are developed. As Governors, we have a responsibility to consider and direct the broad objectives of postal operations and policy. As a threshold matter, we reiterate that we do not concede that jurisdiction lies at the Postal Rate Commission by complaint under 39 U.S.C. section 3662 to challenge new products, services, or activities that the Postal Service has determined to be nonpostal. The principal inquiry presented by such a complaint concerns the nature and status of the Postal Service's product offerings, matters that lie outside the Commission's acknowledged primary expertise in allocating costs and recommending rates, fees, and classifications. Even assuming there is jurisdiction, if section 3662 is employed, we believe that the statute requires a joint determination between the two agencies acting as partners, as discussed earlier.

The Governors would prefer to find in the Pack & Send Orders guidance for the formulation and conduct of policy in differentiating postal and nonpostal services for the future. But the Orders seem to us to extend the standard for evaluating whether an activity is a postal service farther than is supported by current caselaw. So too, there are now questions regarding the application of the Commission's prior precedents and opinions. For these reasons, rather than from our independent assessment of the Commission's findings, we must reject the conclusions in these two Orders.[8]

Applicable Standards

The introduction of new services, involving innovative features juxtaposed with existing activities, tests the Governors' ability both to find consistency with what has gone before and to identify firm ground for the future. In our capacity as Governors, we have developed an increasing appreciation for both the challenge of drawing the appropriate lines around some of the forward-looking services which management is developing to serve our customers, and the inescapable need to make these decisions in the interest of a modern, vibrant postal system moving into the twenty-first century, and within the statutory framework currently afforded. We sense that the Commissioners, in their effort to provide verbal yardsticks for measuring the postal or nonpostal character of Pack & Send, have recognized some of the same needs and wrestled with much the same inherent ambiguities.

For judicial assistance, the Commission and the Governors must rely primarily on one case which attempted a definition of postal versus

Nos. C85–2 and C86–1 (The Commission recommended no change based on its legal conclusion that the DMCS did not violate the Constitution.)

[5] In this case, a possible recommendation could have been that the Board should initiate a proceeding under Chapter 36, based on the Commission's legal conclusion that Pack & Send is a postal service.

[6] The Postal Service action was not intended to waive its opposition to the Commission's legal conclusion, or to agree with the Commission's Orders.

[7] We understand that in the course of this litigation the OCA, the only other party to play a significant role in the litigation, sided with the Coalition.

[8] The posture of the case requires that we treat the Commission's action here as a recommended decision for our consideration under 39 U.S.C. § 3625, although not so denominated in the Orders themselves. For the reasons expressed below, we have concluded that the option available to the Governors which best allows us to register our concerns is the statutory option to reject. We also find that the Commission's interpretation of its obligations to issue a recommended decision under 39 U.S.C. § 3662 serves as an independent basis for rejection.

nonpostal as applied to specific services then offered. In *Associated Third Class Mail Users* v. *United States Postal Service*, 405 F. Supp. 1109 (D.D.C. 1975), (''ATCMU''), the district court reviewed the Postal Service's assertion that fees for a group of special services, such as mailing list corrections, registry, and insurance, could be changed without a Commission recommendation. The court concluded that all of the services under consideration were ''postal services,'' because ''nearly all of these other services are very closely related to the delivery of the mail.'' Id. at 1115. The court found that money orders were a ''possible exception * * * since they can be used equally as well without being delivered by mail.'' Id. Nevertheless, the court concluded that money orders would also be treated as postal, since the majority of Postal Service money orders were ''* * * actually'' sent by mail. The court also found that whether the fees set for these services had a ''substantial public effect'' was relevant to whether Congress intended them to be recommended by the Commission. On appeal, the Court of Appeals affirmed the district court's holding, without adopting all of its reasoning. *National Association of Greeting Card Publishers* v. *United States Postal Service*, 569 F.2d 570, 596–96 (D.C. Cir. 1976) (''NAGCP''). The court found that the services in question were postal because ''each clearly involves an aspect in the posting, handling and delivery of mail matter.''[9] As for the money order exception, the court agreed with the district court that, since the majority were mailed, they could be viewed as ''intimately a part of postal services.'' Id. The court did not comment on the district court's ''public effect'' criterion.

Subsequent to the district court decision, but before the NAGCP Court of Appeals affirmance, the Commission in Docket No. R76–1 reviewed the jurisdictional status of a broad range of postal activities and services, referring to the test formulated by the district court. PRC Op. R76–1, Vol. 2, App. F. The Commission concluded that many of these satisfied the general tests outlined by the district court. However, the Commission then questioned the applicability of those tests to several other activities. In particular, the Commission questioned the ''jurisdictionality'' of money orders, ''because of their lack of intrinsic connection with the carriage of mail.'' Id. at 12. Furthermore, in its Opinion in Docket No. R76–1, the Commission elaborated on the standard articulated by the court, in connection with special postal services. The Commission characterized these as:

> services other than actual carriage of mail but supportive or auxiliary thereto. They enhance the value of service rendered under one of the substantive mail classes by providing such features as added security, added convenience or speed, indemnity against loss, correct information as to the current address of a recipient, etc. We believe that this standard is consistent with the decision in Associated Third Class Mail Users, supra, that special postal fees are within the jurisdiction of the Commission.

PRC Op. R76–1, Vol. 1, at 266–67.

We have concluded that the Commission's decision in this proceeding expands this earlier standard. The order identified Pack & Send as ''[i]ntrinsically'' a ''value-added'' service that was ''supportive or auxiliary'' to the carriage of mail. Order No. 1145, at 19.

The order also found the public effect standard applicable to Pack & Send's ''impact on competing stores in the private sector that offer packaging service and access to alternative means of shipping parcels.'' *Id.*

Policy Concerns

The Commission's action raises questions about a broader standard for postal services than the courts have defined. In this regard, several general policy implications emerge.

First, we have concerns about the validity and implications of the ''value added'' standard suggested in the order. The district court in *ATCMU* defined a postal service as ''*closely related* to the delivery of mail.'' 405 F. Supp. at 1115 (emphasis added). The Court of Appeals referred to services ''involv[ing] an aspect in the posting, handling and delivery of mail matter.'' 596 F.2d at 596 (emphasis added). The value added concept differs from these more conventional tests. For our own analysis, we have found it a vaguer standard providing little guidance. Nor does the value added concept necessarily flow logically from either of the courts' definitions.

The Commission's assessment of Pack & Send under this standard was based on its conclusion that ''the locus of the added value is the alternative form of acceptance it provides.'' Order No. 1145, at 19; see *id.* at 15. While we do not address that finding, we note that the observation that packaging amounts to ''mail preparation for a fee'' may imply an overbroad and unworkable formula. The Commission and the Governors had earlier found that the sale of packaging materials did not constitute a postal service. PRC Op. R76–1, Vol. 2, App. F, at 20–21. In this regard, the fact that packaging materials are inventoried, stocked, and sold by postal employees did not change the inherent nature of their sale as a nonpostal service. Furthermore, as a general matter, the performance of a service by a postal employee does not change the essential nature of that service and cannot, merely by virtue of the employee's involvement, make that service a postal service.

Based on the description in Docket No. R76–1, quoted above, the Commission presumably intended the ''value-added'' criterion to be the same as the courts' standards. The concepts of ''value'' and ''enhancement,'' however, may be impractically broad and imprecise considering the variety of support services that are increasingly offered and required as conditions for mailing in an automated operational environment. We are concerned, furthermore, that such a standard could be taken so broadly as to include a range of activities that might be considered ''valuable'' in connection with particular uses of mail, but that do not bear any substantive relationship to mail in an operational sense.[10]

Second, we are concerned with the ramifications of the Commission's use of the money order, or ''frequency of mailing'' rationale that was enunciated early on by the courts, but that has not been consistently applied since that time. The Commission considered in Docket No. R76–1 that photocopying machines in postal lobbies would not be a postal service, even if every copy made were required to be mailed. PRC Op. R76–1, Vol. 2, App. F, at 20. In that case, where the service did not involve a clearly postal-related activity, a complete correlation between the service and mailing could not support a finding that the service is postal. With regard to Pack & Send, the Commission's order concluded that the likelihood of mailing established only ''a dispositive tendency toward a finding'' that packaging service was postal in nature. What emerges from this history is an unreliable guideline. While it may be easy to assume that use of a

[9] Id. at 596. The Court of Appeals stated: ''Since the Act provides no specific definition of 'postal services,' * * * we must construe its meaning within the purposes of the Act, looking to legislative history where the words themselves, read plainly, are inadequate.'' Id.

[10] The Postal Service may find it advantageous in the future to offer services that enhance the value of mail content after it ceases to be mail, or perhaps before mail is produced. In this regard, we are concerned that a ''value-added'' test could extend to Postal Service activities that bear little relation to the actual provision of conventional, core mail services.

service could result in mailing, it is difficult to see how a standard based on frequency of this occurrence can determine Commission jurisdiction.[11]

Finally, the application of the public effect standard in Pack & Send appears to differ from the ATCMU court's original formulation. As described by the district court, the public effect test pertained to the financial consequences of a particular service, as reflected in postal revenues, and the effect on consumers' expenses for the service. 405 F. Supp. at 1115. The court implied that, beyond the simple magnitude of customer expenses, the impact on mailers who had no other alternatives (in the case of money orders) had a bearing on this consideration. The court indicated that the test was related broadly to the policies in the Act favoring the availability of hearings and the opportunity to scrutinize and challenge proposed changes in fees. Again, however, the court indicated that the magnitude as well as the scope of the financial impact ''on sizeable and diverse groups in society'' was a controlling consideration. *Id.* at 1116. In the Pack & Send complaint proceeding, the Commission focused on the potential financial impact on competitors, rather than on the public or customers of the service. Indeed, the Commission properly acknowledged that the impact of Pack & Send in its current form was relatively minor.

It is unclear how a public effect consideration, which includes postal competitors and omits postal customers, is consistent with the standard outlined by the district court. We do not endorse it as a guide to future policy, or as a test of the Postal Service's or the Commission's jurisdiction.

Need for Change

The uncertainties that have complicated the Pack & Send situation amplify the inadequacies of existing administrative mechanisms to accommodate the needs of a modern Postal Service. A modest proposal, such as offering packaging services, should not have to be unduly inhibited or interrupted by potentially lengthy administrative or court proceedings. The Postal Service should be able, quickly and efficiently, to test the viability and design of service offerings that provide service of value to the general public, and that have already been established in the marketplace. In the long run, if the Postal Service is to provide affordable universal service, at uniform rates, it must be able to take advantage of opportunities for new revenues. Furthermore, to keep in step with the continually evolving economic environment, it must be able to provide innovative services quickly. This will require real flexibility to design and test products and to set rates, in accordance with fair, uncomplicated opportunities for review that are appropriate for the circumstances.

We have come to our resolution of this matter with regret. It would be far better if the legal standards were clear, well settled, and universally understood, so that full attention could be given to meeting the real needs of the public.

For the ordinary citizen, the current accumulation of past choices about what has or has not been put in the rate and mail classification schedules, what does or does not have the participation of the Commission, is difficult to comprehend. When a customer makes a photocopy in the lobby to put in his envelope, he uses a service not classified in the schedules. When he buys a money order for the same purpose, the schedules define that service for him. When he purchases philatelic services, the fees are outside the rate schedules, because the Postal Service has separate authority for them under 39 U.S.C. section 404(a)(5). When he buys stamped envelopes, the fees are in the rate schedules, although the Postal Service has separate authority for the service under 39 U.S.C. section 404(a)(4). Mailgrams, delivered in the mailstream, are not classified as mail services. Mailing list services, which correct the customer's address file and do not directly involve the mailstream at all, are classified as mail services.

Perhaps it is too much to expect at this point that the Commission and the Governors should have achieved full congruence and consistency between what is in and what is outside the accumulation of services reflected in the schedules recommended by the Commission and approved by the Governors. Virtually the only judicial assistance for the task has come from one case, litigated more than 23 years ago, early in the history of the reorganized Postal Service. With the benefit of additional years of experience, perhaps it is now time to revisit the drawing of the relevant lines.

Conclusion

In summary, there are important policy considerations raised in the Pack & Send analysis of the postal versus nonpostal nature of a service. The Postal Service has nonetheless discontinued the operation of Pack & Send and is not reversing that action by this Decision. Postal management will, however, continue to study its options regarding packaging service in general or a variant of Pack & Send as a postal service, and, if appropriate, make recommendations to the Board of Governors.

Estimate of Anticipated Revenue

The Postal Reorganization Act requires that our Decision include an estimate of anticipated revenues. 39 U.S.C. § 3625(e). Because the Postal Service has already discontinued Pack & Send service, our Decision will have no effect on anticipated postal revenues.

Order

In accordance with the foregoing Decision of the Governors, the Commission's Orders No. 1145 and 1156, construed as a recommended decision under 39 U.S.C. section 3662, are rejected. This Decision shall be published in the **Federal Register**.

By the Governors:

Tirso Del Junco,

Chairman.

[FR Doc. 97–11379 Filed 4–30–97; 8:45 am]

BILLING CODE 7710–12–P

[11] We must defer to the courts' formulation of the frequency of mailing standard. Nevertheless, we note that in the cases the test was established as an exception for an entrenched existing service, sale of money orders, which did not share the characteristics that the courts concluded established a status as a postal service. Consistent with the Commission's reservations, it is possible that the application of that standard is limited to the unique circumstances in ATCMU, in which the court was asked to consider jurisdiction over existing special services as a group.

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

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 has practical utility; (b) the accuracy of the RRB's 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 related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Vocational Report; OMB 3220–0141.

Section 2 of the Railroad Retirement Act (RRA) provides for payment of disability annuities to qualified employees and widow(ers). The establishment of permanent disability for work in the applicants ''regular occupation'' or for work in any regular employment is prescribed in 20 CFR 220.12 and 220.13 respectively.

The RRB utilizes Form G–251, *Vocational Report,* to obtain an applicant's work history. This information is used by the RRB to determine the effect of a disability on an applicant's ability to work. Form G–251 is designed for use with the RRB's disability benefit application forms and is provided to all applicants for employee disability annuities and to those applicants for a widow(er)'s disability annuity who indicate that they have been employed at some time.

Completion is required to obtain or retain a benefit. One response is requested of each respondent.

The RRB proposes minor non-burden impacting editorial changes to Form G–251 which include language required by the Paperwork Reduction Act of 1995. The completion time for Form G–251 is estimated at between thirty and 40 minutes per response. The RRB estimates that approximately 6,000 Form G–251's are completed annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–11283 Filed 4–30–97; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on May 22, 1997, at 10 a.m. at the Office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 20th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the results and presentation of the 20th Actuarial Valuation. The text and tables which constitute the Valuation will have been prepared in draft form for review by the Committee. It is expected that this will be the last meeting of the Committee before publication of the Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

Dated: April 22, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–11282 Filed 4–30–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22636; 812–10628]

The Victory Funds, et al.; Notice of Application

April 24, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Victory Funds (formerly known as The Society Funds), The Highmark Group, The Parkstone Group of Funds, The Conestoga Family of Funds, The AmSouth Funds (formerly known as The ASO Outlook Group), The Sessions Group, American Performance Funds, the Coventry Group, BB&T Mutual Funds Group (the foregoing are referred to herein collectively as the ''Original Funds'') and any other registered investment companies for which BISYS Fund Services Limited Partnership (formerly known as The Winsbury Company) (''BISYS'') or any person directly or indirectly controlling, controlled by, or under common control with BISYS, now or in the future serves as principal underwriter and for which the Advisers (as defined below), or any person directly or indirectly controlling, controlled by, or under common control with the Advisers, now or in the future serve as investment adviser (the ''Funds''); Society Asset Management, Inc., Union Bank of California, N.A. (formerly known as The Bank of California),[1] First of America Investment Corporation, Meridian Investment Company, AmSouth Bank of Alabama (formerly known as AmSouth Bank, N.A.), National Bank of Commerce, BancOklahoma Trust Company, AMR Investment Services, Inc., Boatmen's Trust Company, AMCORE Capital Management, Inc., and Branch Banking and Trust Company (the foregoing are referred to herein collectively as the ''Original Advisers''); BISYS; BISYS Fund Services Ohio, Inc. (formerly known as The Winsbury Service Corporation) (all of the foregoing are referred to herein collectively as the ''Original Applicants''); Martindale Andres & Company, Inc. and 1st Source Bank (the ''New Advisers,'' which, together with the Original Advisers, are referred to herein collectively as the ''Advisers''); and BISYS Fund Services, Inc. (together with the New Advisers are referred to herein as the ''New Applicants'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) for an exemption from sections 12(d)(1) and 17(a), and pursuant to section 17(d) and rule 17d–1 thereunder to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order that permits non-money market series of a Fund to purchase shares of one or more of the money market series of such Fund by adding the New Advisers as applicants.

FILING DATE: The application was filed on April 2, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 29, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Kristin H. Ives, Esq., Baker

[1] As a part of the merger of their respective bank holding companies, The Bank of California, N.A. merged with and into Union Bank of California, N.A. on April 1, 1996.

& Hostetler LLP, 65 East State Street—Suite 2100, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. On October 5, 1993, the SEC issued an order [2] under sections 6(c) and 17(b) of the Act that exempts the Original Applicants from the provisions of sections 12(d)(1)(A) and 17(a) of the Act and that permits, pursuant to rule 17d–1, certain joint transactions in accordance with section 17(d) and rule 17d–1 thereunder. The Order permits: (i) The non-money market series of a Fund to utilize the cash reserves that have not been invested in portfolio securities (''Uninvested Cash'') to purchase shares of one or more of the money market series (collectively, the ''Money Market Series'') of such Fund; and (ii) the sale of their shares by the Money Market Series of a Fund to the non-Money Market Series of such Fund, and the purchase (or redemption) of their shares by the Money Market Series of the Fund from the non-Money Market Series of such Fund.

2. The New Advisers serve as the investment adviser to one or more series of The Sessions Group, one of the Original Applicants. BISYS Fund Services, Inc. is the parent corporation of BISYS Fund services Ohio, Inc. and the corporate general partner of BISYS. The New Applicants consent to the conditions set forth in the original application and agree to be bound by the terms and provisions of the Order to the same extent as the Original Applicants.

3. The New Applicants seek to have the exemptive relief granted under the Order extended to include them so as to permit: (a) The non-Money Market Series of The Sessions Group which are advised by a New Adviser to utilize the Uninvested Cash to purchase shares of one or more of the Money Market Series of The Sessions Group which are advised by such New Adviser; and (b) the sale of their shares by the Money Market Series of The Sessions Group which are advised by a New Adviser to the non-Money Market Series of The Sessions Group which are advised by such New Adviser, and the purchase (or redemption) of their shares by such Money Market Series of The Sessions Group from the non-Money Market Series of The Sessions Group.

4. The New Applicants believe that adding the New Applicants to the Order so that they may invest in affiliated money market series in the manner and under the circumstances described in the Order would be fair and in the best interest of shareholders of New Advisers' advised series. Thus, the New Applicants believe that granting the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11246 Filed 4–30–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Investment Company Act Release Nos. 19695 (Sept. 9, 1993) (notice) and 19759 (Oct. 5, 1993) (order) (''Order'').

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted within 60 days of this publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''National Training Participant Evaluation Questionnaire''.

Type of Request: Revision of a Currently Approved Collection.

Form No.: SBA Form 20.

Description of Respondents: Individuals receiving SBA training and counseling assistance.

Annual Responses: 26,000.

Annual Burden: 6,500.

Comments: Send all comments regarding this information collection to George Solomon, Director. Special Initiatives, Office Business Initiatives, Small Business Administration, 409 3rd Street, S.W., Suite 6100, Washington, D.C. 20416. Phone No.: 202-205–7426.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: ''Small Business Development Centers Counseling Record''.

Type of Request: Revision of a Currently Approved Collection.

Form No.: SBA Form 1062.

Description of Respondents: Small Business Development Center Counselors.

Annual Responses: 1,150,000.

Annual Burden: 115,000.

Comments: Send all comments regarding this information collection to Mary Ann Holl, Business Development Specialist, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street, S.W. Suite 4600, Washington, D.C. 20416. Phone No: 202–205–6766.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: ''SBA Counseling Evaluation''.

Type of Request: Revision of a Currently Approved Collection.

Form No.: SBA Form 1419.

Description of Respondents: Small Business Clients.

Annual Responses: 31,208.

Annual Burden: 20,402.

Comments: Send all comments regarding this information collection to John Bebris, Director, Business Education & Resource Management, Office of Business Initiatives, Small Business Administration, 409 3rd Street, S.W., Suite 6100 Washington, D.C. 20416. Phone No: 202–205–7424.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: April 25, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–11258 Filed 4–30–97; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Computer Matching Program (SSA/State or Local Vital Statistics Organizations)

AGENCY: Social Security Administration.

ACTION: Notice of computer matching programs.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces computer matching programs that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching programs will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Associate Commissioner for Program Support, 4400 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support at the above address.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records pertaining to individuals in a system of records are matched with other Federal, State or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain required Data Integrity Board approval of matching agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that the computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: April 16, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

Notice of Computer Matching Programs, Social Security Administration (SSA) with Participating State or Local Vital Statistics Organizations

A. Participating Agencies

SSA and State or Local Vital Statistics Organizations.

B. Purpose of the Matching Programs

The purpose of these matching programs is to establish conditions under which each participating State or local vital statistics operation agrees to the disclosure to SSA of information regarding certain individuals who have divorced or married. The disclosure will provide SSA with information useful in determining claim and benefit status under both title II and title XVI of the Social Security Act (the Act), as changes in marital status of certain persons may affect benefits/payments under specific provisions of those titles.

C. Authority for Conducting the Matching Programs

This matching operation is carried out under the authority of sections 202 (42 U.S.C. 402), 216 (42 U.S.C. 416) and 1614 (42 U.S.C. 1382c) of the Act, which require SSA to make determinations of entitlement/eligibility for certain categories of Social Security or Supplemental Security Income (SSI) benefits/payments due to changes in marital status. In addition, section 1631(e)(1)(B) of the Act (42 U.S.C. 1383(e)(1)(B)) requires SSA to verify declarations of applicants for and recipients of SSI payments before making a determination of eligibility or payment amount.

D. Categories of Records and Individuals Covered

Each participating State or local government vital statistics operation will disclose certain State marriage and divorce information to SSA. Each participating operation will provide SSA with a file including Social Security Numbers (if available) of individuals who have married or divorced within its jurisdiction during the period covered by the matching program. The State and local sources will disclose the data for SSA's use in verifying entitlement/eligibility and/or benefit/payment amounts under the Social Security and SSI programs administered by SSA. Changes in marital status can affect entitlement to various categories of Social Security benefits under title II of the Social Security Act (Act). In the SSI program under title XVI of the Act, marriage or divorce can affect eligibility for payments, or the amount of payments. The marriage and divorce data thus provided will be matched with appropriate systems of records maintained by SSA in order to help determine eligibility or correct benefit/payment amounts under titles II and XVI of the Act.

E. Inclusive Dates of the Match

Any specific matching agreement with a State or local entity shall become effective no sooner than 40 days after notice of the matching program and of the model agreement for the program is sent to Congress and the Office of Management and Budget, 30 days after publication of this notice in the **Federal Register**, or after the signature of both parties to the specific agreement, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 97–11241 Filed 4–30–97; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

Social Security Disability Program Demonstration; Referral System for Vocational Rehabilitation Providers Demonstration Project

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The Commissioner of Social Security (the Commissioner) announces the Referral System for Vocational Rehabilitation Providers (RSVP) demonstration project. This

demonstration project will test using an outside contractor to carry out certain administrative functions for an expanded vocational rehabilitation (VR) referral and reimbursement program. Under titles II and XVI of the Social Security Act (the Act), this expanded program permits public and private providers of VR services (called alternate participants) to join with the 82 State VR agencies to provide greater access to VR services for Social Security disability insurance (SSDI) beneficiaries and disabled or blind Supplemental Security Income (SSI) recipients to the end that these beneficiaries and recipients can secure employment and reduce or eliminate benefit dependency. The demonstration project will be conducted under the authority of section 505(a) of Pub. L. 96–265 (the Social Security Disability Amendments of 1980), as amended, and section 1110(b) of the Act. These statutes authorize the Commissioner to conduct demonstration projects to test, among other things, ways to increase the availability of VR services leading to employment opportunities for SSDI beneficiaries and disabled or blind SSI recipients. We are publishing this notice to comply with 20 CFR 404.1599(e) and 20 CFR 416.250(e) which provide for publication of a notice in the **Federal Register** before placing certain demonstration projects into operation.

FOR FURTHER INFORMATION CONTACT: J. Kenneth McGill, Social Security Administration, Office of Disability, 560 Altmeyer, 6401 Security Boulevard, Baltimore, Maryland 21235, Phone (410) 965–3988.

SUPPLEMENTARY INFORMATION:

Sections 222 and 1615 of the Act require SSA to refer SSDI beneficiaries and disabled or blind SSI recipients to State VR agencies for rehabilitation services. SSA is authorized under these sections of the Act to reimburse State VR agencies for the reasonable and necessary costs of VR services provided to SSDI beneficiaries and disabled or blind SSI recipients when the services contributed to their performance of substantial gainful activity (SGA) for nine continuous months.

Regulations published on March 15, 1994 (59 FR 11899), entitled ''Payments for Vocational Rehabilitation Services,'' allows SSA to refer an SSDI beneficiary or disabled or blind SSI recipient to an alternate participant if a State VR agency has not accepted the SSA-referred individual for services. Alternate participants are any approved public or private VR service providers other than the designated State VR agencies.

Under the Act and regulations, SSA must refer an SSDI beneficiary or disabled or blind SSI recipient initially to the State VR agency for services. However, the regulations provide that if the State VR agency does not accept the individual for services following such referral, SSA may refer the beneficiary or recipient to an alternate participant for VR services and may reimburse the alternate participant for the cost of services furnished to the beneficiary or recipient under the same terms and conditions that apply to the reimbursement of State VR agencies.

We anticipate that the use of alternate participants under the expanded VR referral and reimbursement program will increase the provider base from the current 82 participating State VR agencies to several hundred or even several thousand providers.

This new referral option will require recruitment of these additional providers, increased handling and tracking of referrals, interaction with a greatly expanded provider base, and more VR reimbursement claims activity. Consequently, the new process must be managed in a manner different from that for managing the former program.

Project Objectives

This three-year demonstration will determine whether expansion of the provider base can best be accomplished by the use of an outside organization to carry out the necessary activities to implement the provisions of the March 1994 regulatory changes affecting SSA's VR referral and reimbursement programs. The project also is intended to determine whether an outside organization can carry out activities to assure that VR services are more readily available to SSDI beneficiaries and disabled or blind SSI recipients. The project will determine whether it is more efficient and cost-effective to have a contractor manage parts of the referral process and the reimbursement claims process.

Description of the Project

Under the demonstration project; SSA will award a contract for one year plus a potential option year(s). The demonstration will be conducted nationwide.

No waivers of any of the provisions of the Social Security Act are required to carry out this demonstration. During the base year of the demonstration, the basic functions of the contractor shall include:

- Developing and implementing a marketing plan that will enhance the marketing campaign begun by SSA to expand the alternate participant base, including activities to improve the knowledge and understanding of SSA's VR referral and reimbursement program and work incentive provisions among potential new alternate participants;
- Maintaining and increasing the network of qualified alternate participants who are ready to provide rehabilitation services to SSDI beneficiaries and disabled or blind SSI recipients;
- Assisting VR providers with the application process to become alternate participants in SSA's VR program, including review of VR provider credentials;
- Maintaining a process for determining that new and previously approved alternate participants retain their qualifications to provide VR services under SSA's VR program;
- Implementing and managing a secure, automated system that will include the database developed by SSA to re-refer beneficiaries and recipients to alternate participants;
- Training alternate participants who are ready to serve our beneficiaries and recipients on SSA's policies, procedures, processes, etc. that are related to SSA's VR referral and reimbursement program;
- Developing and staffing a toll-free telephone number to disseminate information about the SSA VR referral and reimbursement program, work incentives, types of VR services available to SSDI beneficiaries and disabled or blind SSI recipients, and information about alternate participants in our VR program;
- Developing surveys and other data analyses to monitor and evaluate provider, beneficiary, and recipient satisfaction; and
- Developing and implementing procedures to monitor and review the claims submitted by alternate participants for completeness of documentation.

After the base year of the demonstration, the contractor will expend fewer resources on recruiting and training alternate participants. However, the contractor will continue activities to operate the toll-free telephone number, assist in the application process, increase the number of alternate participants, ensure that they retain their qualifications, and evaluate provider, beneficiary, and recipient satisfaction. In addition, the contractor's basic functions shall include:

- Assuming complete responsibility for SSA's established database for

referring beneficiaries and recipients to alternate participants for services;

- Assuming complete responsibility for providing management information; and
- Developing and implementing procedures to monitor and review reimbursement claims submitted by alternate participants for completeness of documentation and compliance with SSA filing requirements.

At the conclusion of the RSVP demonstration project we will have determined: (1) The feasibility of a contractor performing certain administrative functions of SSA's VR referral and reimbursement program; (2) what type of VR service providers are willing to serve SSA beneficiaries and recipients under the expanded VR referral and reimbursement system; (3) what types of disability groups, alternate participants are willing to serve; (4) whether using alternate participants resulted in greater numbers of SSA beneficiaries and recipients engaging in SGA; (5) if a greater understanding of SSA's work incentive provisions both by providers of services and by beneficiaries and recipients resulted; (6) whether SSA received more claims for reimbursement; (7) if there is an improvement in the quality of claims filed for reimbursement which can be attributed to the contractor's reviews of claims for completeness of documentation and compliance with SSA filing requirements; and (8) whether beneficiaries, recipients, alternate participants, and SSA are satisfied with the management of the process by an outside organization.

Authority: Section 505(a) of Pub. L. 96–265, as amended by section 12101 of Pub. L. 99–272, section 10103 of Pub. L. 101–239, section 5120 of Pub. L. 101–508, and section 315 of Pub. L. 103–296; and section 1110(b) of the Social Security Act.

(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; 96.006-Supplemental Security Income.)

Dated: April 21, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

[FR Doc. 97–11240 Filed 4–30–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 347 (Sub–No. 2)]

Rate Guidelines—Non-Coal Proceedings

AGENCY: Surface Transportation Board.

ACTION: Updated RSAM and Average R/VC > 1.8 percentages for the period 1992–1995.

SUMMARY: The Surface Transportation Board established guidelines for handling small maximum rate complaints in *Rate Guidelines—Non-Coal Proceedings,* Ex Parte No. 347 (Sub-No. 2) (served Dec. 31, 1996). In that decision, the Board provided tables containing composite ''Revenue Shortfall Allocation Method'' (RSAM) and ''Average Revenue to Variable Cost > 1.80'' (Average R/VC > 1.8) percentages for class I railroads for the period 1991–1994 for use in addressing small rail rate complaints.

The Board has now updated these tables to provide percentages for the period 1992–1995. In addition, the Board has computed regional (Eastern and Western) and national percentages for use in proceedings involving non-class I railroads.

EFFECTIVE DATE: May 1, 1997.

FOR FURTHER INFORMATION CONTACT: William H. Washburn, (202) 565–1550. TDD for the hearing impaired (202) 565–1695.

SUPPLEMENTARY INFORMATION: The updated tables are contained in the Board's notice. To purchase a copy of the notice, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW., Washington, DC 20423, (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: April 18, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–11361 Filed 4–30–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5712 and 5712–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5712, Election To Be Treated as a Possessions Corporation Under Section 936, and Form 5712-A, Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5).

DATES: Written comments should be received on or before June 30, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Be Treated as a Possessions Corporation Under Section 936 (Form 5712), and Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5) (Form 5712-A).

OMB Number: 1545–0215

Form Number: 5712 and 5712-A

Abstract: Domestic corporations may elect to be treated as possessions corporations on Form 5712. This election allows the corporation to take a tax credit. Possession corporations may elect on Form 5712-A to share their taxable income with their affiliates under Internal Revenue Code section 936(h)(5). These forms are used by the IRS to ascertain if corporations are entitled to the credit and if they may share their taxable income with their affiliates.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 2,600

Estimated Time Per Response: 6hr., 59 min.

Estimated Total Annual Burden Hours: 18,138.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 23, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–11167 Filed 4–30–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9465

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9465, Installment Agreement Request.

DATES: Written comments should be received on or before June 30, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Installment Agreement Request.

OMB Number: 1545–1350.

Form Number: 9465.

Abstract: Form 9465 is used by the public to provide identifying account information and financial ability to enter into an installment agreement for the payment of taxes. The form is used by IRS to establish a payment plan for taxes owed to the federal government, if appropriate, and to inform taxpayers about the application fee and their financial responsibilities.

Current Actions: The application fee was increased as a result of increased costs in handling and processing Form 9465.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 2,500,000.

Estimated Time Per Response: 47 min.

Estimated Total Annual Burden Hours: 1,950,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 24, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–11377 Filed 4–30–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Public and Private Nonprofit Organizations in Support of International Educational and Cultural Activities: The Training of Personnel To Staff and Administer a Judicial Training Institution in the Palestinian Authority

AGENCY: The United States Information Agency.

NOTICE: Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop, in close consultation with leading American specialists in judicial training and USIS Jerusalem, an educational project for the personnel who will staff and administer a soon-to-be-established judicial training institution in the Palestinian Authority. The project will provide ten Palestinians—directors and administrators of the proposed institution and judges who will teach there—orientation to and experience in curriculum and text development, training methodology, and

administrative procedures appropriate to the reconfigured Palestinian legal system. The goal of the project will be the formation of a cadre of knowledgeable Palestinian specialists who will develop an institution and train judges upon whose knowledge and skill the successful operation of the modern legal system in the Palestinian Authority will depend.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Announcement Title and Number

All communications with USIA concerning this announcement should refer to the above title and reference number E/P–97–46.

Deadline for Proposals

All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on June 12, 1997. Faxed documents will not be accepted, nor will documents postmarked June 12, 1997, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, E/P, Room 220, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 619–5319; fax: (202) 619–4350; e-mail: tjohnsto@usia.gov to request a solicitation package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet

The entire solicitation package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be received from the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling (202) 401–7616. The ''Table of Contents'' listing available documents and order numbers should be your first order when entering the system.

Please specify USIA Program Specialist Thomas Johnston on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau's proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the solicitation package. The original and nine copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–97–46, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Background/Objectives of This Program

Over the past two years, a consensus has emerged among judges, lawyers, and legal scholars within the Palestinian Authority regarding the re-establishment of the Palestinian legal system and its configuration along lines which will allow it to serve as underpinning for a democratically oriented political and social structure. The logical next step in this process is the institutionalization of training for the judges and lawyers upon whose knowledge and skill the successful operation of the modern legal system will depend. The Palestinian Ministry of Justice has identified international resources for the establishment of training institutions. Reflecting the appreciation developed within the Palestinian legal community for the responsive and accessible American common-law system of justice, the Minister has requested that the United States Information Agency facilitate the development of a program within which both the trainers and the administrators who will staff these institutions will receive aspects of their training in the United States.

Participants

Ten Palestinian judges and administrators who will form the core staff of the to-be-established judicial training institution in the Palestinian Authority. These participants will be selected by the Palestinian Ministry of Justice in consultation with the American grantee institution, American specialists in judicial training and institutional development, and US Information Service personnel in the region. USIA and the USIS post in Jerusalem retain the right to accept or reject participants recommended by grantee institutions. American judges and legal scholars who serve as consultants and trainers during this exchange and who may travel abroad in the capacity of advisors will be selected by the grantee institution in consultation with the Palestinian Ministry of Justice and the United States Information Service in Jerusalem.

USIS officers in participating countries will facilitate the issuance of visas and other program-related

material. USIS Jerusalem will also be responsible for arranging the travel of Americans in the West Bank and Gaza, approving lodging arrangements, and providing orientation and debriefing.

Programmatic Considerations

The program should provide that the exchange:

—Be informed by the grantee's experience in working with foreign audiences and in the field of civil and criminal legal processes;

—Provide the ten Palestinian participants both a strong theoretical and a strong experiential orientation to judicial training and the development and administration of a judicial training institution;

—Include (1), an initial assessment trip to the Palestinian Authority for a small contingent of American specialists in judicial training and in the establishment and operation of judicial training institutions; (2), a ten-to-12-day intensive orientation/training visit to the United States by approximately ten Palestinian leaders and administrators of the proposed institute and judges who will teach in the institute; and (3), a somewhat extended consultative visit to the Palestinian Authority as the Palestinian judicial training institution is getting underway, by one or more American specialists—probably from among those who made the initial assessment trip and who have also played a substantive role in the Palestinians' American visit—to assist in the organization of the institute and in early training sessions; and

—The adaptation and/or development of appropriate judicial training curriculum and text materials.

Beyond the immediate goals of this exchange, USIA is interested in encouraging exchange projects which lay the groundwork for new and continuing, mutually beneficial links between American and Middle Eastern institutions and professional organizations and which will encourage the further growth and development of democratic institutions.

The grantee organization will be responsible for most arrangements associated with this program. These include organizing a coherent progression of activities, providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with host institutions and individuals to achieve maximum program effectiveness.

To prepare the Palestinian judges and administrators for this project prior to their arrival in the United States, E/P encourages the grantee organization to develop material to be sent to USIS offices overseas for distribution to participants. This material should include a tentative project outline and information on American individuals and institutions involved in the exchange.

At the beginning of the U.S.-based program, the grantee organization should conduct an orientation session for the visiting participants that addresses administrative details of the program and provides general information about American society and culture that will facilitate the participants' understanding of and adjustment to daily life in the United States.

At the conclusion of the U.S.-based program, the group should meet in a symposium to review what has been presented to and experienced by the participants and to consider how that which has been learned can most effectively be applied upon the participants' return to their home country.

Additional Guidelines

Program monitoring and oversight will be provided by appropriate USIA elements. The U.S. grantee institution should maximize cost-sharing in all facets of the program and stimulate U.S. private sector (foundation and corporate) support.

Proposals incorporating participant/observer site visits will be more competitive if letters committing prospective host institutions to supporting these efforts are provided.

For this grant, because of the sensitivity of the program and the fluid political situation in the region, all activities must be coordinated, in advance, with USIS Jerusalem and USIS Tel-Aviv.

Funding

Competition for USIA funding support is keen. The final selection of a grantee institution will depend on assessment of proposals according to the review criteria delineated below.

The amount requested from USIA for this exchange should not exceed $135,000. Organizations with less than four years of successful experience in managing international exchange programs are subject to a grant limit of $60,000.

Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional.

USIA will consider funding the following project costs:

1. International and domestic air fares; visas; transit costs (e.g., airport taxes); ground transportation costs.

2. Per diem: For the U.S. program, organizations have the option of using a flat rate of $140/day for international participants or the published Federal Travel Regulations per diem rates for individual American Cities.

Note: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities in the Middle East, the Standard Federal Travel Regulations per diem rates must be used.

3. Escort-interpreters: Interpretation for U.S.-based programs is provided by the State Department's Language Services Division. USIA grants do not pay for foreign interpreters to accompany delegations during travel to or from their home country. Grant proposal budgets should contain a flat $140/day per diem rate for each State Department interpreter, as well as home-program-home air transportation of $400 per interpreter and any U.S. travel expenses during the program itself. Salary expenses are covered centrally and are not part of the applicant's budget proposal. The cost of interpretation for phases of the program to be conducted abroad, during which interpreters are required to facilitate American participation, is to be covered from the grant. The grant applicant is encouraged to confirm with the appropriate USIS post(s) the local costs for interpreters.

4. Book and cultural allowance: Participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. These benefits are not available to U.S. staff.

5. Consultants: May be used to provide specialized expertise or to make presentations. Honoraria up to $345 per day may be paid. Subcontracting organizations may also be used, in which case the written contract(s) must be included in the proposal.

6. Room rental: Generally should not exceed $250 per day.

7. Material Development: Proposals may contain costs to purchase, develop and translate material for participants.

8. One working meal per project: Per capita cost may not exceed $5–8 per

lunch and $14–20 per dinner, excluding room rental. The number of invited guests may not exceed the number of participants by a factor of more than two to one.

9. Return travel allowance: $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, ''Cost-sharing and Matching,'' and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals will be reviewed by USIS posts and by USIA's Office of Near Eastern, North African, and South Asian Affairs. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for granting awards resides with the USIA grants officer. The awarding of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent the awarding of a grant, all preparation and submission costs are borne by the applicant. USIA will not funds activities conducted prior to the actual grant award.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered.

1. *Quality of Program Idea:* Proposals should exhibit substance, originality, rigor, and relevance to the Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. *Program planning:* Proposals should demonstrate the applicant's ability to plan, organize, and administer a complex undertaking involving international travel and collaboration among institutions and individuals.

3. *Ability to Achieve Program Objectives:* The applicant should give evidence of a clear grasp of the objectives of the program and indicate how the applicant's project design would promote the efficient achievement of those objectives.

4. *Multiplier Effect:* Proposed projects should strengthen mutual understanding, should contribute to maximum sharing of information, and should promote the establishment of long-term institutional and individual ties.

5. *Value to U.S.-Partner Country Relations:* The project should be framed in such a way as to make clear the significance of the project to both the United States and the foreign country and should demonstrate how the project might influence positively the binational relationship.

6. *Institutional Capacity:* Institutions should demonstrate their potential for effective program design and implementation and provide, if available, evidence of having conducted successful programs. If an applicant has previously received a USIA grant, responsible fiscal management and full compliance with all reporting requirements for past Agency grants, as determined by USIA's Office of Contracts, will be considered. Evaluations of previous projects may also be considered in this assessment.

7. *Follow-on Activities:* Proposals should provide, if possible, a plan for continued exchange activity (without USIA support) which ensures that the USIA-supported project is not an isolated event.

8. *Evaluation Plan:* Proposals should include a plan to evaluate the project. USIA recommends that the applicant discuss the evaluation methodology chosen and the techniques which will be employed to assess the effectiveness of the project and the correspondence between observable outcomes and original project objectives.

9. *Cost Effectiveness:* Costs to USIA per exchange participant (American and foreign) should be kept to a minimum, and all items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost Sharing:* Proposals should maximize cost-sharing through private sector support as well as through direct funding contributions and/or in-kind support from the prospective grantee organization and its partners.

11. *Support of Diversity:* Projects conducted under USIA auspices should reflect, to the degree feasible, the diversity of American (and the foreign) society in the selection of both American and foreign participants.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: April 25, 1997.

Dell Pendergrast,

Deputy Associate Director for Bureau of Educational and Cultural Affairs.

[FR Doc. 97–11186 Filed 4–30–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Public and Private Nonprofit Organizations in Support of International Educational and Cultural Activities: Civil Justice Modernization in Jordan

AGENCY: The United States Information Agency.

ACTION: Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a project providing six Jordanian lawyers and judges in-depth orientation to and study of functions and mechanisms regularly employed in the American legal system to resolve civil/commercial litigation expeditiously, i.e., case management, early neutral evaluation, judicial settlement, mediation, arbitration, and summary judgement. The goal will be the formation of a cadre of knowledgeable Jordanian specialists who will develop guidelines for the introduction of modern case management process and ADR mechanisms into the civil legal process of Jordan.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Announcement Title and Number

All communications with USIA concerning this announcement should refer to the above title and reference number E/P–97–45.

Deadline for Proposals

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Diversity, Freedom and Democracy Guidelines

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Background/Objectives of this Program

The legal community in Jordan, with the support and endorsement of the Jordanian Ministry of Justice, has been engaged in a civil justice modernization study since 1995, with the goal of improving the practical operation and increasing the efficiency of the Jordanian legal process. There is widespread support within the community for the use of ADR mechanisms to resolve civil—especially commercial—cases, thereby relieving the backlog within the courts and rendering rapid resolution of commercial cases possible. The creation of a more transparent, accessible, and efficient system for the litigation of commercial and labor disputes in Jordan will contribute to a more hospitable environment for both regional trade and international investment. The primary objective of this program is to further the development of the modern civil legal system in Jordan by training a core group of lawyers and judges who will draft, in the context of the exchange, practical guidelines for system modernization.

Participants

Six Jordanian lawyers and judges who have participated, with the former Minister of Justice, in a Ministry-sponsored legal study project focussed on legal system modernization and alternative dispute resolution mechanisms. The Jordanian participants will be fluent in English. Participants will be nominated through coordination among USIA, U.S. Information Service personnel in the region, and overseas partner institutions. USIA and the USIS post in Jordan retain the right to nominate all participants and to accept or reject participants recommended by grantee institutions. American judges, lawyers, and legal scholars who serve as consultants and trainers during the initial phase of this exchange and who may travel abroad in the capacity of advisors during later phases will be selected by the grantee institution in consultation with USIA/USIS.

USIS officers in participating countries will facilitate the issuance of visas and other program-related material.

Programmatic Considerations

The program should provide that the exchange:

—Be informed by the grantee's experience in working with foreign audiences and in the field of civil legal processes;

—Provide the six Jordanian participants both a strong theoretical and a strong experiential orientation to the court management and ADR mechanisms determined by the Jordanians to be appropriate for adaptation to the Jordanian legal system;

—Include, as an early phase, a two-to-three-week intensive orientation program in the United States for the participants, comprising lectures by leading legal scholars and members of the Bar Association and focussing primarily on case management and mediation and an opportunity to observe, in actual courtrooms and law firms, the implementation of ADR mechanisms by experienced judges and lawyers.

—Provide consultation with and advice to the Jordanian judges and lawyers in their development of guidelines for adapting appropriate court management and ADR mechanisms to the Jordanian civil legal system;

—Include the possibility that American specialists will travel to Jordan to collaborate with their Jordanian counterparts in presenting and explaining the guidelines to the members of the Jordanian legal community.

Beyond the immediate goals of this exchange, USIA is interested in encouraging exchange projects which lay the groundwork for new and continuing, mutually beneficial links between American and Middle Eastern institutions and professional organizations and which will encourage the further growth and development of democratic institutions.

The grantee organization will be responsible for most arrangements associated with this program. These include organizing a coherent progression of activities, providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with host institutions and individuals to achieve maximum program effectiveness.

To prepare the Jordanian judges and lawyers for this project prior to their arrival in the United States, E/P encourages the grantee organization to develop material to be sent to USIS offices overseas for distribution to participants. This material should include a tentative project outline with suggested goals and objectives, relevant background information, and information on American individuals and institutions involved in the exchange.

At the beginning of the U.S.-based program, the grantee organization should conduct an orientation session for the visiting participants which addresses administrative details of the program and provides general information about American society and culture that will facilitate the participants' understanding of and adjustment to daily life in the United States.

At the conclusion of the U.S.-based program, the group should meet in a symposium to review what has been presented to and experienced by the participants and to consider how that which has been learned can most effectively be applied upon the participants' return to their home country.

Additional Guidelines

Program monitoring and oversight will be provided by appropriate USIA elements. The U.S. grantee institution should maximize cost-sharing in all facets of the program and stimulate U.S. private sector (foundation and corporate) support.

Proposals incorporating participant/observer site visits will be more competitive if letters committing prospective host institutions to support these efforts are provided.

Funding

Competition for USIA funding support is keen. The final selection of a grantee institution will depend on assessment of proposals according to the review criteria delineated below.

The amount requested from USIA for this exchange should not exceed $130,000. Organizations with less than four years of successful experience in managing international exchange programs are subject to a grant limit of $60,000.

Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional.

USIA will consider funding the following project costs:

1. International and domestic air fares; visas; transit costs (e.g., airport taxes); ground transportation costs.

2. Per diem: For the U.S. program, organizations have the option of using a flat rate of $140/day for international participants or the published Federal Travel Regulations per diem rates for individual American cities. NOTE: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities in the Middle East, the Standard Federal Travel Regulations per diem rates must be used.

3. Escort-interpreters: In the case of this project, the Jordanian participants traveling to the United States will be fluent in English, and escort/interpretation will not be necessary. The cost of interpretation as needed for the second (foreign) component of the exchange is to be paid from the grant. The grant applicant is encouraged to confirm with the appropriate USIS post(s) the local costs for interpreters. Grant proposals should reflect these costs.

4. Book and cultural allowance: Participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. These benefits are not available to U.S. staff.

5. Consultants: May be used to provide specialized expertise or to make presentations. Honoraria up to $345 per day. Subcontracting organizations may also be used, in which case the written contract(s) must be included in the proposal.

6. Room rental: Generally should not exceed $250 per day.

7. Material development: Proposals may contain costs to purchase, develop and translate material for participants.

8. One working meal per project: Per capita cost may not exceed $5–8 per lunch and $14–20 per dinner, excluding room rental. The number of invited guests may not exceed the number of participants by a factor of more than two to one.

9. Return travel allowance: $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, ''Cost-sharing and Matching,'' and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals will be reviewed by USIS posts and by USIA's Office of Near Eastern, North African, and South Asian Affairs. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for granting awards resides with the USIA grants officer. The awarding of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent the awarding of a grant, all preparation and submission costs are borne by the applicant. USIA will not fund activities conducted prior to the actual grant award.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered.

1. *Quality of Program Idea:* Proposals should exhibit substance, originality, rigor, and relevance to the Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. *Program Planning:* Proposals should demonstrate the applicant's ability to plan, organize, and administer a complex undertaking involving international travel and collaboration among institutions and individuals.

3. *Ability to Achieve Program Objectives:* The applicant should give evidence of a clear grasp of the objectives of the program and indicate how the applicant's project design would promote the efficient achievement of those objectives.

4. *Multiplier Effect:* Proposed projects should strengthen mutual understanding, should contribute to maximum sharing of information, and should promote the establishment of long-term institutional and individual ties.

5. *Value to U.S.-Partner Country Relations:* The project should be framed in such a way as to make clear the significance of the project to both the United States and the foreign country and should demonstrate how the project might influence positively the binational relationship.

6. *Institutional capacity:* Institutions should demonstrate their potential for effective program design and implementation and provide, if available, evidence of having conducted successful programs. If an applicant has previously received a USIA grant, responsible fiscal management and full compliance with all reporting requirements for past Agency grants, as determined by USIA's Office of Contracts, will be considered. Evaluations of previous projects may also be considered in this assessment.

7. *Follow-on Activities:* Proposals should provide, if possible, a plan for continued exchange activity (without USIA support) which ensures that the USIA-supported project is not an isolated event.

8. *Evaluation Plan:* Proposals should include a plan to evaluate the project. USIA recommends that the applicant discuss the evaluation methodology chosen and the techniques which will be employed to assess the effectiveness of the project and the correspondence between observable outcomes and original project objectives.

9. *Cost Effectiveness:* Costs to USIA per exchange participant (American and foreign) should be kept to a minimum, and all items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost Sharing:* Proposals should maximize cost-sharing through private sector support as well as through direct funding contributions and/or in-kind support from the prospective grantee organization and its partners.

11. *Support of Diversity:* Projects conducted under USIA auspices should reflect, to the degree feasible, the diversity of American (and the foreign) society in the selection of both American and foreign participants.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluating requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: April 25, 1997.

Dell Pendergrast,

Deputy Associate Director for Bureau of Educational and Cultural Affairs.

[FR Doc. 97–11187 Filed 4–30–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Provision of Overseas Educational Advising Services Seeking Partnerships; Call for Concept Papers

SUMMARY: The Office of Academic Programs of the United States Information Agency's (USIA) Bureau of Educational and Cultural Affairs announces an opportunity to create public/private sector partnerships with USIA in order to ensure the long-term viability of educational advising centers abroad which provide information on and facilitate access to U.S. institutions of higher education to overseas audiences. Because of the important role of these centers in achieving the United States' educational exchange and foreign policy objectives, USIA is committed to maintaining comprehensive and objective educational advisory services to overseas audiences. Recent budget reductions, however, have limited the operational, material and training support that USIA can offer to the network of overseas educational advising centers. USIA is seeking outside funding, contributions and creative solutions to continue providing educational advising services in cooperation with United States Information Service (USIS) posts abroad. USIA invites public and private, for-profit and not-for-profit organizations with significant substantive experience in international education to submit statements of interest for collaborating with USIA and USIS posts abroad. Limited support for initiatives may be available, depending on the specific circumstances of the advising program in each country, the interest and requirements of individual USIS posts, and the availability of funds.

Background Information

Advising and Student Services

The Advising and Student Services Branch (E/ASA) of the United States Information Agency's Bureau of Educational and Cultural Affairs promotes the international exchange of students and scholars through a network of educational advising centers located overseas and through partnership with the international education community in the United States. The Branch works toward strengthening the infrastructure for the administration of international educational exchange and facilitates cooperation between educational advisers overseas and their counterparts at U.S. academic institutions. The Branch provides material support for advising centers within the USIA network in the form of books, other reference materials and appropriate equipment, as well as staff training and professional development opportunities through training in the U.S., overseas workshops and conferences, and services offered by Regional Educational Advising Coordinators.

Overseas Educational Advising Centers

The educational advising centers in the USIA network, located in nearly every country in the world, provide foreign audiences, including prospective students and scholars, with the information they need to understand the U.S. higher education system, and, if appropriate, to apply for admission to a U.S. college or university. Centers can be found in a wide variety of institutions, including U.S. embassies, Fulbright commissions, local universities, private foundations, U.S. non-profit organizations with operations overseas, and other local institutions. USIA provides operational support for some of these centers; but all centers receive at least a minimum level of material support. Topics for which information is readily available at a center include:

—profiles of U.S. higher education institutions, including course descriptions
—application procedures and strategies
—financial assistance options
—information on standardized tests required for admission such as TOEFL
—information on secondary education in the U.S.

Range of Participation

USIA is seeking non-governmental organizations to collaborate in one or more of the following types of activities:

(A) Under direction of the USIS post, to accept responsibility for all or part of the operation of an overseas educational advising center currently operated by the post.

(B) To establish a cooperative relationship with a Fulbright commission, a host-country institution or a USIS post in support of a new or existing educational advising activity.

(C) To contribute material, technological, staffing or other support to ongoing advising operations.

(D) To contribute to professional development programs for advisers.

Operational Standards

I. USIA requires advising centers within its network to adhere to the following basic principles:

(A) They should provide impartial, accurate information about the full range of accredited institutions of higher learning in the United States and must not serve as agents or recruiters. Ethical standards of appropriate professional associations must be followed.

(B) They should provide, at no charge, access to essential reference materials and to an introductory advising session, which may be a group or video presentation.

II. If an advising center decides to offer fee-based services, the following principles also apply:

(A) All services beyond the introductory level may be provided for a fee that is in accordance with the local market and laws. These services might include one-on-one advising, transcript evaluations, translations, pre-departure orientations, and specialized workshops.

(B) Services may be provided to U.S. colleges, universities and schools (e.g., college fairs, assistance in logistical arrangements for recruitment) provided that the center maintains impartiality and continues to present the full range of accredited U.S. academic institutions. Fees may be charged for these services.

(C) Students who are clearly not qualified for U.S. study, i.e., lack financial resources, English language ability, and/or sufficient academic preparation, should not be offered fee-based services.

(D) Centers may recruit sponsors for specific activities, provided solicitation is done in coordination with the local USIS post.

Announcement Title and Number

All communications with USIA concerning this announcement should refer to the above title and reference number E/ASA–97–11.

Submissions

Organizations wishing to pursue collaborative activities as described above should prepare a concept paper, not to exceed five pages. This paper should include the following information:

(A) Name and address of organization(s).

(B) Principal contact information (name, phone/fax numbers, e-mail address).

(C) Outline of organization's history, mission, and scope.

(D) Brief description of organization's involvement with U.S. and foreign higher educational systems, educational exchange, and overseas educational advising and/or other services.

(E) Resources (human, financial, in-kind etc.) which applicant organization proposes to contribute to the achievement of the goals of the educational advising program.

(F) Countries or regions of interest.
(G) Scope of proposed activity.

The original and five copies of the concept paper, along with the same information on a 3.5″ diskette in ASCII text format, should be sent to: U.S. Information Agency, Ref.: E/ASA–97–11, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

USIA will use the electronic submissions to transmit concept papers to appropriate USIS posts for their review and comment.

Deadline for Submission

All concept papers must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on July 25, 1997. Faxed documents will not be accepted at any time. Documents postmarked July 25 but received at a later date will not be accepted.

Review Process

USIA will review concept papers using as criteria the degree to which the applicant organization demonstrates:

—Experience with U.S. and foreign higher education systems;
—Significant involvement in international educational exchange, in the U.S. or abroad;
—Commitment to the mission of overseas educational advising and to maintaining operational and ethical standards;
—Experience in the provision of educational services overseas;
—Ability to provide a financial base for advising and related operations abroad.

All eligible concept papers will be reviewed by a panel that may include the program office and USIA geographic area offices where appropriate to recommend those that should be approved for further consideration by USIS posts. Statements may also be reviewed by the Office of the General Counsel or by other Agency elements. Recommended concept papers will be shared with appropriate USIS posts. E/ASA will facilitate communication between submitters and USIS posts. Further action on concept papers will depend upon USIS post requirements and will involve E/ASA's oversight. Discussions between USIS post and submitter may lead to the negotiation of a formal agreement with the submitter. It is anticipated that agreements will be executed by January 1, 1998.

FOR FURTHER INFORMATION CONTACT: The Advising and Student Services Branch, E/ASA, Rm. 349, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone 202–619–5434; fax 202–401–1433; e-mail Advise@usia.gov. Contact officer is Amy Forest.

TO RECEIVE THIS ANNOUNCEMENT VIA FAX ON DEMAND: This announcement may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling (202) 401–7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

TO DOWNLOAD THIS ANNOUNCEMENT VIA INTERNET: This announcement may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher://gopher.usia.gov. Under the heading ''International Exchanges/Training,'' select ''Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before downloading.

Dated: April 23, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–11311 Filed 4–30–97; 8:45 am]

BILLING CODE 8230–01–M

federal register

Thursday
May 1, 1997

Part II

Environmental Protection Agency

40 CFR Part 372

Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory Reporting; Community Right-to-Know; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400104D; FRL–5578–3]

RIN 2070–AC71

Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding seven industry groups to the list of facilities subject to the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). These industry groups are metal mining, coal mining, electric utilities, commercial hazardous waste treatment, chemicals and allied products-wholesale, petroleum bulk terminals and plants-wholesale, and solvent recovery services. EPA believes that the addition of these industry groups to the EPCRA section 313 list will significantly enhance the public's knowledge about releases, transfers, and other waste management of toxic chemicals. EPA is taking this action pursuant to its authority to add to the list those facilities that meet the standard of EPCRA section 313(b)(1)(B). Reporting for facilities within these industry groups will be effective beginning with the 1998 reporting year. The first reports from the added facilities must be submitted to EPA and the States by July 1, 1999. EPA is also revising its interpretation of the threshold activity, ''otherwise use'' and this interpretation is reflected in the revised definition. This change is effective beginning with the 1998 reporting year. The first reports from any covered facilities using the revised interpretation must be submitted on or before July 1, 1999. Finally, EPA is announcing it will initiate an intensive stakeholder process to comprehensively evaluate the current reporting forms and reporting practices.

EFFECTIVE DATE: This rule is effective December 31, 1997, for the reporting year beginning on January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tim Crawford at 202-260-1715, e-mail: crawford.tim@epamail.epa.gov for specific information regarding this final rule. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Regulated Entities

Entities regulated by this final action are those facilities within the Standard Industrial Classification (SIC) codes being added by this rule and certain facilities in SIC codes 20 through 39, which manufacture, process, or otherwise use chemicals listed at 40 CFR 372.65 and meet the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 13106. The potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry; facilities that manufacture, process, or otherwise use certain chemicals	Metal mining, Coal mining, Electric utilities, Commercial hazardous waste treatment, Chemicals and allied products-wholesale, Petroleum bulk terminals and plants-wholesale, Solvent recovery services, Manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine this final rule and the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations.

B. Statutory Authority

This final rule is issued under sections 313(b) and 328 of EPCRA, 42 U.S.C. 11023(b) and 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report certain facility-specific information about such chemicals, including the annual quantities of the chemicals entering each environmental medium. Beginning with the 1991 reporting year, such facilities also must report source reduction and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (PPA), 42 U.S.C 13106. The information reported under section 313 of EPCRA and section 6607 of PPA provides the input for a publicly available data base, the Toxics Release Inventory (TRI). Section 313(b)(1)(A) specifically applied these reporting requirements to owners and operators of facilities that have 10 or more full time employees (FTEs) and that are in SIC codes 20 through 39. EPCRA section 313(b) authorizes EPA to add facilities and industry groups to the EPCRA section 313 list. The purpose of this final rule is to expand the universe of facilities that are subject to reporting under EPCRA section 313 and PPA section 6607.

II. Background of this Rulemaking

A. General Background

On June 27, 1996 (61 FR 33588) (FRL–5379–3), EPA issued a proposal in the **Federal Register** to add seven industry groups to the list of facilities subject to the reporting requirements of section 313 of EPCRA and section 6607 of PPA (hereafter collectively referred to as ''EPCRA section 313 reporting requirements''). Those industry groups are metal mining, coal mining, electric utilities, commercial hazardous waste treatment, chemicals and allied products-wholesale, petroleum bulk plants and terminals-wholesale, and solvent recovery services. As discussed in the proposed rule (at 61 FR 33592), Congress gave EPA clear authority to expand TRI, both in terms of the chemicals reported and the facilities required to report. The initial list of chemicals and facilities identified in the original legislation was meant as a starting point. Congress recognized that the TRI program would need to evolve to meet the information needs of a better informed public and to fill information gaps that would become more apparent over time. The information EPA is seeking to provide to the public through this action is generally unavailable at present. While many of these non-manufacturing facilities may be subject to various reporting requirements at the Federal, State, and local levels, none of these reporting systems are comparable to TRI.

EPA first announced its intention to consider the expansion of TRI to include facilities in additional industry groups at a public meeting held on May

29, 1992 (57 FR 19126). EPA's initiative to expand the coverage of TRI to include additional industry groups was undertaken to more completely account for the use, management, and disposition of EPCRA section 313 toxic chemicals in the U.S., and to provide the public, all levels of government, and the regulated community with information that will improve decision making, measurement of pollution, and the understanding of the environmental and health consequences of toxic chemical releases and other waste management activities. EPA's proposal was intended to address this issue. The industry groups being finalized today are responsible for the ''manufacture,'' ''process,'' ''otherwise use,'' release and other waste management of substantial quantities of EPCRA section 313 chemicals, and are engaged in activities similar to or related to activities conducted at facilities within the manufacturing sector that currently report.

B. Outreach

Prior to the proposed rule, EPA engaged in a significant and comprehensive outreach effort. This outreach served to inform interested parties, including industry groups under consideration, state regulatory officials, environmental organizations, labor unions, community groups, and the general public of EPA's intention to propose adding industry groups to the EPCRA section 313 list. The outreach effort also allowed EPA to gather additional information that assisted in the development of the proposed rule. EPA held two formal public meetings in 1992 and 1995 prior to the proposed rule (57 FR 19126 and 60 FR 21190), and held three public meetings during the comment period for the proposal (61 FR 33619 and 61 FR 40637). In addition, EPA used the regularly-held public meetings of the Forum on State and Tribal Toxics Action (FOSTTA), which represents state environmental agencies, and the National Advisory Council on Environmental Policy and Technology, which includes members from industry, environmental organizations, states, and academia, to discuss the expansion of EPCRA section 313 reporting requirements to new industry groups.

EPA used a number of other approaches to gather and share information regarding the expansion of EPCRA section 313 reporting requirements prior to publication of its proposal. Beginning in 1994, EPA held a considerable number of meetings with interested parties regarding this initiative, including what were referred to as ''focus group meetings,'' and routinely met with interested parties. EPA also provided considerable information regarding its intentions to expand EPCRA section 313 reporting requirements through the annual TRI Data Release, notices in the **Federal Register**, public statements by EPA officials, media coverage, data and analytical analyses provided to industry, and significantly, a Presidential address on August 8, 1995, that set out very clearly the Administration's commitment to the expansion of community right-to-know. EPA received substantial public comment prior to the proposal, and considered these comments in its deliberations to develop the proposal. Additional information regarding EPA's outreach may be found at Unit II.B. of the proposal (61 FR 33590) and in supporting documents included in the Public Docket.

C. Development of Industry Group Candidates

Prior to the proposed rule, EPA designed and executed a screening process intended to identify those industry groups potentially most relevant to the purposes of EPCRA section 313. EPA began its screening process by analyzing what limited chemical use, release and waste management information was already available for those industries. EPA reviewed several existing EPA data systems, including the Aerometric Information Retreival System (AIRS), the Biennial Report System (BRS), and the Permit Compliance System (PCS). The initial screening activity ranked industries at the 2-digit SIC code level by the volume of EPCRA section 313 chemicals identified in these systems which could be estimated for each of the data reporting systems (see 61 FR 33591). Those 2-digit SIC codes that made up 99 percent of the matched EPCRA section 313 chemical release volumes for non-manufacturing facilities were selected from each reporting system. This list of 25 2-digit SIC codes was referred to as the ''Tier I'' list for further consideration.

The Tier I list represented an extremely large number of diverse individual industries. EPA collected and compiled information detailing the specific activities conducted by facilities within each of the 2-digit SIC codes, identified on the Tier I list with emphasis on those activities that may involve section 313 chemicals. This industry-specific information for each 2-digit SIC code, as well as chemical-specific data were integrated into documents referred to as ''industry profiles.'' The next phase in the screening process compared the types of activities they perform to the EPCRA section 313 threshold activities and the services these industry groups provide to the manufacturing sector. To further refine the analysis, EPA collected and assessed data reported in EPA data systems at the more specific 4-digit SIC code level. These data were then incorporated into a ranking model that allowed the analysis of large volumes of information, further increasing the level of specificity and detail of this analysis. The last stage in the screening process overlayed regulatory definitions, existing program guidance, and any exemptions pertinent to activities identified for the primary candidates. This stage of the analysis allowed EPA to evaluate the degree to which EPCRA section 313 reporting would be expected to occur for these ''candidate industry groups.'' Additional detail regarding the screening process is provided in Unit II.C. of the proposal (see 61 FR 33591).

EPA did not include certain industry groups for consideration in the proposal based on a number of unresolved issues, which were referred to as ''additional considerations'' in the proposal. Among these issues included significant intergovernmental impacts; economic considerations; non-listed primary chemical association (i.e., questions remain regarding the industry's routine involvement with EPCRA section 313 listed toxic chemicals); and the definition of a standard facility unit. Discussion of these issues is found at Unit II.D. of the proposal (see 61 FR 33592).

D. Statutory Construction

Congress provided EPA with explicit statutory authority to expand the categories of facilities required to report to TRI beyond those specified in section 313(b)(1)(A), which applies EPCRA section 313 to facilities that are in SIC codes 20 through 39. The seven additional industry groups were proposed based on the authority provided in EPCRA section 313(b)(1)(B), which states:

> The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Classification Code to which this section applies is relevant to the purposes of this section.

EPA believes that this provision grants the Agency broad, but not unlimited, discretion to add industry groups to the facilities subject to EPCRA section 313 reporting requirements where EPA finds that reporting by these industries would be relevant to the purposes of EPCRA section 313. Thus, the statute directs

EPA, when adding industry groups, to consider and be guided by the ''purposes'' of EPCRA section 313. EPCRA section 313(h) states that:

> The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available... to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

Based on the Agency's reading of the statute, pertinent legislative history, and a General Accounting Office (GAO) report critically analyzing the TRI program, the proposal identified several purposes of the EPCRA section 313 program, as envisioned by Congress, including: (1) Providing a complete profile of toxic chemical releases and other waste management activities; (2) compiling a broad-based national data base for determining the success of environmental regulations; and (3) ensuring that the public has easy access to these data on releases of toxic chemicals to the environment. EPA considered these purposes when exercising its discretion to add particular industries to EPCRA section 313. Additional discussion of EPA's statutory authority for its proposed action can be found at Unit III.A. of the proposal (see 61 FR 33592).

III. Summary of Proposal

A. Interpretation of Statutory Standard

For purposes of the proposed rule, which was EPA's first use of section 313(b)(1)(B), EPA identified three primary factors to consider in determining whether the statutory standard would be met by addition of the candidate facilities in industry groups under EPCRA section 313(b)(1)(B). The three primary factors identified by EPA are the following: (1) Whether one or more toxic chemicals are reasonably anticipated to be present at facilities within the candidate industry group (''chemical'' factor); (2) whether facilities within the candidate industry group ''manufacture,'' ''process,'' or ''otherwise use'' these toxic chemicals (''activity'' factor); and (3) whether facilities within the candidate industry group can reasonably be anticipated to increase the information made available pursuant to EPCRA section 313, or otherwise further the purposes of EPCRA section 313 (''information'' factor). Additional discussion of this interpretation of statutory standard may be found at Unit III.B. of the proposal (see 61 FR 33593).

B. Clarification of Threshold Activities

EPA proposed to modify its interpretation of activities considered ''otherwise used'' as it applies to activity thresholds under EPCRA section 313(f). In 1988, EPA promulgated a definition of ''otherwise use'' that recognized the purposes of the statute and the statutory definitions of ''manufacture'' and ''process.'' The definition of ''otherwise use'' included certain activities that were not ''manufacturing'' or ''processing.'' See 40 CFR 372.3.

However, given that section 313 originally applied to those facilities which principally operate in the manufacturing sector, past reporting guidance was tailored to address the principal activities conducted by manufacturing facilities. That guidance instructed facilities not to include the amounts treated (including treatment for destruction and waste stabilization) or disposed toward the ''manufacture,'' ''process,'' or ''otherwise use'' threshold. However, as EPA considered its interpretive guidance on ''otherwise use'' for purposes of its industry expansion initiative, EPA was concerned that, as a result of its past guidance, the public may not have access to information relating to the use and releases and other waste management activities of toxic chemicals by facilities within SIC codes 20 through 39 that are receiving materials for purposes of treatment for destruction, stabilization, or disposal. This guidance would also result in information gaps relating to the use and releases and other waste management activities of toxic chemicals by facilities within the candidate industry groups.

Therefore, EPA proposed modifying its interpretation of activities considered ''otherwise used'' to include treatment for destruction, disposal, and waste stabilization when the EPCRA section 313 facility engaged in these activities receives materials containing any chemical (not limited to EPCRA section 313 listed toxic chemicals) from one or more other facilities (regardless of whether the generating and receiving facilities have common ownership) for purposes of further waste management.

EPA proposed to define ''treatment for destruction'' to mean the destruction of the toxic chemical such that the substance is no longer a toxic chemical subject to EPCRA section 313 reporting requirements. EPA proposed to define ''waste stabilization'' consistent with the definition at 40 CFR 265.1081, the definition that is used in the Resource Conservation and Recovery Act (RCRA) program. For purposes of EPCRA section 313, the definition would be interpreted to apply to any EPCRA section 313 listed toxic chemical or waste containing any EPCRA section 313 listed toxic chemical. Also, for purposes of the EPCRA section 313 ''otherwise use'' reporting threshold, EPA proposed to interpret disposal to include underground injection, placement in landfills/surface impoundments, land treatment, or other intentional land disposal. A more thorough discussion of this clarification of threshold activities is found at Unit IV. of the proposal (see 61 FR 33595).

C. Technical Review

For each industry group proposed for addition to EPCRA section 313, EPA conducted an extensive assessment. The information summarized in the proposed rule for each industry group describes the key data elements upon which EPA relied to determine that the addition of facilities in the industry group was relevant to the purposes of EPCRA section 313. This information may be found at Units V.A through V.G. in the proposed rule (see 61 FR 33598). EPA's assessment of these industries is based on the Office of Management and Budget Standard Industrial Classification (OMB SIC) Manual, 1987 (Ref. 4). EPA is aware that OMB has recently revised the classification system (see 62 FR 17288). EPA will issue a notice in the **Federal Register** that will cross reference the OMB SIC Manual 1987 and OMB's recent revisions to identify manufacturing sector groups and industry groups added to today's rule. The following is a brief summary for each of the proposed industry groups:

EPA proposed to require that facilities operating in SIC code 5169, Wholesale Nondurable Goods—Chemicals and Allied Products, Not Elsewhere Classified (hereafter ''Chemicals and Allied Products''), be subject to the EPCRA section 313 reporting requirements. Facilities within this industry group receive EPCRA section 313 chemicals in bulk, take possession of those chemicals and reformulate, blend, and repackage materials containing section 313 chemicals for further distribution in commerce.

EPA proposed to require that petroleum facilities in SIC code 5171 be subject to the EPCRA section 313 reporting requirements. This industry group includes facilities that receive petroleum products and petroleum additives that contain EPCRA section 313 chemicals, take possession of those chemicals and reformulate, blend, and

repackage petroleum products prior to distribution in commerce.

EPA proposed to require that coal and oil-fired electric utility plants in SIC code 49 be subject to the EPCRA section 313 reporting requirements. These facilities are classified in SIC code 4911-Electric Services, SIC code 4931-Electric and Other Services Combined, and SIC code 4939-Combination Utilities, Not Elsewhere Classified. EPA requested additional comment on whether to add SIC code 4960-Steam and Air Conditioning Supply.[1] Nuclear, hydroelectric, gas and other non coal/oil-fired electric generating stations typically do not generate power for distribution in commerce by combusting fuel containing EPCRA section 313 listed toxic chemicals. EPA proposed to add only those facilities within this industry group which combust fuels containing EPCRA section 313 listed toxic chemicals. While EPA recognized that non coal/oil-fired electric generating stations may otherwise use EPCRA section 313 chemicals in maintenance, cleaning, and purifying operations, and that information on releases and other waste management data from these activities may have some value, these support activities are not the primary function of the facility. Thus, EPA chose, at this time, to limit its proposal to the addition of coal and oil-fired plants in the proposed rulemaking.

EPA also proposed to require that facilities engaged in metal mining be subject to the EPCRA section 313 reporting requirements. The proposed addition was limited to facilities in SIC code 10-Metal Mining except SIC code 1081-Metal Mining Services. Facilities in SIC code 1081 generally do not conduct threshold activities; activities performed by facilities in SIC code 1081 primarily consist of contracted services for mining operations in the other SIC codes.

EPA also proposed to require that facilities engaged in coal mining be subject to the EPCRA section 313 reporting requirements. The proposed addition was limited to facilities in SIC code 12-Coal Mining except SIC code 1241-Coal Mining Services. EPA does not believe that SIC code 1241 includes facilities which conduct threshold activities or routinely handle large volumes of EPCRA section 313 chemicals.

EPA believed that activities associated with beneficiation in both metal and coal mining operations include EPCRA section 313 threshold activities and would result in reports relevant to the purposes of EPCRA section 313. As a result of EPA's evaluation of coal mining, the Agency believes, based on currently available data, that facilities in this industry which conduct only extraction are unlikely to submit reporting information. EPA based this conclusion on its belief that EPCRA section 313 chemicals are not present above *de minimis* concentration levels during coal extraction, and the use of EPCRA section 313 chemicals in coal extraction activities in concentrations above *de minimis* is unlikely to occur. Therefore, EPA proposed to exempt extraction activities conducted by facilities in SIC code 12 from all EPCRA section 313 reporting requirements. EPA proposed to interpret ''extraction'' for purposes of EPCRA section 313 to mean the physical removal or exposure of ore, coal, minerals, waste rock, or overburden prior to beneficiation, and encompasses all activities related to extraction prior to beneficiation.

EPA also requested comment regarding whether a similar exemption should be applied to metal mining extraction as well. Based on existing data, EPA believed that metal mining extraction and coal mining extraction are similar types of operations, and that the use of EPCRA section 313 chemicals in concentrations above *de minimis* during extraction is unlikely in both industries. However, EPA recognized that the composition of extracted material is different in metal mining and coal mining and EPA believed that EPCRA section 313 chemicals can be present above *de minimis* concentrations in metal ore.

EPA proposed to require that facilities classified within SIC code 4953, which are also regulated under the RCRA Subtitle C program, be subject to the EPCRA section 313 reporting requirements. Facilities operating in SIC code 4953 that are regulated under RCRA (the primary federal law addressing waste management) subtitle C, are engaged primarily in the collection, transportation, treatment for destruction, stabilization, and/or disposal of hazardous waste containing EPCRA section 313 toxic chemicals and include incinerators, underground injection facilities, waste treatment plants, hazaradous waste landfills, and other facilities designed for the treatment for destruction, stabilization, and disposal of hazardous waste.

EPA proposed to require that facilities engaged in solvent recovery operations be subject to the EPCRA section 313 reporting requirements. These facilities are classified in SIC code 7389 Business Services, Not Elsewhere Classified, and are primarily engaged in solvent recovery activities involving EPCRA section 313 chemicals.

D. Comment Period

Upon publication of the proposed rule, EPA initially provided a 60–day comment period. EPA then granted an additional 30 days to allow interested parties further time for preparation of their comments. During the comment period, EPA held three public meetings: August 7, 1996, in San Francisco; August 14, 1996, in Washington, DC (61 FR 33619) (FRL–5382–3); and August 19, 1996, in Chicago (61 FR 40637) (FRL–5390–9). While the meetings held in San Francisco and Washington, DC were intended to solicit comment from all interested parties, the meeting held in Chicago was primarily intended to provide an opportunity for comment on the potential impacts on small entities of the proposed action. The public docket includes summaries of these public meetings, unedited transcripts, and copies of written statements provided by speakers. In addition, at the request of some interested parties, EPA staff met with representatives of several firms, trade associations, and non-governmental organizations to discuss the proposed rule. Summaries of these meetings are also included in the public docket.

IV. Summary of Final Rule

In this action, EPA is adding seven industry groups to the list of facilities subject to the EPCRA section 313 reporting requirements. These industry groups are metal mining ((SIC code 10 (except 1011, 1081, and 1094)), coal mining ((SIC code 12 (except 1241)), electric utilities (SIC codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4931 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4939 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce)), commercial hazardous waste treatment (SIC code 4953 (limited to facilities regulated under the RCRA Subtitle C, 42 U.S.C. section 6921 *et seq.*)), chemical and allied products-wholesale (SIC code 5169), petroleum bulk terminals and plants (also known as stations)-wholesale (SIC code 5171), and solvent recovery services (SIC code 7389 (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis)). EPA finds that each of these industry groups meets the

[1] This SIC code was misnumbered although correctly described in the proposal; the correct SIC code is 4961.

EPCRA section 313(b)(1)(B) standard. EPA believes that the addition of these industry groups will further the goals of EPCRA section 313 and significantly add to the public's knowledge about the use and disposition of toxic chemicals in their communities.

The proposed rule and the record supporting the rulemaking contain information on EPA's review of these industry groups. That background information will not be repeated here. However, to the extent that comments were received on these issues, those comments are briefly addressed in this document. In addition to general comments and comments pertaining to a number of the proposed industry groups, EPA received specific technical comments on each of the industry groups. Detailed responses to comment are contained in *Response to Comments Received on the June 27, 1996 Proposed Rule to Expand the EPCRA Section 313 List of Industry Groups* (hereinafter *Response to Comments* document, Ref. 15).

EPA is not including SIC code 1011 (Metal Mining: Iron Ores) in this rulemaking based on the information available to EPA as discussed in Unit V.H.2. of this preamble. EPA received comments requesting that EPA specifically exclude SIC Code 1011 Iron Ore Mining. EPA may reconsider the addition of this industry segment at a future date in light of additional information.

In addition, EPA is deferring final action on SIC code 1094 (Metal Mining: Uranium-Radium-Vanadium Ores) until a later date. EPA received comments during the inter-agency review process under Executive Order (E.O.) 12866 for this expansion initiative that raised difficult technical and policy issues which will require additional time to address. The Agency does not believe that it would be in the spirit of community right-to-know to delay final action on all of the remaining industry groups, pending completion of work on SIC code 1094. EPA will make a final determination as to whether this industry group should be added to EPCRA section 313. If EPA's final decision is to add this industry group, EPA will accomplish this through a future rulemaking. The public comment that has been received specific to this deferred industry segment will be addressed as part of the future rulemaking discussed above.

These additions are effective beginning on January 1, 1998, as discussed in Unit V.D. of this preamble. EPA believes that this schedule permits the preparation of sector-specific guidance and sufficient time for newly affected facilities to become familiar with the rule.

V. Summary of Public Comments

The public comment period for the proposed rule (61 FR 33588) closed September 25, 1996. EPA received 2,715 comments, including 470 from industry, 86 from trade associations, 60 from environmental groups, 1,875 from private citizens, 5 from Federal agencies, 43 from State agencies, 108 from public interest groups, 18 from labor groups, 14 from universities, and 36 from associations. Detailed responses to these comments are contained in the *Response to Comments* document (Ref. 15).

In addition to comments supporting the proposed expansion of industry groups, EPA received comments in the following major areas: EPA's screening process used to identify potential candidates; EPA's interpretation of authority under EPCRA section 313; application of the statutory criteria; compliance with existing laws and policies; EPA's interpretation of release; reporting exemptions; duplicative reporting; general technical comments; and industry-specific comments.

A. Statutory Authority

While many commenters support EPA's exercise of its authority to add industry groups to EPCRA section 313, a number of commenters argue that EPA's authority to add industry groups to the TRI program is severely restricted. Some of these commenters argue that language in EPCRA section 313(b)(1)(B) limits EPA to adding industry groups only to the extent it is ''necessary'' under that provision. Others state that EPA may add or delete only those industries within the traditional manufacturing sector SIC codes 20 through 39, which were made subject to the TRI program by Congress pursuant to the statute at EPCRA section 313(b)(1)(A). On similar reasoning, still other commenters argue that EPA's authority to add industrial classifications is limited to those that are in some manner ''like'' or ''akin'' to those within the traditional manufacturing sector.

EPA believes that in EPCRA section 313(b)(1)(B), Congress gave EPA the authority to add industry groups to the TRI program, whenever the Agency reasonably finds that reporting by facilities within those groups would be relevant to the purposes of the TRI program. EPCRA section 313(b)(1)(B) provides that:

> The [EPA] may add or delete [SIC] Codes. . .but only to the extent necessary to provide that each [SIC code] to which [section 313] applies is relevant to the purposes of [section 313].

EPA believes that this provision gives authority to the Agency to add industry groups and provides guidance for the identification of the new sectors--i.e., where EPA finds that reporting by facilities within those groups would be relevant to the purposes of EPCRA section 313. Although the statute does use the term ''to the extent necessary'' in describing EPA's authority, the use of the phrase ''relevant to the purposes'' of section 313 indicates that rather than having to find that it is somehow ''necessary'' to add an industrial group to those reporting under EPCRA section 313, it is ''necessary'' for EPA to find that potential reporting by that group would be relevant to the purposes of EPCRA section 313 in order to exercise its authority to add that group.

The legislative history of section 313(b)(1)(B) confirms EPA's interpretation of the statutory text. The Senate-passed bill encompassed reporting by only those facilities within SIC codes 20 through 39, whereas the House legislation contemplated that any facilities handling above-threshold amounts of reportable chemicals would be subject to the reporting requirements. The Conference Committee that developed the language eventually enacted into law stated as follows:

> The conference substitute combines elements of the Senate and House amendments. Coverage of facilities is based on SIC Codes 20-39, except that [EPA] may add or delete SIC Codes to the extent necessary to achieve the purposes of this section. . . .
>
> Subparagraph 313(b)(1)(B) of the conference substitute provides that:
>
> [EPA] may add or delete SIC codes specified for coverage in the legislation. This authority is limited, however, to adding SIC codes for facilities which, like facilities withing the manufacturing sector SIC codes 20 through 39, manufacture, process or use toxic chemicals in a manner such that reporting by these facilities is relevant to the purposes of [section 313].

Conf. Rep. 99-962 at 292. Thus, the Conference Report clearly indicates that where EPA finds that the addition of an industry group to the TRI program would be relevant to the purposes of that program, section 313(b)(1)(B) authorizes EPA to add that group to those subject to EPCRA section 313 reporting.

EPA does not agree with comments that the additional industry groups must be within the traditional manufacturing sector, or must be like or akin to that sector in the way they ''manufacture,'' ''process,'' or ''otherwise use'' toxic

chemicals. The question under section 313(b)(1)(B) is whether potential reporting by an additional group would be relevant to the purposes of the TRI program. While the Conference Report did refer to adding SIC codes for facilities which are ''like facilities within the manufacturing sector,'' id., EPA believes the relevant similarity is not the operational nature of the industry group, but in the informational value of reporting on toxic chemical use, management, and disposition--i.e., the language in the statute and Conference Report communicates Congress' intent that EPA may expand the SIC code coverage to include other facilities that will contribute to the TRI data base information on the use and disposition of toxic chemicals in the United States. By including SIC Codes 20 through 39, Congress made a judgment that reporting by those industries would be relevant to the purposes of the TRI program; Congress then authorized EPA to include additional SIC codes, where EPA finds that reporting by those industries would also be relevant to the TRI program. There is no indication that Congress intended TRI to forever remain only a Manufacturers' Toxics Release Inventory. In this rule, even though EPA believes that EPCRA permits addition of industry groups composed of facilities that ''manufacture,'' ''process,'' or ''otherwise use'' toxic chemicals in a manner different from facilities within the traditional manufacturing sector, the Agency has limited the addition to industry groups that have significant ties to the manufacturing sector.

In addition to the general comments regarding EPA's authority to add industry groups to the EPCRA 313 facility list, commenters raise some more specific authority questions. These, along with EPA's responses, are summarized below. Further detail is provided in the *Response to Comments* document (Ref. 15).

Several commenters read the statutory provision regarding addition of facilities, in conjunction with a discussion in the Conference Report, to indicate that EPA may add industry groups only if those groups manufacture, process, or otherwise use listed chemicals in a manner similar to facilities in SIC codes 20 through 39. EPA disagrees with the conclusion drawn by the commenters. The discussion at issue,

> [EPA's] authority is limited, however, to adding SIC codes for facilities which, like facilities within the manufacturing sector, SIC codes 20 through 39, manufacture, process or otherwise use toxic chemicals in a manner such that reporting by these facilities is relevant to the purposes of this section. [S]imilarly, the authority to delete SIC codes from within SIC codes 20 through 39 is limited to deleting SIC codes for facilities which, while within the manufacturing sector SIC codes, manufacture, process or use toxic chemicals in a manner more similar to facilities outside the manufacturing sector[,]

must be read in context. By prefacing the sentence on deletion with ''similarly,'' Congress is connecting it to the prior sentence on addition, and directing EPA to use the same basic criterion--relevance to the purposes of EPCRA section 313--for both addition and deletion of industry groups. The use of the manufacturing/non-manufacturing dichotomy in the deletion sentence reflects the content of the EPCRA section 313 facility list at the time, rather than a congressional intent to limit for all time the authority to add non-manufacturing industry groups to the TRI program. At the time this statement was made, the only facilities eligible for deletion were those in SIC codes 20 through 39. Therefore, the only frame of reference for the discussion was the manufacturing sector. Under those circumstances, it is reasonable for Congress to have used the distinction between manufacturing and non-manufacturing to describe EPA's authority to delete facilities from the EPCRA section 313 list. As discussed above, EPA does not believe that this distinction is controlling for purposes of adding facilities to the section 313 list because EPA does not believe that operational similarity to the manufacturing sector is a necessary correlate of ''relevant to the purposes'' of EPCRA section 313.

Other commenters argue that Congress' adoption of the PPA evinces a congressional intent to require reporting only from industries that are capable of source reduction. EPA agrees that the reporting required under PPA section 6607 is an extension of reporting required under EPCRA section 313. Thus, facilities required to report under EPCRA section 313 are also required to report for purposes of PPA section 6607. However, EPA disagrees with commenters' conclusion that adoption of the PPA in 1990 characterizes Congress' intent in its previous adoption of EPCRA section 313. In fact, in enacting the PPA, Congress specifically provided that ''[n]othing in [the PPA] shall be construed to modify or interfere with implementation'' of EPCRA. PPA section 6609(a), 42 U.S.C. section 13108(a).

Many commenters interpret EPA's authority to add industry groups to be limited to those groups composed of facilities likely to report releases of EPCRA section 313 toxic chemicals resulting in immediate human exposures or significant risks to public health. These commenters apparently believe that reporting is only relevant to the purposes of EPCRA section 313 if it communicates information about local risks to the local public. Commenters argue that absent such a finding relative to a candidate industry group, reporting by the group will mislead the public about the nature of the risks relative to the information on TRI.

EPA does not agree that the Agency must evaluate the potential for local, human exposures, and risks to determine whether a candidate industry group may be added under EPCRA section 313(b)(1)(B). As discussed above, EPCRA section 313(b)(1)(B) authorizes the addition of industry groups where reporting by such industry groups is relevant to the purposes of EPCRA section 313, which are described in EPCRA section 313(h) to include informing ''the public, including citizens of communities surrounding covered facilities. . . about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; [and] to aid in the development of appropriate regulations, guidelines, and standards.'' 42 U.S.C. section 11023(h). Thus, as EPA explained in its proposal, the Agency concludes from the language of the statute and the legislative history that there are three functional purposes for the EPCRA section 313 reporting program: (1) To provide a complete profile of the disposition of toxic chemicals through reporting of toxic chemical releases and waste management activities; (2) to compile such information into a broad-based national data base for use in determining the success of environmental programs; and (3) to ensure that the public has easy access, in an understandable format, to the data base and raw information (see 61 FR 33593). Neither EPCRA section 313(h) nor its legislative history indicates that the purpose of EPCRA section 313 is for the federal government to collect only that information from only that sector of industry that releases EPCRA section 313 toxic chemicals such that, from the federal government's perspective, there is significant local human exposure and human risk from those releases. Therefore, EPA does not believe that EPCRA section 313(b)(1)(B) requires a determination of the potential for significant exposures or risk to the local

human population from the release of toxic chemicals from facilities within candidate industries.

Federal and local perspectives on what may be an acceptable risk are likely to be very different. The roles of local government and the federal government differ significantly in terms of ensuring environmental quality. In passing EPCRA, Congress determined that it is for the public to take the information reported on the use and releases and other waste management of toxic chemicals, and to determine whether there is a need for any response given other factors, such as economic and environmental conditions, or particularly vulnerable human or ecological populations. Congress did not intend the federal government to consider these local factors prior to determining whether certain information should be made available to the public, or prior to determining whether an industry group should be added.

Moreover, while human exposure and risk may be viewed by some as the focus of EPCRA section 313, they were not Congress' sole concern in enacting that section. EPA believes that environmental considerations are also important. That Congress looked beyond human exposures and risks when enacting EPCRA section 313 is amply demonstrated by the fact that chemicals can be included on the EPCRA section 313 list based on environmental effects alone.

Some commenters argue that reporting by a candidate industry is not relevant to EPCRA section 313 if reporting will lead the local public to conclude that a particularly successful environmental program, such as a pollution prevention effort, is in fact not successful. EPA disagrees with the conclusion that the local public necessarily will be misled by having access to the information reported on TRI. Misuse or misinterpretation of information does not mean that the basis for collecting the information is invalid. EPA believes that the appropriate solution to this issue for TRI is education and outreach, rather than a decision not to include an otherwise eligible industry group on TRI. As discussed in Unit V.I.2. of this preamble, EPA has taken steps and continues to take aggressive measures to assure that the information reported is unbiased and is communicated in a responsible manner. Moreover, while EPA agrees that compilation of the information required to be reported on TRI is, in part, a valuable tool for use by the federal government for measuring the success of its environmental programs, EPA believes that the public should have the opportunity to disagree with the federal government's assessments of its own environmental programs, or with the federal or state government's standards established under those programs. Information provided on TRI allows for broader public involvement on such issues.

Some commenters conclude that where there is limited existing knowledge of the constituents of the materials handled by facilities within a candidate industry group, and estimation is infeasible or inconsistently applied, reporting by the candidate industry is not relevant to EPCRA section 313 because it is not likely to provide meaningful data. EPA recognizes that EPCRA section 313 does not require reporting to be based on actual monitoring where such monitoring is not already required under other provisions of law. See EPCRA section 313(g). Further, EPCRA permits reports to be based on readily available monitoring information or, where monitoring data are not readily available, on reasonable estimates. EPA agrees that the legislative history shows that reporting based on estimation was permitted to alleviate burdens that might be imposed by monitoring requirements. However, EPA believes that Congress recognized that while reporting based on estimation is not as exact as reporting based on monitoring, estimation can result in information that is useful to the public. Otherwise, one would have to conclude that Congress knowingly required industries to report information that was not possible to develop or that was not useful for the purposes outlined in EPCRA section 313(h). Specific comments on this issue particular to each industry added are addressed in the industry-specific responses to comments.

Other commenters argue that where reporting from the candidate industry is not likely to assist in the preparation of emergency plans or to result in reporting of emergency releases, addition of the candidate industry is not relevant to the purposes of EPCRA section 313. Others argue that the information reported by the added industries is likely to overwhelm the local emergency officials. EPA disagrees with these comments. EPCRA section 313 is concerned with the public's right to know about the use, management, and disposition of toxic chemicals. Separate provisions, EPCRA sections 311 and 312, 42 U.S.C. 11021 and 11022, are intended to address a community's preparedness for emergencies resulting from accidental releases of hazardous chemicals. While section 313 data can be used to complement sections 311 and 312 data to provide a more comprehensive understanding, TRI was designed to stand alone. The information reported on TRI is available to the public, and thus, is available to the local emergency officials. However, it is not directly reported to such officials and therefore is not likely to overwhelm them with information not relevant to accidental releases.

Finally, several commenters argue that unless a specific activity involving a toxic chemical by the candidate industry group is specifically identified within the statutory definitions of ''manufacturing'' or ''processing,'' Congress did not intend to require reporting from that industry group. Specifically, the mining community commented that Congress did not consider ore extraction or beneficiation to be within the statutory definitions of ''manufacture'' or ''process.'' Commenters believe that Congress was aware of differences between the terms extraction and beneficiation, and ''manufacturing'' and ''processing,'' and would have added extraction and beneficiation activities to the definitions of either ''manufacturing'' or ''processing'' if it meant them to be included. Commenters conclude that the non-inclusion of these terms is evidence of Congress' plain intent not to subject SIC code 10 to reporting.

EPA disagrees with commenters' reading of congressional intent because first, for an industry group to be added to the EPCRA section 313 list, activities at facilities in that group may fall within the statutory definitions of either ''manufacture'' or ''process'' or within ''otherwise use,'' which EPA believes is a broad category of additional industries. EPA also disagrees with commenters' specific conclusion that because the definitions of ''manufacture'' and ''process'' as they appear in the statute do not expressly contain the words beneficiation or extraction that Congress specifically intended to exclude the mining industry from any EPCRA section 313 reporting requirement. Again, legislative history does not support this interpretation of the statute. Nor do the commenters point to any general rules of statutory construction that would support their interpretation. In other sections of EPCRA, where Congress intended to exempt a particular activity, it did so expressly, for example, in providing an exemption for the transportation and distribution of natural gas in section 327 of EPCRA. 42 U.S.C. 11047. Had Congress intended to exclude mining activities, EPA believes it is reasonable

to conclude that Congress would have expressly provided such an exemption. In the absence of such exemptions, EPA believes that Congress intended the phrase ''manufacture, process, or otherwise use'' of toxic chemicals to encompass a broad scope of activities involving toxic chemicals, the reporting of which would be relevant to the public-information purposes of section 313.

B. Screening Process for Candidate Industries

The screening analysis used by EPA to identify candidate industries for this rulemaking consisted of several procedures used to prioritize and focus on those industries whose potential addition to EPCRA section 313 would most likely result in significant environmental and public information benefits. This analysis was not used to select industries for addition, but was used to help organize and evaluate potentially significant chemical uses, and to identify and prioritize industry groups that warranted further consideration. Further details of the screening process are included in Unit II.C. of this preamble and in the proposed rule.

Commenters raised a number of issues regarding EPA's screening process. Although EPA has responded to these comments, it is important to note that the screening process itself was not a part of this rulemaking, but was a process used to identify candidate industry groups for further consideration in this rulemaking.

Several commenters raised a variety of issues and concerns related to EPA's use of data collected under existing regulatory programs. These comments ranged from an assertion that the data collected in these systems and the manner in which the data were summarized are entirely inappropriate for EPA's TRI industry screening and selection processes, to the view that these data systems already provide information equivalent to TRI, so that extension of EPCRA section 313 reporting requirements to these industries is redundant and unnecessary.

One commenter disagreed with EPA's determination that ''the methodologies used to develop the volume data were applied consistently across industries reporting within each system...[which] allows a relative comparison among industries'' (Ref. 10), based on EPA's statement in the screening document that each of the data systems used contain biases and limitations. The commenter stated that there is no reason to believe that the biases and limitations that EPA describes will have consistent impacts across the industries being evaluated. The commenter further contends that EPA ''is simply dismissing these very serious problems with the data systems by saying that the systems are only being used to extrapolate data for relative comparisons [and that this approach] overlooks this fundamental problem with using these data systems to estimate releases of TRI chemicals.''

Based on many of the comments, it is evident that the commenters had confused EPA's use in the screening process of the data from other regulatory programs with the bases for EPA's determination that candidate industries met the statutory standard for addition. EPA did not use the data extracted from other regulatory programs in the screening process to project the amounts of EPCRA section 313 chemicals ''released,'' or to determine whether candidate industry groups met the statutory standard for addition. As EPA stated in the screening document, ''[it] does not necessarily believe that the data contained in these systems equate to the information on amounts of toxic chemicals managed by facilities as that reported under section 313'' (Ref. 10). Rather, ''data contained in these systems can be used as indicators of which industries are routinely involved with EPCRA section 313 chemicals,'' *Id.*, and to evaluate the degree to which reporting would be expected to occur. EPA used those data only for those purposes. The ''relative comparison'' cited by the commenter was limited to an evaluation of which industries may or may not routinely handle section 313 chemicals, based on indications of chemical associations developed from the data systems. EPA believes that its use of the data systems from other regulatory programs was valid for this purpose. EPA has provided responses, in the *Response to Comments* document (Ref. 15), to the major issues raised by commenters regarding specifics involved with the use of data extracted from other regulatory programs.

Some of the comments received focused on the ranking model that was developed to screen candidate industry groups. Specifically one commenter questioned EPA's use of the model in identifying candidate industries and based on results generated by the ranking model, questioned EPA's decision to include particular industries in the proposal. In particular, the commenter questioned why some industries, such as some of the 4-digit SIC codes in the metal mining industry, are being added when they appeared lower in rank compared to other industries that are not being added.

In the proposed rule, EPA did not base its determination that individual industries met the statutory standard for addition on the ranking model results. Many of the industries that appeared to be ranked higher than some other industries were screened out for a variety of reasons, such as a lack of information to adequately determine whether the industry conducts activities that would be reportable on the TRI. The ranking model was one method used as part of the screening process to identify the candidate industries that would be further considered for addition to the TRI program. Industries which were not proposed for one of the above mentioned reasons may be included in future EPCRA expansion activities.

A number of commenters stated that they believe that TRI-like information already exists and EPA should focus its efforts on making those data available. EPA expended a significant amount of resources in extracting and evaluating the data from existing data bases for purposes of their use in the screening analysis. EPA's experience with these data, along with many of the other comments received, reinforce EPA's belief that data equivalent to TRI data do not currently exist for the new industry sectors and that the extension of TRI to these industries is necessary to provide the public greater access to information on the use, management, and disposition of chemicals within their communities.

A few commenters stated that EPA failed to evaluate information collected by states in the analyses supporting this rulemaking. Another commenter asserted that EPA failed to take advantage of experience gained by those states that have expanded their TRI-like programs. EPA disagrees with these comments. Generally, the commenters failed to distinguish between analyses EPA conducted as part of the screening used to identify potential candidate industries and the ''selection factors'' and information on which EPA relied to determine whether candidate industries met the statutory standard for addition. The extent to which EPA relied on state data to support the addition of individual industries is addressed in the industry specific-sections of this notice and the *Response to Comments* document (Ref. 15). What follows below, is an explanation of the extent to which EPA relied on state experience in its screening analyses and in applying its selection factors.

The Agency has followed closely the activities of Massachusetts, Minnesota,

and Arizona in their expansion of their state right-to-know programs. Some of the experience gained by these states was determined to be relevant to the federal right-to-know program, and in those instances the information was either considered during the screening, or was taken into account when EPA applied its selection factors. However, for both purposes, EPA often found the type of information generated or evaluated by state activities to be limited in scope, or more relevant to considering specific facilities for addition pursuant to EPCRA section 313(b)(2).

For example, Minnesota's Emergency Response Commission (MERC) used the following criteria to make industry additions to their program: (1) Number of facilities in industry; (2) percent of facilities in SIC code that would likely report; (3) number of toxic chemicals in reportable quantities; (4) amount of releases and transfers; and (5) technical difficulty in reporting (Ref. 3). EPA evaluated each of the criteria used by MERC and considered several of them during the screening. EPA also considered these state criteria when identifying factors that it would consider in this rulemaking to determine whether candidate industries met the EPCRA section 313(b)(1)(B) standard for addition. (See Unit V.C. of this preamble for a discussion of EPA's consideration of the selection factors used in this rulemaking). EPA did not use element one, the number of facilities in the industry. EPA does not believe that such a consideration is appropriate for a program designed to address local information needs; the number of total facilities nationwide within a particular industry group may not be relevant to a community in which a particular facility or cluster of facilities is located. The second element used by MERC, percent of facilities in SIC code likely to report, was included during EPA's screening analysis, and its association with EPA's selection factors is discussed in Unit V.C. of this preamble. The number of toxic chemicals in reportable quantities, the third element MERC evaluated, was considered in the ranking model as part of the screening process. For example, as described in *Development of SIC Candidates*: Screening Document (Ref. 10), a significant element in the ranking model was composed of instances where facilities were matched with toxic chemicals which are carcinogens as defined in 29 CFR 1910.1200(d)(4). The fourth element, amount of releases and transfers, is information that EPA believes is not readily available nationally in a form comparable to TRI data; however, to the extent appropriate, EPA used existing information on permitted emissions to evaluate the potential association of industries with EPCRA section 313 toxic chemicals for purposes of screening for candidate industries. Further discussion is provided in the *Response to Comments* document (Ref. 15). The fifth and last element considered by MERC was the technical difficulty posed by unique circumstances in reporting TRI type information. EPA did not use this element as part of the screening process but did consider it in subsequent assessment activities prior to selecting industries for inclusion in the proposed rule.

EPA received several comments on its application of ''additional considerations'' to industries listed as candidate industries as a result of the screening process. A number of these comments took issue with EPA's use of these additional considerations to limit the candidate industries considered for inclusion in the proposal. EPA did not apply the additional considerations as selection factors. Rather, these considerations represent several issues EPA continued to address for particular industry groups, while it proceeded with the rulemaking for the remaining candidate industries. Some of these considerations are addressed further in Unit V.H. of this preamble, relating to specific industries and in the *Response to Comments* document (Ref. 15).

C. Application of Statutory Standard

As discussed in Unit III.B. of the preamble to the proposed rule (see 61 FR 33593-95), EPA's interpretation of its authority to add industrial groups to the TRI program under EPCRA section 313(b)(1)(B) led the Agency to develop three primary factors that it believes to be suitable for use in this rulemaking to determine whether to add particular candidate industries. Those factors consist of: (1) Whether one or more listed toxic chemicals are reasonably anticipated to be present at facilities in that industry (chemical factor); (2) whether facilities within the candidate industry group ''manufacture,'' ''process,'' or ''otherwise use'' EPCRA section 313 listed toxic chemicals (activity factor); and (3) whether addition of facilities within the candidate industry group reasonably can be anticipated to increase the information made available pursuant to EPCRA section 313 or to otherwise further the purposes of EPCRA section 313 (information factor). EPA interprets section 313(b)(1)(B) as authorizing the Agency to add industries where including them in the TRI program would advance the public-information purposes of that program (See Unit II.D. and V.A. of this preamble for further discussion), and EPA believes that the selection factors developed for this rulemaking help ensure that the industries selected for inclusion in the program will in fact further the purposes of section 313. Identifying facilities that are known to handle listed section 313 toxic chemicals on a routine basis (chemical factor), makes it likely that a candidate industry might have reportable information. Determining that facilities routinely conduct activities that meet the definitions of ''manufacture,'' ''process,'' or ''otherwise use'' under section 313 (activity factor) serves to increase the likelihood that facilities within an industry group are involved with listed toxic chemicals is likely to result in their reporting to TRI. Finally, the information factor takes into account more specific details regarding the nature of each industry's activities involving listed chemicals, to evaluate their likelihood of reporting information that will serve the purposes of the statute.

A number of comments were received that took issue with EPA's development and application of the factors used to select the industries for addition to EPCRA section 313. Some commenters criticized EPA's selection factors, stating that they are not relevant to section 313 and its purposes. Two commenters stated, ''[the] three criteria [selected by EPA] embody the position that there are no limits to its authority to add to the list of industries.'' Similarly, a third commenter asserted that the criteria appear to be too broad with little detail in explaining why they were chosen. A number of other commenters stated that EPA's methodology and selection criteria are flawed, artificial, meaningless, and/or inconsistent with legislative history and depart from the purposes of the statute, as well as being inappropriately and arbitrarily applied. At the same time, EPA received a number of comments that challenged the use of any factors, asserting that instead of adding individual industrial groups EPA should require any facility exceeding the thresholds to comply with the EPCRA section 313 reporting requirements.

EPA disagrees that its selection factors ''embody the position that there are no limits to its authority to add to the list of industries,'' or otherwise conflict with its statutory authority. As discussed in Unit V.A., EPA believes that its authority to add industries is broad but not unlimited. Consequently,

EPA's factors are intended to guide EPA's exercise of discretion to ensure that its decision is reasonable, and limited to adding industries whose addition serves to further the purposes of EPCRA section 313, but not to limit or otherwise restrict EPA's ability to add industry sectors beyond the statutory language. The selection factors used by EPA were used to limit additions to only those industry groups or specific facilities that are likely to provide information relevant to purposes served by EPCRA section 313. In addition, as discussed in both the preamble to the proposed rule at 61 FR 33592-33595, and in this document in Unit V.A., EPA disagrees that EPA's selection factors are in any way inconsistent with the legislative history. EPA also disagrees that it inappropriately or arbitrarily applied its selection factors. Where commenters raised issues with regard to the application of the selection factors to particular industries, EPA has responded in the specific industry section of the *Response to Comments* document (Ref. 15).

One commenter stated that the approach used for determining the presence of EPCRA section 313 toxic chemicals at candidate facilities is flawed because of questions about the reliability of data bases used for EPCRA section 313 toxic chemical release estimates. As noted above in Unit II.C. and V.B. of this preamble, the three primary data bases (AIRS, BRS, and PCS) were used in the screening process to identify which industries may routinely manage EPCRA section 313 toxic chemicals. They were not used to project an industry group's amount of toxic chemical releases or in any other way to determine, during the industry selection process, whether candidate industries met the EPCRA standard for addition. The information supporting EPA's evaluation of the chemical factor was taken from the industry process information contained in the industry profiles and economic analysis, each of which contains numerous additional references. EPA's use of AIRS data in its economic analysis is discussed in the *Economic Analysis* (Ref. 12) and *Response to Comments* document (Ref. 15).

Several other commenters stated that EPA's activity factor should be modified to include the manner in which industries manage EPCRA section 313 toxic chemicals in relation to how such chemicals are managed within the manufacturing sector. These commenters asserted that the ''manufacturing,'' ''processing,'' or ''otherwise use'' activities conducted by industries to be added must be similar to those conducted by facilities within the manufacturing sector. EPA does not believe that Congress intended to confine the TRI program to industries which handle toxic chemicals in the same ways as the manufacturing sector because, among other reasons, Congress itself applied the program to the manufacturing sector and then authorized EPA to apply the program to additional sectors. This issue is discussed further in Unit V.A. of this preamble. Therefore, as discussed in Unit III.B.2. of the preamble to the proposed rule, EPA applied the activity factor to determine whether facilities in each candidate industry ''manufacture,'' ''process,'' or ''otherwise use'' listed toxic chemicals, as those terms are defined in the statute and EPA regulations and guidance.

Another commenter suggested that EPA expand the third factor (information) to include additional considerations: (1) That the information is otherwise unavailable or less accessible to the public or government, and (2) that the information provided has practical utility such as allowing agencies to properly plan for and respond to emergencies and understand risks associated with activities conducted at a particular facility.

EPA is required by regulations issued to implement the Paperwork Reduction Act (PRA) to certify that the information to be reported pursuant to this rule will have practical utility and that it will not be duplicative. Consequently, EPA believes that including such considerations as selection factors would not provide any additional information. EPA has addressed the extent to which the information that will be reported under this rule is otherwise unavailable or less accessible to the public or government and has practical utility in Unit V.I.1. of this preamble.

Several other commenters suggested that prior to adding an industry group, EPA make a determination as to the amounts of chemicals that are anticipated to be reported as released or otherwise generated or handled by that industry. EPA generally does not have available to it this type of information for industry groups not currently reporting to TRI. Moreover, EPA does not believe that this is a factor that is appropriate for selecting industry groups. During the analyses conducted for this rulemaking, EPA went to considerable lengths in attempting to determine amounts of toxic chemicals that might be released or otherwise managed by facilities not currently reporting under EPCRA section 313. As discussed elsewhere in this preamble, EPA believes that this type of information is generally not readily available for the industries being added, and that efforts to estimate it may result in potentially significant errors and are typically met with criticism. As a result, EPA selected industry groups by using available information to identify industries that are likely to manage listed chemicals in a reportable manner, such that addition of those groups would most likely further the purposes of making TRI data available. As discussed in Unit VII. of this preamble, EPA will initiate an intensive stakeholder process to comprehensively evaluate the current reporting forms and reporting practices.

Several commenters suggest that EPA consider risk or the level of exposure in adding industries to EPCRA section 313. Among such comments were those stating that TRI must inform the public whether toxic chemical releases pose a threat to the public and not simply present the public with unqualified and misleading information. EPA believes that a risk-based approach to EPCRA section 313 reporting is at odds with the basic premise of EPCRA section 313, which is to get information about the use, disposition, and management of toxic chemicals into the public domain, enabling the users of this information to evaluate the information and draw their own conclusions about risk. This is discussed further in Unit V.A. of this preamble. EPA is sensitive to industry's concern about the TRI data being misunderstood or misused, and will be continuing its separate efforts to promote better understanding and appropriate use of this information.

One commenter believes that the burden of reporting should be a criterion in selecting industry categories. This commenter also stated that EPA should consider not only costs to facilities to report, but the number of small businesses in the industry and the capability of facilities to report. This commenter further claimed that Executive Order 12866 requires EPA to incorporate costs and related factors in the selection criteria.

EPA is separately required to consider anticipated regulatory impacts and costs under Executive Order 12866, the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104-4), and the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). EPA takes very seriously its obligations to consider costs and impacts on small entities. EPA's evaluation of informational considerations took into account, among other things, the capability of facilities in each candidate industry to report meaningful information under TRI. EPA

believes that it has met its obligations under these and other separate provisions in this action. The Agency also considers it important to note that the size of a business does not necessarily correspond to its impacts on public health or the environment, or the relevance in reporting by that entity. However, in this action, EPA has done its best to balance the need for public information with the circumstances of small businesses and their ability to meet EPCRA section 313 reporting requirements. These matters are discussed further in Unit V.I.4. of this preamble and in the *Economic Analysis* (Ref. 12).

In contrast to comments received from industry, some members of the environmental community commented that EPA is being too confining in expanding the TRI program on an industry group by industry group basis, which limits the expansion of public information to slow and incremental steps. These commenters assert that EPA should abandon the process of adding individual industry groups, and should instead require any facility exceeding the EPCRA section 313 reporting thresholds to comply with current reporting requirements, while steadily lowering the reporting thresholds over time. EPA believes there are a number of practical problems with the commenters' suggestion. Section 313 requires that in order for a facility to be required to report, the facility must be in an SIC code that is subject to the reporting requirements. Section 313(b) lays out separate standards for adding additional SIC codes and particular facilities; in addition, EPA can only proceed by rulemaking.

Aside from the fact that EPA lacks the resources to make the findings for all facilities or SIC codes in a single rule, EPA believes that it is important to expand the section 313 program in an orderly manner to ensure that the statutory requirements are met. It may not be appropriate or relevant to add all industry groups or facilities. Further, EPA believes it important to expand the section 313 program in an orderly manner to optimize the information previously collected by TRI. EPA believes that incremental additions may provide greater continuity to the wealth of information maintained and made available in TRI. Therefore, in this action EPA sought to add industries that are likely to provide relevant section 313 information on a range of activities and from a variety of industry groups related to manufacturing.

D. First Year's Reporting and Effective Date

A number of commenters have suggested that EPA delay or defer reporting for at least 1 full calendar year, while others have suggested that 2 years would be more appropriate. These commenters are concerned about adequate time to familiarize themselves with the EPCRA section 313 reporting requirements; a perceived lack of outreach on EPA's part; and pending industry studies which may provide more information on toxic releases.

EPA has reviewed and evaluated each of these comments and believes that delaying the first year's reporting has merit. Thus, EPA believes that it is appropriate to make the requirements of this rule effective on January 1, 1998, for reports due on or before July 1, 1999. EPA believes that the regulated community, EPA, and the states require time to understand and prepare for implementing this change. The regulated community will need an opportunity to become fully aware of these new requirements and understand how it can apply to their data development and their own data management systems for EPCRA section 313 compliance purposes. In addition, EPA believes that it is reasonable to provide additional time for the newly affected industry groups to become familiar with the additional requirements under EPCRA section 313, and that this additional time will promote more accurate and consistent reporting among these groups.

A number of commenters believe that EPA should delay reporting for the new industry groups until EPA develops exposure and risk evaluations for each. While EPA takes seriously its responsibility to provide the public with guidance on how to use the TRI data in conjunction with appropriate hazard, exposure and risk information, EPA does not believe that it should perform or use nationwide risk estimates to influence what data should be available to individual communities across the United States. TRI was designed in part to provide local communities with facility-specific information about releases and other waste management of toxic material within their community. The release patterns and resultant exposures are as unique as each community. Multiple facilities, each with small releases, can add up to a large release in a specific geographic area. An EPA decision, based on a nationwide risk estimate, may deprive that community of information that is vital to protecting public health at the local level. A one size fits all risk assessment, as suggested by the commenters, undermines the intent and the utility of the TRI.

A set of commenters have raised the concern that EPA did not conduct adequate outreach to the potentially regulated community and that EPA did not apprise the potentially regulated community of the planned publication of the proposed rule. EPA strongly disagrees with these comments and believes that the record of meetings held on this issue reflects a concerted effort by EPA to involve all potentially affected parties, early and often. EPA began publicly discussing the expansion of the industry groups subject to EPCRA section 313 reporting as early as 1991. TRI facility expansion was a major topic of discussion at a TRI Data Use Conference in January of 1992, a conference where many industry representatives interacted with Agency staff in discussion of this issue. EPA held the first of a number of public meetings on TRI facility expansion on May 29, 1992, and again in 1993, highlighted facility expansion in its Data Use Conference and in the Administrator's nationwide Pollution Prevention Policy Statement. In 1994, the Agency embarked on an extensive series of focus groups with individual industries that expressed an interest in working with EPA and in 1995, at another public meeting, laid out the Agency strategy for selecting industries as well as a ''short list'' of potential candidates. EPA has identified at least 65 events since 1991 that have served as outreach to the potentially regulated community. Some of these events have been focused on small business, others on a particular industry sector and others more generally on the potentially regulated community. EPA's proposed rule, issued on June 27, 1996, was thus simply one more step in a series of efforts to inform and educate the potentially regulated community of EPA's intentions.

Commenters have expressed concern that if EPA does not delay or defer reporting for 1 year after the effective date, newly added industries will not have had ample time to familiarize themselves with basic EPCRA section 313 reporting requirements. As noted above, EPA is not requiring reporting for the newly added industries for the 1997 reporting year. EPA will work with the newly added industry groups to maximize the amount of assistance that is available to them. EPA is committed to continuing its work with industry trade associations, individual companies and facilities and professional trainers to assure that guidance, both technical and

interpretive, is available to the new sectors.

In addition, EPA will develop sector-specific guidance documents for each of the newly affected industry groups and make these documents available no later than November 1997. These documents will provide the newly affected industry groups with a greater understanding of how the reporting requirements associated with EPCRA section 313 relate to specific activities conducted by their industry. These documents should also help resolve many of the issues raised by commenters prior to initiating reporting activities, and should assist them in reporting in a more cost-effective and less burdensome manner. EPA will also develop such helpful guidance for all affected industry groups and will publish this additional guidance in the **Federal Register** no later than November 1997.

Some commenters believe that EPA should defer reporting until certain studies being under taken by the industry are complete and available for Agency review. For example, electric utilities have encouraged EPA to delay inclusion of utilities until after a study of toxic emissions from utilities is complete. EPA appreciates that this type of study may provide additional information regarding certain types of releases for certain chemicals. This and the other studies mentioned, however, do not deal with the multi-media nature of releases that are core to EPCRA, nor are they designed to provide annual release information to the public. They are designed to address issues of potential risk and exposure, both important pieces of additional information which EPA believes should be made available to communities. EPA looks forward to receiving and reviewing these studies and will work with the industry to communicate the risk and exposure findings to local communities and others who use the TRI data.

E. Reporting Threshold Clarifications

1. *De minimis exemption.* Several commenters contend that for the purposes of this rulemaking, EPA should interpret the *de minimis* exemption to apply to the manufacture of byproducts. In addition, they contend that to do otherwise would be inconsistent with past guidance.

EPA disagrees with the commenters. The *de minimis* exemption allows facilities to disregard certain minimal concentrations of chemicals in mixtures they ''process'' or ''otherwise use'' in making threshold and release determinations for section 313 reporting. The *de minimis* exemption does not apply to the ''manufacture'' of a chemical except if that chemical is ''manufactured'' as an impurity and remains in the product distributed in commerce below the appropriate *de minimis* level. As illustrated by the preamble to the final rule implementing the reporting provisions of EPCRA section 313 (53 FR 4500, February 16, 1988), EPA has explicitly stated since the beginning of the program, that the *de minimis* exemption does not apply to the ''manufacture'' of byproducts. In the preamble to the 1988 final rule, EPA explained (see 53 FR 4501), that the ''*de minimis* limitation does not apply to the byproducts produced coincidentally as a result of manufacturing, processing, use, waste treatment, or disposal.'' EPA further explains at 53 FR 4504, its decision about the application of the *de minimis* exemption to impurities and byproducts.

> EPA has distinguished between toxic chemicals which are impurities that remain with another chemical that is processed, distributed, or used, from toxic chemicals that are byproducts either sent to disposal or processed, distributed, or used in their own right. EPA also considers that it would be reasonable to apply a *de minimis* concentration limitation to toxic chemicals that are impurities in another chemical or mixture....Because the covered toxic chemical as an impurity ends up in a product, most producers of the product will frequently know whether the chemical is present in concentrations that exceed the *de minimis* level, and, thus may be listed on the Material Safety Data Sheet (MSDS) for that product under the OSHA HCS.
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> This final rule does not adopt a *de minimis* concentration limitation in connection with the production of a byproduct. EPA believes that the facility should be able to quantify the annual aggregate pounds of production of a byproduct which is not an impurity because the substance is separated from the production stream and used, sold, or disposed of, unlike an impurity which remains in the product. 53 FR at 4504.

That language is consistent with guidance EPA has provided on the *de minimis* exemption. For example, on pages 15 and 16 of EPA's *1995 Toxic Chemical Release Inventory Reporting Form R and Instructions* (EPA 745-K-96-001), a document that is distributed annually to the regulated community, EPA states the following:

> EPA included the *de minimis* exemption in the [1988] rule as a burden-reducing step, primarily because facilities are not likely to have information on the presence of a toxic chemical in a mixture or trade name product beyond that available in the product's MSDS. For threshold determinations, the *de minimis* exemption applies to: A listed toxic chemical in a mixture or trade name product received by the facility. . . .The *de minimis* exemption does not apply to: A toxic chemical manufactured at the facility that does not remain in a product distributed by the facility. A threshold determination must be made on the annual quantity of the toxic chemical manufactured regardless of the concentration. For example, quantities of formaldehyde created as the result of waste treatment must be applied toward the threshold ''for manufacture'' of this toxic chemical, regardless of the concentration of the toxic chemical in the waste.

EPA believes that there is nothing in EPA's discussion for purposes of today's action or the proposed rule that is inconsistent with the regulatory text at 40 CFR 372.38(a), the preamble to that regulatory text, or EPA's long-standing guidance on the *de minimis* exemption.

One commenter requested that EPA clarify whether the *de minimis* exemption applies to EPCRA section 313 toxic chemicals present as constituents of wastes received from off-site at RCRA subtitle C permitted facilities. Another commenter stated that if EPA adopts an interpretation of ''otherwise use'' to include certain waste treatment activities, then EPA must indicate that the *de minimis* exemption applies the same way to wastes received from other facilities as it does to any other mixture or trade name product. Other commenters asked whether the same *de minimis* concentrations applies to EPCRA section 313 toxic chemicals that are constituents of hazardous waste.

The *de minimis* exemption applies solely to mixtures. In promulgating this exemption, EPA provided the following rationales for adopting a *de minimis* exemption for mixtures:

> [Commenters] asserted that it would be both unreasonable and extremely burdensome for processors and users of [mixtures and trade name products] to have to account for these quantities in developing threshold determinations. In addition, commenters asserted that is would be equally as burdensome for suppliers of these products to have to determine and disclose small percentages of section 313 chemicals in their products beyond that currently required under the OSHA HCS. . . .
>
> EPA believes that it is necessary to provide a *de minimis* limitation to help reduce the burden both on the part of the user and the supplier of such products....Second, EPA does not expect that the processing and use of mixtures containing less than the *de minimis* concentration would, in most instances, contribute significantly to the threshold determinations and releases of listed toxic chemicals from any given facility. (53 FR 4509)

For purposes of the *de minimis* exemption, EPA's long-standing interpretation for facilities with SIC codes 20 through 39 has been that the term ''mixture'' does not include wastes; this means that the *de minimis*

exemption does not apply to the ''processing'' or ''otherwise use'' of a waste stream. EPA has chosen to retain this interpretation for this rulemaking for a number of reasons, even though this means that the *de minimis* exemption will not be available to RCRA Subtitle C treatment, storage, and disposal facilities (TSDs) for many of the activities at their facilities.

EPA's rationale for whether a facility could apply the *de minimis* exemption to ''processing'' or ''otherwise use'' activities was based on the likelihood that parties would have knowledge of the constituents of a mixture at levels below the levels required by the OSHA Hazard Communication Standards (HCS). For example, EPA determined that for manufactured by-products, additional factors made it likely that a facility would be able to characterize the individual constituents based on readily available information, notwithstanding that such levels of characterization were not required by the HCS. EPA noted in the 1988 preamble that:

> EPA believes that the facility should be able to quantify the annual aggregate pounds of a byproduct which is not an impurity because the substance is seperated from the production stream and used, sold, or disposed of. . .'' (53 FR 4505)

Further, it is clear from the 1988 preamble that EPA originally equated the term ''mixtures'' with trade name products, and these products have certain unique attributes that EPA believes generally are not applicable to wastes. For example, manufacturers of trade name products may have an incentive not to provide information on constituents below *de minimis* levels out of concerns about protecting trade secret information. Consequently, it was highly likely that facilities ''processing'' or ''otherwise using'' such products would have no way of determining whether such constituents were present, without potentially extensive sampling of the product. By contrast, waste generators have no similar commercial incentive to conceal the components of the wastes they ship off-site to TSDs. Moreover, as noted in Unit V.H.5. of this preamble, TSDs are required under RCRA regulations to conduct routine sampling of the wastes they manage, and EPA believes that facilities have an incentive to regularly conduct monitoring to ensure that they remain within their permit.

Moreover, if facilities genuinely have no information on the constituents of the wastes they manage, they are not required to collect such information in order to comply with the EPCRA section 313 reporting requirements.

EPA plans to review the *de minimis* exemption and the assumptions upon which it is based, in light of data that will be collected under this rule, and the additional facilities' experiences in reporting. Subject to the results of its review, EPA may elect to initiate rulemaking to modify the exemption.

2. *Interpretation of the ''otherwise use'' reporting threshold.* Several commenters contend that EPA should modify the regulatory definition of ''otherwise use'' to reflect EPA's revised interpretation. They contend that revision of the definition of ''otherwise use'' would be the best way to clarify the meaning of the term.

While EPA believes that the current regulatory definition of ''otherwise use'' is very broad and covers EPA's revised interpretation, EPA is amending the definition of ''otherwise use'' to reflect EPA's revised interpretation in order to minimize any difficulties in interpreting the meaning of the term.

One commenter contends that ''EPA needs to clarify that when a facility receives both 'on-site' waste and 'off-site' wastes, only the 'off-site' waste is used in determining reporting thresholds.''

EPA agrees that threshold determinations for ''otherwise use'' should not include quantities of the toxic chemical stabilized, disposed, or treated for destruction unless the facility received the toxic chemical for purposes of waste management or generated the toxic chemical during waste management of a material received from off-site. As a result of comments, EPA is clarifying its interpretation of ''otherwise use'' and incorporating its interpretation into a revised definition as follows:

> ''Otherwise use'' means any use of a toxic chemical, including a toxic chemical contained in a mixture, trade name product, or waste that is not covered by the terms ''manufacture'' or ''process.'' Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless:
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> (1) The toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of futher waste management; or
>
> (2) The toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging of the toxic chemical occurs does not constitute use or processing of the toxic chemical.

One commenter contends that EPA should clarify that threshold determinations are based on the sum of treatment for destruction, stabilization and disposal at the site, not each of these activities individually.

To determine whether a facility exceeds an activity threshold for a listed toxic chemical, the facility must sum all quantities of the chemical for each reporting activity. For example, to determine whether the facility exceeds the ''otherwise use'' activity threshold for a listed EPCRA section 313 toxic chemical, the facility must sum all quantities of the chemical that undergo an ''otherwise use'' activity. The facility should compare the sum to the 10,000 pound threshold. If there are several ''otherwise use'' activities that involve the EPCRA section 313 chemical, the facility should not compare the quantity of the chemical in each activity to the otherwise use threshold. For example, a facility that receives quantity ''X'' of an EPCRA section 313 toxic chemical for purposes of further waste management treats for destruction quantity ''X-Y'' of an EPCRA section 313 toxic chemical, disposes of quantity ''Y'' of the EPCRA section 313 toxic chemical, and also ''otherwise uses'' a third separate quantity, ''Z,'' of the EPCRA section 313 toxic chemical as a catalyst. The facility should sum the quantities that are treated for destruction, disposed, and used as a catalyst and should compare this quantity (''X''+''Z'') to the ''otherwise use'' threshold.

Waste Management Incorporated (WMI) comments that EPA's interpretation of ''otherwise use'' to include disposal, explicitly contradicts the plain meaning of the statute. WMI states that ''[w]e do not believe that any reasonable construction of 'use' means 'disposal,' 'discard,' or 'abandon.'" The commenter states that ''[w]e believe the presence of the adjective 'otherwise' means 'use' must in some way be akin to 'manufacture' or 'process,' i.e., the 'use' must add value.'' Finally, WMI argues that Congress's failure to include the terms, ''manage,'' ''handle,'' or ''possess,'' in EPCRA section 313 implies a specific legislative intent to exclude disposal.

EPCRA section 313 defines ''manufacture'' and ''process,'' but not ''otherwise use.'' As EPA noted in the preamble to the proposed rule, because Congress did not provide a definition of ''otherwise use,'' and did not provide an explanation or discussion of the term in the legislative history, EPA interpreted the term to most appropriately meet the intent of EPCRA section 313.

EPA first considered the plain language of the statute. The statutory context indicates that the term ''*otherwise*'' was intended to capture all ''uses'' of a chemical that are not

''manufacturing'' or ''processing.'' Contrary to the commenters' suggestion, the effect of the term ''otherwise'' is to distinguish these uses from ''manufacturing'' and ''processing.'' If Congress considered ''otherwise use'' to be akin to ''manufacture'' or ''process,'' there would have been no reason to apply a different threshold to this activity. Further, EPA considers the commenter's definition of manufacture and processing--as activities that only ''add value to another product or the chemical itself''--to be too narrow. EPA believes that this interpretation is inconsistent with the statutory definition of ''manufacture,'' which includes importation of a toxic chemical. 42 U.S.C. section 11023(b)(1)(C)(I). Importation does not add value to a toxic chemical; rather it is a service that benefits a particular facility, just as a facility that manages wastes received from other facilites provides a service that benefits particular facilities. Similarly, the commenter's interpretation would not address all of the concepts included within the definition of ''processing.'' The definition of ''processing'' encompasses the concept that a facility intends to obtain a commercial benefit from its activities with the toxic chemical: the term ''process'' is restricted to the preparation of the chemical ''*for distribution in commerce*.'' 42 U.S.C. section 11023(b)(1)(C)(ii) (emphasis added). Consistent with the commercial benefit concept embodied by the definitions of ''manufacturing'' and ''processing,'' EPA's revised interpretation includes uses beneficial in providing a product or a service. This would clearly encompass a RCRA Subtitle C facility, which employs EPCRA section 313 chemicals, when it manages or disposes of wastes received from off-site generators for the purpose of obtaining a commercial benefit. EPA's inclusion of disposal within the definition of ''otherwise use'' is consistent with the Congressional definitions of ''manufacture'' and ''process,'' as all of these activities benefit the facility engaging in them.

EPA also considered the relevant goals and purposes of reporting under EPCRA section 313. As EPA discusses in Unit V.A. of this preamble, the relevant purposes of EPCRA include informing the public of the use, release and other waste management activities of toxic chemicals in their community. Congress wanted the reporting requirements of EPCRA to be applied broadly, and to provide the greatest amount of information to the public and federal, state, and local governments. Moreover, Congress found information on chemical management activities relevant to the needs of local communities in requiring that information include, for example, information on waste streams and how they are handled. See, e.g., 42 U.S.C. section 11023(g). Given the primary goal of providing information to the public on listed toxic chemicals present, released, and managed in communities, EPA does not believe that Congress would intend any provision of EPCRA section 313 to be interpreted to significantly limit the information to the public. Because interpreting the definition of ''otherwise use'' narrowly can have the unintended impact of limiting the amount and kind of information readily available to the public, EPA believes that the term ''otherwise use'' should be interpreted more broadly than EPA has interpreted it in the past.

EPA also disagrees that the failure to include a term such as ''manage'' implies Congressional intent to exclude waste management activities. Where Congress intended to exempt specific activities, it did so explicitly, as, for example, exempting transportation activities in EPCRA section 327. Accordingly, EPA believes it is reasonable to assume that, had Congress intended to exclude waste management activities, it would have provided a similar exemption.

The American Petroleum Institution (API), in comments on the Information Collection Request (ICR) for this rulemaking, contends that the revised interpretation of ''otherwise use'' has several problems. API believes that EPA's definition of ''treatment for destruction'' is inconsistent with the interpretation of ''otherwise use.'' The commenter contends that under the interpretation of ''otherwise use,'' a ''non-listed'' chemical that is received from off-site can trigger reporting if it is ''treated for destruction.'' If a chemical is ''non-listed,'' any process using the chemical could be ''treatment for destruction'' because the chemical already is a ''substance that is no longer a toxic chemical subject to reporting under EPCRA section 313.''

EPA believes that the commenter misunderstands the proposed definition of ''treatment for destruction.'' In the proposed rule at 61 FR 33597, EPA proposed to define ''treatment for destruction'' as follows:

> Treatment for destruction means the destruction of the toxic chemical such that the substance is no longer a toxic chemical subject to reporting under EPCRA section 313.

By use of the words ''no longer a toxic chemical subject to EPCRA section 313 reporting,'' it is clear that ''treatment for destruction'' involves the destruction of a listed toxic chemical. Therefore, any process, even a destruction activity, on a ''non-listed'' chemical would not be ''treatment for destruction.''

In addition, based on the comment provided, EPA believes there may be some confusion regarding the reporting requirements of EPCRA section 313. The commenter mistakenly believes that EPCRA section 313 activity threshold determinations and reporting are not limited to toxic chemicals that are listed at 40 CFR 372.65. No reports are required for chemicals that are not on that list. An activity on a non-listed chemical does not trigger reporting for a listed or ''non-listed'' chemical. Further, for threshold determinations under EPCRA section 313, a facility need only consider activities that occur at that facility. The commenter appears to believe that a facility that receives for further waste management a chemical that is not listed at 40 CFR 372.65 must assume that some precursor to that chemical was an EPCRA section 313 chemical that was ''treated for destruction'' and consider activities involving those ''non-listed'' chemicals in threshold determinations. This does not follow, most obviously because the ''non-listed'' chemical may not have been made by the destruction of a listed toxic chemical. Moreover, even if the precursor to the chemical were a listed toxic chemical, the reporting facility would not be required to include the ''treatment for destruction'' of a chemical by and at another facility in its calculations of the ''otherwise use'' activity threshold.

Further, EPA believes there may be some confusion regarding EPA's revised interpretation of ''otherwise use'' and proposed definition of ''treatment for destruction,'' and guidance for calculating activity thresholds. In the proposed rule (see 61 FR 33598), EPA interpreted ''otherwise use'' as follows:

> *Otherwise use* or *use* means any use of a toxic chemical that is not covered by the terms ''manufacture'' or ''process'', and includes treatment for destruction, stabilization (without subsequent distribution in commerce), disposal, and other use of a toxic chemical, including a toxic chemical contained in a mixture or trade name product. *Except that*
>
> (1) Facilities engaged in treatment for destruction, stabilization, or disposal are not using a toxic chemical in these activities unless the facility receives materials from other facilities for purposes of further waste management activities.
>
> (2) Relabeling or redistributing a container of a toxic chemical where no repackaging of

the toxic chemical occurs does not constitute use of the toxic chemical.

The interpretation of ''otherwise use'' includes the phrase ''the facility receives materials from other facilities for purposes of further waste management activities.'' EPA purposely used the word ''materials'' rather than ''EPCRA section 313 listed toxic chemicals'' to avoid a situation where a facility that receives materials for further waste management would not report on an EPCRA section 313 toxic chemical that it treated for destruction, stabilized or disposed. This situation could exist if EPA were to limit its interpretation of otherwise use by replacing ''materials'' with ''EPCRA section 313 listed toxic chemicals.'' This situation is illustrated in the following example.

Facility ''X'' receives chemical A from off-site. Chemical A is not an EPCRA section 313 listed toxic chemical. The facility treats for destruction chemical A. Since chemical A is not an EPCRA section 313 listed toxic chemical, this activity is not reportable. In treating for destruction chemical A, 11,000 pounds of chemical B, which is an EPCRA section 313 listed toxic chemical, is ''manufactured,'' and subsequently disposed on-site. (Note that the quantity of chemical B ''manufactured'' is less than the 25,000 pound ''manufacturing'' threshold).

Absent EPA's clarification in the proposed interpretation, the quantity of chemical B disposed is not otherwise used, because chemical A, which was the material received from off-site for further waste management, is not an EPCRA section 313 listed toxic chemical. In contrast, as EPA has proposed ''otherwise use,'' the disposal of chemical B in the example above would be a reportable activity.

The proposed rule contains several alternatives to EPA's interpretation of otherwise used. A commenter contends that the interpretation of ''otherwise use'' that EPA chose was more burdensome than the alternative in which there was no ''condition that the chemicals originate off-site.'' EPA disagrees with the commenter's statement that it chose an option that is more burdensome than the alternative discussed. The alternate interpretation discussed in the proposed rule is ''including in the definition of ''otherwise use'' all disposal, treatment for destruction, and stabilization, regardless of whether the facility receives materials from off-site for the purposes of treatment for destruction, stabilization, or disposal.'' (see 61 FR 33598). The alternative affects a larger universe than the interpretation EPA chose because the alternative requires that every covered facility compare the quantities of an EPCRA section 313 listed toxic chemical that it treats for destruction, stabilizes, or disposes with the ''otherwise use'' threshold. The interpretation that EPA chose requires only those facilities, that either receive an EPCRA section 313 toxic chemical from other facilities for purpose of further waste management or manufactures an EPCRA section 313 toxic chemical as a result of waste management activities conducted on materials received from off-site, to compare the quantities of that EPCRA section 313 listed toxic chemical that it treats for destruction, stabilizes, or disposes with the ''otherwise use'' threshold.

The American Automobile Manufacturers Association (AAMA) contends that if EPA's proposed interpretation of ''otherwise used'' is promulgated, then manufacturing facilities in SIC codes 20 through 39 would have to calculate threshold determinations in two ways—how much is destroyed in control equipment such as oven incinerators, as well as how much is ''manufactured/processed or otherwise used.'' They contend that EPA should exclude on-site treatment and Clean Air Act (CAA)/Clean Water Act (CWA) control equipment at non-treatment, stabilization, and disposal facilities (TSD) facilities for purposes of performing otherwise use threshold determinations.

EPA does not agree that all treatment for destruction that occurs at facilities will be considered as ''otherwise use'' activities. ''Treatment for destruction'' of an EPCRA section 313 toxic chemical constitutes an ''otherwise use'' only if the EPCRA section 313 toxic chemical is received from other facilities for purposes of further waste management activities or if the EPCRA section 313 toxic chemical is produced as a result of the waste management of a material received from off-site.

Also, EPA does not believe that there will be two groups of threshold determinations as AAMA describes. As ''otherwise use'' is defined, for certain cases ''treatment for destruction' is considered an ''otherwise use'' activity. There is nothing distinctive about EPA's approach for ''otherwise use'' as compared to its approach for interpreting ''manufacture'' or ''process.'' Further, EPA does not believe that it is appropriate to exclude on-site treatment and destruction of listed toxic chemicals in CAA/CWA control equipment at non-TSD facilities if: (1) The EPCRA section 313 toxic chemical that was treated for destruction was received by the facility from off-site for purposes of further waste management or (2) the EPCRA section 313 toxic chemical that was treated for destruction was ''manufactured'' as a result of waste management activities on materials received from other facilities for the purposes of further waste management activities. EPA believes that to do so would perpetuate a loophole that exists in reporting on EPCRA section 313 toxic chemicals. EPA believes that the public has a right-to-know about these releases and other waste management activities.

Amoco states that the definition of ''otherwise use'' should not be changed to capture the commercial hazardous waste treatment and solvent recovery industries as these sectors can be easily accommodated by ''manufacture'' and ''process'' definitions.

EPA is not revising its interpretation of ''otherwise use'' simply to ''capture'' a particular industry as the commenter has suggested. Rather, EPA is revising its interpretation to close an informational gap created by EPA guidance. EPA's revision will ensure reporting of information about the handling of chemicals that is valuable for the public to know, and therefore relevant to the purposes of EPCRA section 313. EPA is revising its interpretation of ''otherwise use'' because, as stated at 61 FR 33596, of the proposed rule, ''EPA is concerned that, based on current guidance, the public may not have access to information relating to releases of toxic chemicals from facilities within SIC codes 20 through 39 that are receiving materials for the purposes of treatment for destruction, stabilization, or disposal.'' EPA acknowledged the same concerns for the candidate industries, including RCRA Subtitle C treatment and disposal facilities and solvent recovery facilities. Thus, EPA announced its intent to revise the past interpretation of ''otherwise use'' for all industries subject to EPCRA section 313 to rectify the loss of information from certain facilities within SIC codes 20 through 39 and the potential loss of information from added facilities.

Amoco also suggests that the activities within the commercial hazardous waste treatment and solvent recovery industries can be ''easily accommodated by 'manufacture' and 'process' definitions.''

EPA agrees that pursuant to current statutory and regulatory definitions, facilities within the hazardous waste treatment and solvent recovery industries ''manufacture'' and ''process'' EPA section 313 toxic chemicals. For example, these facilities may coincidentally manufacture section 313 toxic chemicals during waste

management activities. These facilities may also ''process'' section 313 toxic chemicals during solvent recycling operations. In addition, under EPA's past interpretation of ''otherwise use,'' these facilities ''otherwise use'' EPCRA section 313 during waste management activities to neutralize chemicals wastes or to facilitate the waste management process. These activities and the information expected to be reported as a result of these activities serve as independent bases for adding these industries.

However, EPA disagrees that ''treatment for destruction,'' ''stabilization'' (without subsequent distribution in commerce) and ''disposal'' are ''manufacture'' or ''processing.'' The definitions of ''manufacture'' and ''process'' as defined in the final rule implementing the reporting requirements of EPCRA section 313 (40 CFR 372.3) are as follows:

> Manufacture means to produce, prepare, import, or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use, or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical or mixture of chemicals as an impurity.
>
> Process means the preparation of a toxic chemical, after its manufacture, for distribution in commerce:
>
> (1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance, or
>
> (2) As part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.

EPA does not believe that the definitions of ''manufacture'' or ''process'' as currently written, should incorporate the activities of treatment for destruction, stabilization, or disposal. The definition of ''manufacture'' includes produce, a synonym of which is create. EPA believes that neither stabilization nor disposal of a listed toxic chemical is the creation of that chemical. Nor does EPA believe that treatment for destruction of a listed toxic chemical is creation of that listed toxic chemical. EPA also does not believe that these activities can be considered to be the preparation, importation, or compounding of a toxic chemical. ''Process'' requires that the toxic chemical either in the same form or physical state as, or in a different form or physical state be prepared for distribution in commerce. EPA believes that disposal on-site, stabilization without subsequent distribution in commerce, and treatment for destruction do not involve the preparation of a toxic chemical for distribution in commerce. Thus, these would not be considered ''processing'' activities.

The Department of Energy requested guidance on how one would report under EPCRA section 313 on the constituents of waste if the origin or the chemical constituents of the waste received from offsite are unknown. For example, the Department of Energy has a backlog of wastes remaining from the research, development and production of nuclear weapons that is currently in storage awaiting treatment or disposal. A substantial volume of these ''legacy wastes'' is radioactive mixed waste (i.e., waste that contains both a hazardous (as defined under RCRA) and a radioactive component), and the Department is concerned that for some of these wastes it does not have information that will allow it to identify the individual toxic chemical constituents of these wastes. The Department is concerned that, if records cannot be found to identify the origin and individual toxic chemical constituents of this waste, in order to complete the TRI reporting, additional characterization would be needed that could increase the potential for worker exposure to radioactive material.

In the case where there is no readily available information on either the presence or concentration of toxic chemicals in wastes, a potential reporter is not required to undertake activities to characterize these wastes in order to make threshold determinations and report releases of toxic chemicals in these wastes, provided that these characterization activities are not otherwise required either by other regulations or as part of the facility's treatment or disposal activities. Under EPCRA section 313, a facility is only required to use the best available information when making threshold determinations and release and other waste management calculations.

3. *Coincidental manufacture definitions and related reporting issues.* Many commenters state that during combustion of coal or oil, metals and metal compounds in these fuels simply undergo a change in the valence state. They contend that this change should not be considered to be ''coincidental manufacture'' of a chemical. They claim this is a new interpretation of ''manufacture'' as defined in EPCRA section 313 that is inconsistent with previous guidance and that was ''proposed'' in order to capture releases from combustion processes at electric utilities.

EPA disagrees with the commenters. In the proposed rule, EPA discusses ''manufacture'' as it applies to coal and oil combustion, EPA stated that:

> In the combustion of coal and oil, metal compounds may be produced from either the parent metal or a metal compound contained in the coal or oil. *This may or may not involve a change of valence state. A change in valence state results in the manufacture of a metal compound.* Metal compounds which are produced in the combustion process are considered ''manufactured'' for purposes of EPCRA section 313 (emphasis added). (61 FR 33601).

EPA disagrees that this is a new interpretation of manufacture. If a metal undergoes a valence state change, a metal compound will be ''manufactured'' since the metal ion that results from the change in valence state of the metal will combine with another element. For example, if copper(0) (i.e., copper in valence state 0) changes valence state to copper(+2) (i.e., copper in valence state +2) then the copper(+2) will combine with some other element such as oxygen. The resulting product, in this case copper oxide, is a metal compound and thus, a metal compound has been ''manufactured.'' In order to produce the copper compound from copper, there must be a change in the valence state of the metal. As cited above, EPA also stated that the ''manufacture'' of metal compounds ''may or may not involve a change of valence state.'' For example, if copper sulfate, in which copper's valence state is +2, is converted to copper oxide during combustion, no change in the valence state of copper occurs (i.e., the copper in copper oxide still has a +2 valence state), but a new metal compound (copper oxide) has been manufactured. There may also be cases in which the metal compound is not changed at all during combustion. For example, if beryllium oxide is in the coal and remains as beryllium oxide after combustion of the coal, then no manufacture of a metal compound has occurred. In any event, the test of whether a metal compound has been ''manufactured'' is not whether there has been a change in the valence state of the metal but whether a metal compound has in fact been ''manufactured'' as a result of the combustion of the coal or oil. If a metal is converted to a metal compound or if one metal compound is converted to another metal compound, then a metal compound has been ''manufactured.''

In the proposed rule, EPA did not propose either a new definition or interpretation of ''manufacture'' in order to capture releases from electric utilities. The information provided in

the proposed rule concerning valence state changes and the ''manufacture'' of metal compounds was included to ensure that parties affected by the proposed addition of certain new industries would understand that during the combustion of coal and oil it is possible to ''coincidentally manufacture'' EPCRA section 313 toxic chemicals, including metal compounds. The discussion of ''manufacture'' in the proposed rule and as outlined above is consistent with the definition of ''manufacture'' used under EPCRA section 313. For example, on page 8 of *EPA's 1995 Toxic Chemical Release Inventory Reporting Form R and Instructions* (EPA 745-K-96-001) it is stated that ''The term manufacture also includes coincidental production of a toxic chemical (e.g., as a byproduct or impurity) as a result of the manufacture, processing, otherwise use, or treatment of other chemical substances.'' This statement is consistent with the definition of ''manufacture'' codified at 40 CFR part 372, which is consistent with the statutory definition found in EPCRA section 313(b)(1)(C)(I). As discussed in more detail in the *Response to Comments* document (Ref. 15), EPA has provided guidance to facilities within the manufacturing sector that a chemical that is created during combustion is considered to be ''coincidentally manufactured'' as a byproduct. This includes guidance that is specific to coal combustion.

There is nothing unique or special about the ''coincidental manufacture'' of toxic chemicals, including metal compounds, during combustion processes, such as the combustion of coal. Clearly combustion processes can result in the ''coincidental manufacture'' of toxic chemicals. In fact, standard manufacturing processes for making metal compounds can be similar to combustion processes, such as the combustion of coal. For example, zinc oxide is ''manufactured'' by burning (oxidizing) zinc vapor (Ref. 2). In addition, metal compounds are often ''manufactured'' from other metal compounds with or without a valence state change. For example, there is no change of the valence state of the metal in the ''manufacture'' of barium carbonate from barium sulfide (i.e., barium has a +2 valence state in both the carbonate and the sulfide) (Ref. 2, Vol. 3, page 466), yet this is clearly the ''manufacture'' of a metal compound. Therefore, if a metal is converted to a metal compound or if a metal compound is converted to another metal compound as the result of the combustion of coal, a metal compound has been ''manufactured'' as defined under EPCRA section 313.

Several commenters state that the statutory definition of ''manufacture'' found in EPCRA section 313(b)(1)(C)(I) does not include ''coincidental manufacture'' and that the definition at 40 CFR 372.3 should be consistent with the statutory definition. EPA disagrees with the commenters. The definition of ''manufacture'' found under EPCRA section 313(b)(1)(C)(I) reads as follows:

> The term manufacture means to produce, prepare, import, or compound a toxic chemical.

This definition does not preclude the ''coincidental manufacture'' of a chemical. A chemical that is ''coincidentally manufactured'' can certainly be considered as having been produced. When EPA finalized the rule implementing the reporting requirements of EPCRA section 313, the definition of ''manufacture'' was clearly interpreted to include the ''coincidental manufacture'' of a chemical (53 FR 4500, February 16, 1988). EPA does not believe that there is any inconsistency between the statutory definition and the definition as explained in the 1988 final rule. EPA addressed this issue in that final rule See 53 FR 4504.

4. *Interpretation of waste management activities.* A number of commenters contend that ''a regulatory definition or interpretation of 'management activity'. . .is needed.'' One commenter, WMI states that it is concerned with the ''lack of clarity'' because there are waste management activities that are conducted at hazardous waste facilities that do not involve treatment and disposal. WMX also suggests that the Agency ''clarify that if the only 'management activity' which occurs is storage, container transfer or tank transfer, then these activities do not fall under the 'otherwise use' definition as proposed, and thus would not require reporting.''

EPA interprets waste management to include the following activities: recycling, combustion for energy recovery, treatment for destruction, waste stabilization, and release, including disposal. Waste management does not include the storage, container transfer, or tank transfer if no recycling, combustion for energy, treatment for destruction, waste stabilization or release of the chemical occurs at the facility.

EPA's interpretation of the terms ''recycling,'' ''combustion for energy recovery,'' ''treatment for destruction,'' and ''waste stabilization'' are discussed in Ref. 13. ''Combustion for energy recovery,'' ''treatment for destruction,'' and ''waste stabilization'' are also discussed in Units IV.E.6., IV.E.7., and IV.E.8., respectively, of this preamble. EPCRA section 329(8) defines ''release.''

Some commenters believe that EPA should define ''waste,'' particularly because EPA is adding a segment of the waste management industry. AAMA believes that EPA should ''provide clear guidance for all covered facilities with respect to the definition of waste, especially in the context of recycling.'' The Chemical Manufacturers Association (CMA) contends that EPA ''should define a waste stream under the PPA reporting requirements so there is not ambiguity about which wastes really are wastes.''

EPA is providing guidance on waste management activities in the document entitled *Interpretations of Waste Management Activities: Recycling, Combustion for Energy Recovery, Treatment for Destruction, Waste Stabilization, and Release* (Ref. 13). EPA will provide regulatory definitions on waste when it reproposes the PPA reporting requirements in the near future.

5. *Recycling as a process activity.* WMI and Safety Kleen support EPA's interpretation of recycling as a process activity. The Department of Energy contends that the ''interpretation of the term ''processing'' to include toxic chemicals contained in materials being recovered/recycled and subsequently distributed in commerce is new and that this interpretation raises issues needing clarification.'' They question whether this interpretation applies only to wastes received from off-site or from all recovery/recycling operations. They also question how they should report if the recovery operation takes place in one reporting year and the reuse operation takes place in a future reporting year.

EPA's interpretation of ''processing'' stated in the proposal is not new. In the proposed rule, EPA stated that the recovery of an EPCRA section 313 listed toxic chemical for further distribution or commercial use is ''processing'' of that chemical. This interpretation applies to recycling activities where the EPCRA section 313 listed toxic chemical that is recovered is distributed in commerce. If a facility recycles an EPCRA section 313 listed toxic chemical and uses that material at the facility, e.g., as a solvent, and the EPCRA section 313 listed toxic chemical is not distributed in commerce, the chemical is ''otherwise used.'' This guidance is not new to this rulemaking. EPA has provided this guidance on recycling activities that have occurred at covered facilities since the inception of the program. EPA has not changed its interpretation of

''processing'' to include recycling of an EPCRA section 313 toxic chemical only if the recycled material was received from off-site. Nor did EPA state in the proposed rule that it intended to change its interpretation.

In response to the question about the recovery and reuse taking place in different reporting years, a recovered toxic chemical does not need to be reused during the same reporting year to be reported as ''recycled.'' This is illustrated in the following examples.

Facility ''X'' removes chromium from sludge created during wastewater treatment. The chromium that is recovered from the sludge and is reused at the facility. Assuming all of these steps occur at the facility within the same reporting year, the quantity of chromium recovered from the sludge and reused is considered to be recycled within that reporting year. As a second example, facility ''X'' treats the wastewaters, recovers the chromium from the sludge and then stores the reusable chromium during the 1997 reporting year. During the 1998 reporting year, the chromium is reused. EPA considers the chromium to be recycled in the 1997 reporting year because that is when it was recovered into a usable product.

A broader discussion of recycling is available in the document entitled *Interpretations of Waste Management Activities: Recycling, Combustion for Energy Recovery, Treatment for Destruction, Waste Stabilization, and Release* (Ref. 13).

6. *Combustion for energy recovery vs. treatment for destruction.* Safety Kleen states that it believes that ''treatment for destruction, disposal, or stabilization is appropriately considered to be 'otherwise use' when it applies to operations that are associated with disposal operations.'' However, Safety Kleen is concerned that waste-derived fuel blending operations could inappropriately be considered to be ''treatment for destruction.'' Safety Kleen states ''[w]aste-derived fuels are organic chemical waste streams which contain significant amounts of heat value (generally greater than 5,000 British Thermal Units (Btu) per pound) but with contamination levels that make it either impractical or not cost effective to recover the primary constituents from them. These fuel streams are burned as an alternative fuel in cement kilns, for example, reducing the kilns' energy dependence on coal or other fossil fuels.'' Safety Kleen considers the blending of the waste-fuel streams to be analogous to the preparation and distribution in commerce of a chemical mixture. Therefore, Safety Kleen considers this activity to be ''processing.'' Safety Kleen also requests that the ''otherwise use'' definition be modified to make it clear the ''otherwise use'' applies only to ''treatment for destruction'' if there is no subsequent distribution in commerce.

EPA believes that the commenter interprets ''treatment for destruction'' as including the preparation of an EPCRA section 313 toxic chemical in waste for destruction because: (1) Combustion of waste-derived fuels is an activity that results in the destruction of a chemical(s), and (2) the commenter requests that the definition of ''otherwise use'' be modified so that it is clear the otherwise use only applies to ''treatment for destruction'' if there is no subsequent distribution in commerce. EPA believes that the commenter contends that the preparation of a waste fuel which will subsequently be distributed in commerce and destroyed could be construed as ''treatment for destruction,'' even though no destruction of the subject EPCRA section 313 toxic chemical will occur during blending operations. EPA believes that in discussing waste-derived fuels that have heat values of greater than 5,000 Btus and that are combusted in cement kilns, the commenter is implicitly referring to ''combustion for energy recovery.'' As discussed below, for purposes of reporting on the management of wastes under the PPA, EPA differentiates ''treatment for destruction'' from ''combustion for energy recovery.'' EPA believes that in addition to bringing up a number of issues associated with how threshold determinations are made for ''processing,'' ''treatment for destruction,'' and ''otherwise use,'' the commenter also introduces the issue of how ''treatment for destruction'' and ''combustion for energy recovery'' are reported on the Form R.

EPA agrees with the commenter that the act of fuel blending is not in itself now considered ''otherwise use'' nor would it be considered ''otherwise use'' under EPA's revised interpretation of that term. If a facility blends and subsequently distributes in commerce a waste-derived fuel, the facility is ''processing'' the EPCRA section 313 toxic chemicals that are constituents of that waste-derived fuel. However, if subsequent to blending the waste-derived fuel, that same facility combusted on-site the waste-derived fuel in an energy recovery unit, e.g., a cement kiln, the facility would be ''otherwise using'' the EPCRA section 313 constituents of the waste-derived fuel. Note that this facility is ''otherwise using'' the EPCRA section 313 toxic chemicals that are constituents of the waste-derived fuel regardless of whether the facility generated the waste-derived fuel or received it from another facility for purposes of waste management. Since the inception of the program, EPA has considered that an EPCRA section 313 listed toxic chemical that is a constituent of a fuel that is combusted on-site is being ''otherwise used'' (see EPA's 1995 *Toxic Chemical Release Inventory Reporting Form R and Instructions* (EPA 745-K-96-001), page 23). If the facility that blended the waste-derived fuel distributes this fuel in commerce, the facility that receives and combusts the waste-derived fuel would compare the quantities of the EPCRA section 313 listed toxic chemicals in this fuel with the ''otherwise use'' threshold, provided that the receiving facility is a covered facility.

Thus, for purposes of identifying whether an ''otherwise use'' activity is being conducted, EPA distinguishes between the ''otherwise use'' of an EPCRA section 313 toxic chemical through the ''treatment for destruction'' and the ''otherwise use'' of an EPCRA section 313 toxic chemical that is a constituent of waste-derived fuels combusted in an energy recovery unit. Under EPA's existing guidance on ''otherwise use,'' an EPCRA section 313 toxic chemical that is a constituent of waste-derived fuel combusted in an energy recovery device is ''otherwise used'' by the facility, regardless of the origin of the waste-derived fuel. The EPCRA section 313 chemical that is a constituent of the waste-derived fuel is considered ''otherwise used'' for energy recovery because it is combusted in an energy recovery unit. This is simply one application of EPA's guidance on the ''otherwise use'' of EPCRA section 313 toxic chemicals in any fuel. EPA's revised definition of ''otherwise use'' also considers the ''treatment for destruction'' of an EPCRA section 313 toxic chemical to be ''otherwise use,'' but only if the facility destroying the toxic chemical received the chemical from another facility for waste management purposes or if the toxic chemical was produced as a result of managing waste materials received from another facility.

However, EPA notes that once the ''otherwise use'' threshold has been met, for reporting the activity under section 6607 of the PPA the combustion of the EPCRA section 313 toxic chemical in waste-derived fuel is reported as ''combustion for energy recovery'' only if certain conditions are met. Under EPA's interpretation of ''combustion for energy recovery,'' EPCRA section 313 toxic chemicals that have significant heat value and that are combusted in an energy recovery unit are ''combusted for

energy recovery.'' EPA believes that while ''combustion for energy recovery'' can be considered ''treatment for destruction'' of the toxic chemical because it results in the destruction of the EPCRA section 313 toxic chemical, it can also be considered to have aspects of ''recycling'' because it may also result in the beneficial reuse of the chemical. Therefore, EPA believes that quantities of an EPCRA section 313 toxic chemical in waste that are combusted in an energy recovery unit should not be considered to be solely the ''treatment for destruction'' of the toxic chemical. EPA believes that for the purposes of the PPA, reporting quantities ''combusted for energy recovery'' should be restricted to devices where energy is produced from the combustion of the toxic chemical and harnessed. Such a restriction distinguishes, in keeping with PPA section 6607, between combustion of an EPCRA section 313 toxic chemical for the purpose of producing energy and destruction of the toxic chemical with no recovery of energy. EPA also believes that a threshold for the heating value of the toxic chemical should be set to determine whether the chemical should be reported as ''combusted for energy recovery'' or ''treated for destruction.'' EPA believes that the threshold applied should be the same threshold used in EPA's RCRA enforcement guidance to distinguish between energy recovery and incineration (48 FR 11158, March 16, 1983), of 5,000 Btus per pound.

Specifically, EPA interprets ''combustion for energy recovery'' as the combustion of a toxic chemical that (1) is (i) a RCRA hazardous waste or waste fuel, (ii) a constituent of a RCRA hazardous waste or waste fuel, or (iii) a spent or contaminated ''otherwise used'' material; and that (2) has a heating value greater than or equal to 5,000 Btus per pound in an ''energy or materials recovery device.'' EPA believes that the Btu value of the toxic chemical is the value listed either in (i) ''Design Institute of Physical Property Data Pure Component Data Compilation'', 1988; (ii) Domalski, Eugene S. and Hearing, Elizabeth D. ''Estimation of the Thermodynamic Properties of C-H-N-O-S Halogen Compounds at 298.15 K. Journal of Physical and Chemical Reference Data, V22 #4, 1993; (iii) Domalski, Eugene S. ''Selected Values of Heats of Combustion and Heats of Formation of Organic Compounds Containing the Elements C, H, N, O, P, and S.'' Journal of Physical and Chemical Reference Data, V22 #4, 1972; (iv) ''CRC Handbook of Chemistry and Physics'', 1988; or in the absence of such listing, generated by EPA using either the American Society for Testing Materials (ASTM) Computer Program for Chemical Thermodynamic and Energy Release Evaluation Version 7.0, 1994, or the National Institute of Standards and Technology Estimation of the Chemical Thermodynamic Properties for Organic Compounds at 298.15K, 1994.

EPA considers an ''energy or materials recovery device'' to be an industrial furnace or boiler as defined in 40 CFR 372.3.

EPA considers any toxic chemical that is burned and meets the criteria described in part (1) of the interpretation, but which has a heating value less than 5,000 Btus per pound, as provided in part (2) of the definition interpretation, to be ''treated for destruction'' rather than ''combusted for energy recovery.'' This is regardless of the type of device in which it is combusted. A discussion of this interpretation is provided in Ref. 13.

EPA believes revision of its proposed definition of ''treatment for destruction'' is necessary in response to the comments received and to reflect the difference between ''treatment for destruction'' and ''combustion for energy recovery.'' EPA's revised definition for ''treatment for destruction'' follows.

> Treatment for destruction means the destruction of the toxic chemical in waste such that the substance is no longer the toxic chemical subject to reporting under EPCRA section 313. This does not include the destruction of a toxic chemical in waste where the toxic chemical has a heat value greater than 5,000 British thermal units and is combusted in any device that is an industrial furnace or boiler as defined at 40 CFR 260.10.

EPA reiterates that an EPCRA section 313 toxic chemical that has a heat value of 5,000 Btus or less and that is a constituent of a waste-derived fuel is ''otherwise used,'' regardless of the origin of the waste material, if that waste-derived fuel is combusted in an energy recovery unit.

7. *Treatment for destruction*. One commenter believes that there is substantial confusion over the definition of ''treatment for destruction.'' The commenter contends that it is clear that this definition includes processes such as incineration and the commenter believes that acid or alkaline neutralization and cyanide destruction may qualify. However, the commenter is uncertain whether treatment activities such as fuel blending, clarification, precipitation, biological treatment and carbon absorption will be covered. These processes are considered ''treatment'' under current RCRA regulations.

EPA has defined ''treatment for destruction'' as ''the destruction of the toxic chemical in waste such that the substance is no longer the toxic chemical subject to reporting under EPCRA section 313. . . .'' EPCRA section 313 and PPA section 6607 reporting data elements are generally chemical-specific not waste stream-specific. Thus, reporting on ''treatment for destruction'' activities and consideration of ''treatment for destruction'' activities for purposes of the ''otherwise use'' threshold under EPCRA section 313 focus on treatment of the chemical not treatment of the wastestream. As such, ''treatment for destruction'' only includes activities that chemically change the listed EPCRA section 313 toxic chemical. EPA believes that this includes acid or alkaline neutralization if the EPCRA section 313 listed toxic chemical is the entity which reacts with the acid or base. EPA does not consider the EPCRA section 313 toxic chemical to be ''treated for destruction'' if the waste stream is neutralized, but a component of the waste stream other than the EPCRA section 313 listed toxic chemical is the entity which reacts with the acid or base. As discussed in Unit V.E.6. of this preamble, fuel blending is often a ''processing'' activity. EPA believes that biological treatment can result in the destruction of an EPCRA section 313 listed toxic chemical. More generally for EPCRA section 313 purposes, EPA believes that ''treatment for destruction'' should not include preparation of the EPCRA section 313 toxic chemical for disposal or removal of the toxic chemical from waste streams. Further, EPA believes that ''treatment for destruction'' should not include physical removal or other activities intended to render the stream more suitable for further ''otherwise use'' or ''processing,'' such as a distillation or sedimentation unit. Additional guidance on this issue is provided in Ref. 13.

8. *Waste stabilization*. In the preamble to the proposed rule, EPA stated that it interpreted waste stabilization consistent with the definition at 40 CFR 265.1081, except that for purposes of EPCRA section 313 the definition should be interpreted to apply to any EPCRA section 313 listed toxic chemical or waste containing any EPCRA section 313 listed toxic chemical. 61 FR 33596-97. EPA noted that as provided in § 265.1081, a synonym for waste stabilization is waste solidification. *Id.* at 33597. One commenter states that in a **Federal Register** notice of February 9, 1996 (61 FR 4903), EPA removed waste

solidification from the definition of waste stabilization at § 265.1081. EPA does not agree that the new language excludes solidification from the definition of waste stabilization; rather, it simply excludes one specific activity, the addition of absorbent material without mixing or agitation, from the general stabilization definition.

EPA further does not agree that the specific activity excluded from the general definition of waste stabilization in § 265.1081 should be excluded from that definition for EPCRA section 313 purposes. That activity was excluded because the addition of absorbent material without mixing or agitation would not be expected to result in emissions of volatile organic compounds. However, for purposes of ''otherwise use'' under section 313, that activity constitutes such use in the same manner as any other waste stabilization activity. Therefore, for purposes of EPCRA section 313, EPA defines ''waste stabilization'' consistently with the general definition found at 40 CFR section 265.1081, which provides that waste stabilization is a physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids in the waste, and that this process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture.

The commenter also suggests that a more appropriate definition of waste stabilization is located at 40 CFR 268.42 Table 1. That table does not define waste stabilization, but identifies waste stabilization as one type of technology-based treatment standard applicable to RCRA hazardous wastes prior to land disposal. For purposes of defining waste stabilization as a type of ''otherwise use'' of a toxic chemical, EPA believes that the general approach used in the definition at 40 CFR 265.1081, as discussed above, is appropriate.

F. Definitional Interpretations and Reporting Considerations

1. *Reporting of releases.* EPA has received approximately 50 comments on the issue of the Agency's interpretation of ''release.'' The following is a brief summary of some of the major issues raised in those comments. Detailed responses to comments specific to mining, RCRA Subtitle C facilities, utilities, and underground injection wells are available in the *Response to Comments* document (Ref. 15).

A number of the commenters argue that EPA is unlawfully expanding the definition of ''release.'' They contend that EPA has incorrectly interpreted release to include, for example, the disposal of EPCRA section 313 listed toxic chemicals in mining materials, ash, and sludge on-site to land; the disposal of EPCRA section 313 listed toxic chemicals into a RCRA Subtitle C facility; and the injection of EPCRA section 313 listed toxic chemicals into underground injection wells, particularly, Class I and II injection wells. They further contend that in *The Fertilizer Institute v. EPA*, 935 F.2d 1303 (DC Cir. 1991) (''TFI''), the court rejected EPA's expansive definition of ''release.'' Since the definition of ''release'' in EPCRA is identical to the definition of ''release'' in CERCLA, these commenters argue that *TFI* prohibits EPA from defining ''release'' under EPCRA to apply to any of the above scenarios.

EPA believes that EPCRA section 313 does authorize the Agency to require that the land-based disposal of toxic chemicals, including the examples cited above, be reported on Form R as releases. The statute directs EPA to publish a ''uniform toxic chemical release form'' and specifies that the form is to provide for the submission of, *inter alia*, ''[t]he annual quantity of the toxic chemical entering each environmental medium.'' EPCRA section 313(g)(1). The statute broadly defines both ''release'' to mean ''any spilling, leaking, pumping, pouring, emitting, emptying, discharging, *injecting*, escaping, leaching, dumping or *disposing* into the environment,'' EPCRA section 329(8) (emphasis added); and ''environment'' to ''include water, air and land and the interrelationship which exists among and between water, air, and land and all living things.'' *Id*. section 329(2). Under EPCRA, EPA interprets annual reportable quantity to include ''releases.'' EPA interprets ''release'' to include the land-based disposal of toxic chemicals given the definition of ''release'' includes a wide variety of activities and the encompassing definition of ''environment'' includes the land, both surface and subsurface. Even if ''release'' were to be construed more narrowly, EPCRA does not limit the Form R requirements to ''releases'' but calls for facilities to report all amounts of listed toxic chemicals ''entering each environmental medium'' annually. EPCRA section 313(g)(1)(C)(iv). EPA does not believe that it is appropriate in this context to exclude such disposals simply because the disposal area is intended to contain the toxic chemicals in or on the land.

EPA has interpreted section 313(g)(1)C)(iv) in this way from the inception of the TRI program. Ever since reporting was first required, for reporting year 1987, Form R has included data elements specific to releases to land on-site: Section 5.5, entitled ''Release to Land On-site,'' is divided into four subsections: landfill; land treatment/application farming; surface impoundment; and other disposal. Further, in EPA's guidance document entitled *1995 Toxic Chemical Release Inventory Reporting Form R and Instructions* (EPA 745-K-96-001), which is provided to the regulated community every year, EPA has consistently described releases to land to include disposal in landfills, surface impoundments, land treatment/application farming, and other disposal. Form R also includes a data element specific to underground injection, Section 5.4 entitled ''Underground injections on-site,'' and the guidance document specifically states that this data element includes the ''total annual amount of the toxic chemical that [is] injected to all wells, including Class I wells, at the facility.''

EPA's interpretation of its statutory authority to collect disposals or injections to land as releases is supported by the Conference Report, in which the House and Senate conferees emphasized that ''[r]eporting on releases to each environmental medium under subsection (g)(1)(C)(iv). . . shall include, *at a minimum*, releases to the air, water (surface water and groundwater), land (surface and subsurface), and waste treatment and storage facilities. Conf. Rep. at 298 (emphasis added). Representative Edgar, the principal House author of EPCRA, further clarified this issue in stating that ''all toxic chemicals dumped into land disposal facilities must be reported whether or not such facilities are regulated under [RCRA].'' 132 Cong. Rec. at H9595 col. 1 (October 8, 1996). EPA believes that this legislative history confirms that Congress intended the release forms to include the land-based disposal of toxic chemicals. This is true whether or not the area receiving waste is intended to contain it, and therefore EPA disagrees with some commenters' assertion that there must be a direct physical contact between a listed toxic chemical and the land (or any other environmental medium) before a ''release'' reportable under EPCRA section 313 can occur.

EPA also does not agree with commenters' position that *The Fertilizer Institute* deprives the Agency of authority to require disposal of toxic chemicals to be reported as releases under EPCRA section 313. That case involved a challenge to EPA's interpretation of ''release'' under CERCLA section 101(22) to include

disposal to unenclosed containment structures, such that CERCLA's section 103(a) reporting requirement would be triggered by such disposal. In response to that challenge, EPA argued that the threat of an actual release from such a structure was great enough to justify reporting a disposal into it as an actual release. Based on specific provisions of CERCLA, however, the court rejected that position, emphasizing that CERCLA ''expressly distinguish[es] between threats of releases and actual releases,'' TFI, 935 F.2d at 1310, and concluding that ''[u]nder CERCLA's provisions, nothing less than the actual release of a hazardous material into the environment triggers its reporting requirements,'' *Id*.

EPA believes that *The Fertilizer Institute* does not affect EPA's authority to promulgate today's rule under EPCRA. Although one relevant term, ''release,'' is defined in a similar way in both EPCRA and CERCLA, other relevant provisions of EPCRA are defined differently and more broadly. First, while CERCLA section 101(8) defines ''environment'' to mean (in addition to certain specified waters) surface and ground water, land surface and subsurface strata and air, EPCRA defines environment more broadly to ''*include*'' all such media and the ''interrelationship which exists among and between water, air, and land and all living things.'' EPCRA section 329(2) (emphasis added). Second, while CERCLA section 103(a) requires notification only of an actual release, EPCRA requires each annual facility report to include, at a minimum, not only the quantity of toxic chemicals ''entering each environmental medium,'' and a number of other things, such as amounts of toxic chemicals present and the waste treatment and disposal methods used. EPCRA section 313(g)(1)(C). Moreover, the purposes of the reporting requirements in each statute are significantly different: as *The Fertilizer Institute* court noted, CERCLA was enacted ''[t]o address the growing dangers caused by the unregulated dumping and storage of hazardous wastes.'' TFI, 935 F.2d at 1306. To ''establish a program for appropriate environmental response action,'' CERCLA ''vested the EPA with the authority to investigate and respond to the release, or threatened release, of hazardous wastes into the environment.'' Id. In turn, the court stated that the purpose of the CERCLA reporting requirement is ''[t]o effectuate the EPA's response authority.'' *Id*. By contrast, in discussing the information required to be reported under EPCRA, the House and Senate conferees stated that ''[t]he purpose of this reporting requirement is to obtain available information about releases of listed toxic chemicals to the environment.'' Conf. Rep. at 298. This statement is reinforced by the broad variety of intended uses of the release forms that are discussed in the statutory text, at EPCRA section 313(h). For all of these reasons, EPA believes that the holding of *The Fertilizer Institute* is limited to the context and terms of CERCLA, and should not be extended to the reporting requirements of EPCRA.

EPA also received comments stating that because EPA uses the word ''release,'' TRI data will lead to the misperception that a reported EPCRA section 313 ''release'' necessarily results in an actual exposure of people or the environment to a toxic chemical. These comments have been received from the mining interests, RCRA Subtitle C hazardous waste facilities, utilities and other industries. Although EPA provides clear descriptions of TRI data for public use, the Agency recognizes that the potential exists for the data in TRI to be mischaracterized and/or misunderstood. However, EPA does not believe that the potential for mischaracterization and/or misunderstanding justifies not adding new industry groups to the TRI. EPA will continue to attempt to provide the public with the means for correctly interpreting the TRI data.

In addition, the Agency modified Form R for the 1996 reporting year in order to address some of the commenters' concerns about public misperception and to better help the public understand the nature of the various methods of disposal. First, EPA does recognize the difference in the management and regulatory oversight provided by the Underground Injection Control program of Class I wells from other forms of injection into the land. As a consequence, EPA has redesigned Form R to distinguish Class I injection well data from data for other classes of injection wells in a way that makes that distinction clear for the public. The Agency has redesigned Form R to distinguish disposals to RCRA Subtitle C landfills from disposals to other landfills. In addition, the title of Section 5 of the Form R, previously named ''Releases of the Toxic Chemical to the Environment On-Site'' has been changed to reflect the statutory language to ''Quantities of the Toxic Chemical Entering Each Environmental Medium.''

Beyond the changes which EPA has made on the form for 1996, the Agency will be working with industry, states, academia and other non-governmental organizations as part of the stakeholder process as described in Unit VII. of this preamble to identify other modifications to the form which will make it a more effective tool for communicating information about releases and transfers of chemicals to the public. Issues that will be addressed include changes to section 8, currently named ''Source Reduction and Recycling Activities,'' to better reflect pounds of waste generated as distinguished from pounds of waste managed, changes to the nomenclature for underground injection and land disposal as well as modifications that may result from finalization of the PPA reporting requirements for Form R.

2. *Double counting issues.* Several commenters contend that modification of the interpretation of ''otherwise use'' will result in double counting of wastes reported in section 8 of Form R. Others contend that this double counting in section 8 already exists and that the modification of ''otherwise use'' will only increase the magnitude of the problem. All of the comments are specific to the total waste reported by the facility in section 8 of Form R. None of the commenters contend that double counting will result for on-site releases.

Eastman contends that the Form R should be modified so that only the facility responsible for generating a waste would report on the EPCRA section 313 listed toxic chemical in that waste. If wastes are transferred to another facility for purposes of further waste management, the commenter believes that the receiving facility should not report unless a ''new waste'' is generated. CMA contends that EPA's proposed reporting requirements will result in significant double counting if all wastes managed are summed ''across the facilities.'' They believe that if EPA aggregates Form R section 8 data nationally, only the on-site activities should be included.

CMA further suggests that three new data elements should be included in section 8 of the Form R: ''Total waste management activities,'' ''Quantity generated onsite,'' and ''Quantity received from offsite.'' Based on examples that they provide, the data element ''Total waste management activities'' represents the sum of the current sections 8.1-8.7; ''Quantity generated onsite'' represents the quantity of the EPCRA section 313 listed toxic chemical that was actually produced as waste at the site. Quantity received from off-site is the quantity of the EPCRA section 313 listed toxic chemical as waste managed on-site that was received from another facility.

The information in section 8 of Form R is the quantity of the EPCRA section

313 listed toxic chemical that is managed as waste material by the reporting facility; it is not limited to the quantity of the EPCRA section 313 chemical that is generated as waste by the reporting facility. The information collected under section 8 of Form R is collected under the authority of section 6607 of the PPA, which specifically relates to the management of EPCRA section 313 toxic chemicals in waste. EPA does not believe that the PPA is intended to limit the reporting of EPCRA section 313 toxic chemicals managed in waste to the quantities that are generated at the facility. The information on the EPCRA section 313 toxic chemicals in waste managed by the facility would be incomplete if the facility were to report only that fraction of managed waste that was generated by the facility. Thus, EPA believes that if the wastes currently reported in section 8 are totaled across the nation, double counting of the wastes that are managed will not occur. Even assuming someone were to represent national totals of section 8 waste data as waste generated, this rulemaking does not introduce this misuse of the section 8 information.

One type of information that section 8 data capture is how different facilities manage a quantity of an EPCRA section 313 toxic chemical in waste. Currently, facilities in SIC code 20 through 39 may send wastes to other facilities in SIC code 20 through 39 for the purposes of recycling, combustion for energy recovery, treatment, and disposal. The first facility would report in section 8 of Form R on quantities of the EPCRA section 313 listed toxic chemical sent off-site for waste management. If the second facility exceeded the reporting threshold for that chemical elsewhere at the facility then that facility would report on the quantities managed. However, the management activity and quantity of the EPCRA section 313 toxic chemical associated with that activity reported in section 8 by the first facility would not necessarily be reported the same way by the second facility. For example, facility A reports that 1,000,000 pounds of an EPCRA section 313 toxic chemical is sent off-site for recycling to facility B. Facility B recycles 800,000 pounds of the 1,000,000 pounds received from facility A; treats for destruction 150,000 pounds and emits 50,000 pounds. While the reported total quantity of the EPCRA section 313 toxic chemical managed as waste will be the same for both facilities, how each facility managed the waste is clearly different. This information on waste management thus provides the public with useful information on toxic chemicals.

In addition, any apparent issue with double counting of total waste generated may be overstated by the commenters. For example, the facility generating the waste may not file a Form R because it may not have exceeded an activity threshold or may not have conducted a reportable activity.

While EPA disagrees with the commenters, EPA believes that CMA's proposed addition of data elements to section 8 may be an efficient way to address the commenters' concerns about double counting. It would continue to allow the data user to assess wastes managed by the facility but would minimize the perception that the wastes reported in section 8 were generated by the reporting facility. As discussed above, EPA plans to revise the Form R in the near future in conjunction with rulemaking in connection with the PPA reporting requirements. EPA will seriously consider the data elements included in CMA's comments. Once EPA includes data elements that are similar (or the same) as those suggested by the commenter, EPA will report separately national totals of waste generated from national totals of waste managed.

G. Industries Not Included in this Final Rule

A significant number of commenters urged EPA to add other industries which are not included in this rulemaking. These comments primarily support EPA's proposal, but state the belief that EPA should fully exercise its authority to add other industries, and that reporting by a number of other industries is justified. A number of commenters support the addition of other industries such as dry cleaners, gas stations, and airports.

As discussed in Unit II.C. of this preamble, EPA considered a number of industries during the screening process conducted prior to this rulemaking. Also, as discussed in Unit V.A. of this preamble, EPA has broad authority to add other industries, and may consider doing so in the future. EPA selected the industry groups included in this final rule as a matter of prioritizing in order to focus the Agency's efforts and resources, but recognizes that other industries may also ''manufacture,'' ''process,'' or ''otherwise use'' listed toxic chemicals in ways relevant to the reporting purposes of EPCRA section 313. Therefore, reporting by facilities in these other non-included industries may be determined to be relevant to the purposes of EPCRA section 313.

Since EPA did not include the industries suggested by commenters in its proposal, it will not directly address the particular issues associated with each industry which commenters have recommended including under EPCRA section 313. In general, EPA has questions regarding how the Agency should respond to the different situations these industries might face in reporting under EPCRA section 313. EPA recognizes the concerns many commenters expressed regarding the lack of information on toxic chemical releases from facilities in other industries. However, EPA believes that any expansion should be approached in a measured and orderly fashion.

A number of commenters from environmental and community groups urged EPA to remove some of the constraints to reporting in its program, such as lowering the current exemption for *de minimis* concentrations, particularly for classes of chemicals. Such a step may potentially make it more likely that some industry groups not included in this rule would provide more information under EPCRA section 313 reporting requirements. In the future, EPA will consider changes to the *de minimis* exemption, but is not addressing the issue in this rule, because the Agency believes that this issue requires further analysis and rulemakings. EPA may consider such a step in the future.

A number of commenters support EPA's decision not to include oil and gas exploration and production in its proposal, and urge EPA not to propose adding this industry in the future. EPA considered the inclusion of this industry group prior to its proposal, and indicated in the proposal that one consideration for not including it was concern over how a ''facility'' would be defined for purposes of reporting in EPCRA section 313 (61 FR 33592). This issue, in addition to other questions, led EPA to not include this industry group. EPA will continue its dialogue with the oil and gas exploration and production industry and other interested parties, and may consider action on this industry group in the future.

Some commenters from environmental and community groups urged EPA to abandon the SIC code system entirely in order to capture all facilities which use toxic chemicals. These commenters cite the ability of facilities to avoid reporting under EPCRA section 313 by identifying their facilities in non-covered SIC codes. EPA discusses the so-called ''SIC code loophole'' in Unit V.I.3. of this preamble, and more fully in the Response to Comment document (Ref.

15). EPA does not believe that abandoning the SIC code system entirely, and then covering all facilities which manufacture, process, or otherwise use EPCRA section 313 chemicals, is a workable alternative at this point in time. Resource constraints, legal questions, burden for facilities, and compliance and enforcement issues all combine to bring into question the Agency's ability to expand EPCRA section 313 reporting in such a fashion.

H. Industry-Specific Comments for Industry Groups that Are Being Finalized in Today's Action

1. *Comments regarding the proposed addition of mining.* EPA is finalizing the addition of Metal Mining (SIC codes 1021, 1031, 1041, 1044, 1061, 1099) and Coal Mining (SIC codes 1221, 1222, 1231) to the EPCRA section 313 list of covered industries. EPA believes that reporting by facilities in these industry groups is relevant to the purposes of EPCRA section 313. EPA received considerable comment regarding the addition of these industry groups, both for and against this action. A majority of the substantive comments received from mining trade associations, state agencies, and mining companies primarily address whether subjecting mining facilities to EPCRA section 313 reporting requirements is consistent with the authority or purposes of EPCRA section 313, and whether such reporting would provide data of little or no value at considerable burden to the industry. A significant number of industry commenters incorporated the comments of the National Mining Association (NMA) by reference. The comments in favor of the proposal address the lack of data available regarding the environmental consequences of mining and the need for that data, and the lack of inclusion of this industry under other Agency reporting requirements.

In summary, concerns that commenters raise regarding EPA's authority to specifically add mining facilities can be classified as: (a) Mining activities are not similar to activities in the manufacturing sector; (b) mining does not involve the ''manufacture,'' ''process,'' or ''otherwise use'' of EPCRA section 313 toxic chemicals; and (c) the data provided by mining facilities would be of little value or benefit. These concerns are raised in conjunction with the addition of both metal and coal mining, and are addressed in the following section. Following this general section, two sections discuss more industry-specific comments, the first dealing with metal mining, and the second with coal mining. Several major concerns raised by mining industry commenters, such as duplicative reporting requirements, were raised by a number of other commenters, and are addressed generally in other units of this rule. Additional detail is available in the *Response to Comments* document (Ref. 15).

a. *Lack of similarity to manufacturing.* Several commenters believe that EPA has the authority to add only those industries engaging in activities which are similar to activities conducted at currently covered manufacturing facilities, or which are manufacturing-like. These arguments are based on the commenters' reading of the statute and the relevant legislative history of EPCRA section 313. These commenters believe clear distinctions exist between mining and activities that occur in the manufacturing sector. Mining removes EPCRA section 313 metals from their place in nature, while manufacturing industries more typically make products that are toxic chemicals or that are made out of or with the assistance of toxic chemicals. Commenters believe that EPA based its proposal on the false premise that mining activities are ''virtually indistinguishable'' from manufacturing activities in SIC codes 20 through 39.

As discussed in Unit V.A. of this preamble, EPCRA section 313 does not limit the addition of industry groups to EPCRA section 313 to those groups that are like or similar to manufacturing facilities. Rather, Congress applied section 313 to every designated facility classified in Division D: Manufacturing, of the SIC code system, while giving EPA the authority to add other facilities, which by definition, would not be manufacturing facilities. Thus, clearly, Congress authorized EPA to add industries which are outside of the traditional manufacturing sector. The statute permits EPA to add industry groups if reporting by the industry groups is relevant to the purposes of section 313. EPA believes that reporting of information on the ''manufacture,'' ''process,'' ''otherwise use,'' and release and other waste management of toxic chemicals at coal and metal mining facilities is relevant to the purposes of EPCRA section 313. Therefore section 313 authorizes the addition of these industries.

EPA recognizes that there are distinctions between mining and manufacturing; however, there are significant similarities as well. Both manufacturing and mining facilities are engaged in the ''manufacture,'' ''process,'' or ''otherwise use'' of EPCRA section 313 toxic chemicals, and both industry groups can provide information on the release and waste management of EPCRA section 313 toxic chemicals from the ''manufacture,'' ''process,'' or ''otherwise use'' activities. This information is relevant to the purposes of EPCRA section 313. The application of the terms ''manufacture,'' ''process,'' and ''otherwise use'' to the mining sector is consistent with the application of those terms to the manufacturing sector. As discussed in more detail below, EPA believes that the extraction of listed chemicals constitutes ''processing'' for distribution in commerce. Further preparation of those listed chemicals for distribution in commerce during beneficiation also constitutes ''processing'' as defined in section 313.

b. *Mining does not include the manufacture, process, or otherwise use of chemicals.* Several commenters believe that while EPA may have the authority to expand the list of industry groups subject to EPCRA section 313, it does not have the authority to add industries which do not ''manufacture,'' ''process,'' or ''otherwise use'' EPCRA section 313 chemicals, and which do not engage in activities which are similar to activities conducted by facilities within the manufacturing sectors. These commenters argue that the threshold activity definitions in EPCRA section 313 for ''manufacture,'' ''process,'' and ''otherwise use'' do not apply to mining, for a number of reasons, including that mining is the removal of naturally-occurring materials from the earth and does not create or compound EPCRA section 313 chemicals. Because ore or coal is not created (i.e., ''manufactured''), it cannot be ''processed'' during beneficiation or preparation because ''processing'' must occur ''after manufacture'' as defined in EPCRA section 313. Further, some argue that the term ''otherwise use'' has no application because it must occur in the context of the ''manufacturing'' and ''processing'' conducted by the manufacturing sector.

EPA believes that these commenters are incorrect in their interpretation of the terms ''manufacture,'' ''process,'' or ''otherwise use.'' As defined in EPCRA section 313(b)(1)(C), ''manufacture'' means to produce, prepare, compound, or import a listed toxic chemical, and ''process'' means the preparation of a listed toxic chemical, after its manufacture, for distribution in commerce. The term ''otherwise use'' is not defined in the statute, but EPA has interpreted the term by regulation to encompass any activity involving a listed toxic chemical at a facility that does not fall under the definitions of ''manufacture'' or ''process.''

''Manufacture'' of a specific listed toxic chemical includes its production. EPA interprets ''production'' to include creation. Production of that listed chemical may occur naturally, or by industrial process. Metals contained in ores are produced by natural processes. Consequently, EPCRA section 313 chemicals which exist in nature have been ''manufactured'' at some point, as defined under EPCRA section 313. The preparation of toxic chemicals contained in the ore for distribution in commerce occurs after it has been ''manufactured'' (i.e., produced). The preparation of that EPCRA section 313 toxic chemical involves its separation from its natural state. Therefore, the extraction for distribution in commerce of the toxic chemical is ''processing'' under EPCRA section 313. Other activities, such as beneficiation, are also processing under EPCRA section 313 because the listed toxic chemical is being further prepared for distribution in commerce. EPA's belief that toxic chemicals which exist in metal ores are ''manufactured,'' and that subsequent extraction and beneficiation for distribution in commerce is the ''processing'' of those toxic chemicals, is consistent with EPCRA section 313 and EPA's current guidance on the activity definitions, as well as with current compliance practices by manufacturing facilities in SIC codes 20 through 39. Further, other EPCRA section 313 toxic chemicals may also be ''manufactured'' during beneficiation if chemical reactions take place--intentionally or unintentionally--which produce other listed toxic chemicals. In addition, EPCRA section 313 toxic chemicals are ''otherwise used'' during the extraction or beneficiation activities at many of the covered mining facilities.

In applying the EPCRA section 313 processing definition to the mining industry, metal ore can be thought of as similar to crude oil as a material entering commerce. Petroleum refineries, which are currently covered under EPCRA section 313, process crude oil which has been extracted from the earth and which typically contains, in its natural state, EPCRA section 313 listed chemicals. These naturally occurring EPCRA section 313 listed toxic chemicals may continue with the crude oil as it is further processed. The constituents may be incorporated into products such as gasoline and fuel oil. For EPCRA section 313 purposes, the toxic chemicals such as benzene and toluene that may be found as constituents of crude oil are being prepared by the refineries, after being ''manufactured,'' for distribution in commerce. Because Congress listed several naturally occuring materials in the original EPCRA section 313 toxic chemical list, EPA believes that Congress intended for facilities to report on activities involving these materials.

c. *Value and benefit of reporting from mining facilities.* Several commenters assert that little or no benefit will result from reporting under the EPCRA section 313 reporting requirements by the mining industry. Various commenters make a number of arguments as to why little or no benefit will result from reporting. They observe that mining facilities are overwhelmingly located in rural areas and in many cases are distant from population centers; therefore no ''community'' typically exists which will benefit from the data. These commenters generally argue that if there is no ''community'' nearby, then reporting by mining facilities would not be relevant to the purposes of EPCRA section 313, since the purpose of section 313 is to provide information to communities on toxic chemical releases. Many of these commenters contend that EPA did not take the location of mining facilities into account in reaching its determination to propose coal and metal mining.

EPA does not dispute that many mining facilities are located in rural areas, and accepts that some, but not all, mining operations are located significant distances from the nearest dwelling. EPA also acknowledges that a major goal of EPCRA section 313 reporting requirements is to provide data and information to local communities. However, a number of commenters also assert that the general public has a right to know about information regarding toxic chemical releases and waste management information from mining operations because of the benefits that this currently unavailable information will provide to the public. EPA agrees, and this is one of the primary reasons EPA has undertaken this action. Given the purposes described in EPCRA section 313(h), the information collected under EPCRA section 313 is for the benefit of the public, including communities around covered facilities. Coverage under EPCRA section 313 is not based solely on proximity to sizable or urban populations. EPA believes that even small or rural populations may derive benefit from EPCRA section 313 data, and the ''community'' which may benefit from data is broader than the individual citizens living or working in close proximity to mining operations. Further, an additional intent of TRI is also to provide information on chemicals that cause ecological toxicity. EPA believes that information on the releases of chemicals ''manufactured,'' ''processed,'' or ''otherwise used'' by the mining industry in rural areas is consistent with that intent. Thus, EPA acknowledges that a significant consideration in advancing its proposal was to provide information to communities, but in keeping with EPCRA section 313, EPA considers ''community'' to identify more than the most local human populations.

One commenter, the Mineral Policy Center notes that, ''the need for more information is especially compelling in the case of mining, because TRI will fill a void in valuable information about mining's toxic releases. One of the chief reasons for this lack of information is that mining wastes have been exempted from treatment as hazardous wastes under the Resource Conservation and Recovery Act . . . At present, there is no available alternative source of information--such as state programs--on the industry's toxic releases.''

This commenter further observes that the benefits of TRI data include: enabling people to make more educated choices about where to live and work; enabling people to take the necessary measures to prevent exposures to EPCRA section 313 toxic chemicals; using the data to apply pressure through the media and to public officials to address mining's pollution problems; using the data to conduct better research on the environmental and health impacts of mining wastes; and using the data in the mining industry as a gauge to measure progress in reducing releases and in applying technologies to reduce or recover toxic chemicals from mining wastes that pose serious health and environmental risks.

EPA believes that the public will benefit from the information that will result from this rule. The public, including small communities and communities distant from mining operations but which may be impacted in some manner by those operations, do not have access to facility-specific and chemical-specific information such as provided under EPCRA section 313, either at the federal or state level. With this information, the public will have improved knowledge of chemicals involved in mining, and can use that information to better assess environmental and human health risks.

Several commenters argue that reporting of so-called ''releases'' will mislead the public into believing that these ''releases'' pose risks or have significant impacts on the environment.

EPCRA section 313 is not a risk-based reporting system, and EPA makes no determination, through this action, of

the risks to human health or the environment from mining activities. ''Risk'' is not an EPCRA section 313 standard for addition of facilities. However, TRI data, in combination with other information, can and was intended by Congress to be used to help determine potential risks. As the National Mining Association has noted in an attachment to its comments, ''some mining operations may present legitimate risks to health and the environment.''

EPA recognizes that TRI data regarding releases may sometimes be mischaracterized or misperceived, as discussed in Unit V.F.1. of this preamble. Congress intended EPCRA section 313 reporting to provide the public with information about the use, management, and disposition of toxic chemicals. Reporting by mining facilities will increase the universe of information available, and the public can use TRI data in concert with other information to better understand the risks associated with releases of toxic chemicals from mining facilities. EPA believes that, in light of the possibility that public misperceptions might arise through TRI data, EPA must continue to improve its outreach and education efforts regarding the data collected under EPCRA section 313. As noted above, EPA will initiate a stakeholder process to consider these issues.

2. *Metal mining.* As stated above, EPA received considerable substantive comment which urged EPA to withdraw metal mining from this rulemaking. EPA also received comments urging EPA to include metal mining.

a. *De minimis concentrations of section 313 chemicals in metal mining.* Nearly every industry commenter contends that, for most metal mining operations, and especially for precious metal mines, concentrations of metals and metal compounds in waste rock and ore are significantly below the *de minimis* concentration and including these facilities will require facilities to consider *de minimis* amounts for reporting purposes. Several commenters state that other EPCRA section 313 listed chemicals ''manufactured,'' ''processed,'' or ''otherwise used'' at metal mining sites typically would not exceed *de minimis* thresholds. Many industry commenters believe that EPA's statements regarding *de minimis* concentration levels in ore and waste rock are in some cases inaccurate and in others are based on limited and atypical data. Some commenters also assert that there are contradictions in EPA's supporting documentation regarding whether chemicals are present above or below *de minimis* levels. These commenters believe that EPA has therefore based its decision to add metal mining on faulty assumptions and limited or flawed data.

EPA agrees that in some cases metal and metal compound concentrations in ores may be below *de minimis* concentrations, while in other cases, metal and metal compound concentrations may be above *de minimis* concentrations. EPA bases its conclusion on a variety of sources. For example, in the *Economic Analysis* (Ref. 12), EPA identified EPCRA section 313 chemicals such as compounds of lead, zinc, nickel and manganese in ores at concentrations above *de minimis* levels, while gold ores are not anticipated to contain EPCRA section 313 chemicals above *de minimis* concentrations. However, the concentration of EPCRA section 313 toxic chemicals found in ores may also increase during processing or beneficiation activities and under current guidance, facilities are required to consider amounts processed above *de minimis* concentrations toward threshold and release calculations. When a facility ''processes'' or ''otherwise uses'' EPCRA section 313 chemicals that remain below the appropriate *de minimis* levels for the chemicals, the facility does not have to consider these amounts for threshold or release calculations. If the chemical concentrations exceed *de minimis* during processing, at that point the facility must consider amounts of the toxic chemical toward threshold and release calculations.

Nevertheless, the fact that concentrations of the toxic chemical are above or below *de minimis* levels in waste rock is dispositive only for purposes of determining whether the toxic chemicals in the waste rock trigger an activity threshold. In making that determination the toxic chemicals in the waste rock must first be subject to a threshold activity (i.e., the *de minimis* exemption applies only if the EPCRA section 313 toxic chemical is ''manufactured,'' ''processed,'' or ''otherwise used''). Simply being present in concentrations below the appropriate *de minimis* level does not result in an exemption from reporting of the releases of these chemicals. For example, other activity on-site could trigger reporting for an EPCRA section 313 toxic chemical. While extraction of waste rock without subsequent distribution in commerce is not a threshold activity, disposal of the waste rock, and therefore the EPCRA section 313 toxic chemical in the waste rock, must be reported, if the appropriate threshold for that chemical is exceeded at the facility.

In order to provide additional assistance to the commenters in understanding the *de minimis* exemption and its application to mining activities, EPA has provided, in the *Response to Comments* document (Ref. 15) a description of the exemption and some examples of its application.

One commenter, the Nevada Mining Association (NvMA), provided data about the total percent concentrations of metal compounds in ore and waste rock from a number of mines in the western U.S. While these data indicate that section 313 chemicals were not generally present above *de minimis* concentrations in ore and waste rock in selected samples, it was not clear in NvMA's comments what type of mines these samples were taken from, i.e., were these samples taken from gold mines, copper mines, or other metal mines. EPA cannot determine the accuracy or validity of these data, but accepts that these data suggest that, at least in some cases, concentrations of the EPCRA section 313 chemicals in target ore and waste rock may be below *de minimis* levels. However, EPA is not certain how generally applicable these data are to the metal mining industry as a whole without a clearer understanding of what types of metal mines the samples were taken from, the collection methods, and the laboratory testing methods used to collect and process these samples. Most industry commenters limited themselves to general statements regarding their belief that section 313 chemicals are generally below *de minimis* concentrations in ore, waste rock, or overburden, without providing data. In certain situations, an EPCRA section 313 listed toxic chemical that is present below these *de minimis* concentrations that is ''processed'' or ''otherwise used'' does not have to be factored into threshold determinations. Therefore, if a gold mine in Nevada has no EPCRA section 313 chemicals present above *de minimis* concentrations in its processed ore, which industry commenters claim is typically the case, then the amounts of those chemicals ''processed'' are not attributable to thresholds or release determinations. Further, provided that an activity threshold for the chemical is not exceeded at the facility, the disposal of those chemicals contained in waste rock would not be reportable as well.

b. *Extraction exemption for metal mining.* In its proposal, EPA requested comment on whether an exemption for extraction activities should be provided for metal mining, in a manner similar to the exemption proposed for coal mining. Industry commenters support an exemption for metal mining

extraction from EPCRA section 313 reporting requirements, while some commenters specifically urged EPA to not grant an exemption. While industry commenters generally believe the entire industry should be exempt from the EPCRA section 313 reporting requirements, they also offer a number of arguments for exempting extraction.

Several commenters conclude that extraction should be exempted because EPCRA section 313 listed toxic chemicals will not typically exceed *de minimis* concentrations; extraction is not ''manufacturing'' or ''processing;'' and without an exemption, metal mining facilities would be faced with a substantial compliance burden because of the volume of materials moved in extraction and the need to continually assess EPCRA section 313 toxic chemical levels to determine whether reporting thresholds may be exceeded. Industry commenters believe that releases from extraction pose little risk, and reporting associated with extraction will be misleading and mask other more significant releases. In contrast, one commenter argues that an exemption will result in a truncated TRI that would fail to capture one of the largest sources of toxic releases from mining, resulting from the disposal of waste rock.

EPA is not granting an exemption for metal mining extraction. As stated above, EPA believes that the extraction of ore containing EPCRA section 313 chemicals for their subsequent distribution in commerce constitutes the ''processing'' of those listed chemicals. In addition, EPA believes that EPCRA section 313 chemicals may be present above *de minimis* concentrations in ore. EPA recognizes that this may not be the case for some metal mines, and that concentration levels may vary significantly. However, EPA believes, based on the Agency's current understanding, that overburden contains EPCRA section 313 chemicals in negligible amounts and that reporting is unlikely to provide the public with any valuable information. Consequently, EPA is exempting the EPCRA section 313 chemicals in overburden from EPCRA section 313 reporting requirements. EPA will not require compliance determinations or reporting of releases or waste management information for listed chemicals which may be present in overburden removed prior to removal of waste rock or extraction of the target ore. EPA defines ''overburden'' as unconsolidated material that overlies a deposit of useful materials or ores. EPA believes that this action will reduce the compliance burden on metal mining facilities while not depriving the public of any valuable information regarding toxic chemicals.

EPA considers waste rock as distinct from overburden for purposes of reporting under EPCRA section 313. Waste rock is generally considered that portion of the ore body that is barren or submarginal rock or ore which has been mined but is not of sufficient value to warrant treatment and is therefore removed ahead of the milling processes. Waste rock is part of the ore body and may, depending on economic conditions, become a valuable source of a metal. It may also be further distributed in commerce for other uses such as road construction. Waste rock may contain similar constituents as the target ore. In other words, waste rock can become target ore depending on changes in the value of the metals being mined. Waste rock may typically contain lower concentrations of metals and other constituents than the target ore. Releases associated with extraction or further preparation of the waste rock are reportable provided that a threshold is exceeded at the facility for the listed toxic chemicals that are constituents of the waste rock. This would occur under two general scenarios. In the first scenario, the waste rock is distributed in commerce, e.g., to be used in highway construction. In that particular case, the extraction and further preparation of the waste rock is for distribution in commerce, and thus is ''processing.'' In this case, if the concentration of the listed toxic chemical in the waste rock is below *de minimis*, than any quantities of that listed toxic chemical in the waste rock extracted or further prepared would be exempted from threshold and release and other waste management calculations. If above *de minimis*, than the quantities would count toward these calculations. In the second general scenario, the waste rock is disposed of to the land on-site and elsewhere at the facility a threshold is exceeded for the listed toxic chemicals in the waste rock. In this case, the releases of the EPCRA section 313 toxic chemical associated with the extraction of the waste rock would be reportable.

c. *Iron ore mining.* Two commenters requested that EPA specifically exclude SIC code 1011 Iron Ores from this rulemaking. These commenters cite the exemption of facilities in this SIC code from reporting requirements in the state of Minnesota as support. Minnesota previously extended EPCRA section 313 reporting requirements to a number of industry groups outside of SIC codes 20 through 39, including SIC code 1011. Subsequently, Minnesota issued an exemption for iron ore for mining facilities in SIC code 1011. These commenters indicate that the Minnesota Emergency Response Commission specifically found: (1) Toxic chemical releases and transfers from SIC 1011 facililities in Minnesota were not of sufficient quantities to warrant reporting; (2) based on a review of the information, no facilities were expected to meet the threshold reporting levels; and (3) facilities do not make intensive use of toxic chemicals for processing their product. These commenters believe that EPA should grant an exemption, or exclude iron ore mining facilities from this rule, for the same reasons the state of Minnesota granted an exemption. The commenters believe that, based on the findings in Minnesota, reporting by iron ore mining facilities is not relevant to the purposes of EPCRA section 313, and that these facilities do not meet the EPCRA section 313 standard for addition.

EPA is not including this SIC code in this final rule. Based on the information available to EPA, listed toxic chemicals do not appear to be ''processed'' or ''otherwise used'' above *de minimis* concentrations, nor does it appear that listed toxic chemicals are coincidentally manufactured above the ''manufacturing'' threshold during the extraction or beneficiation of iron ores. Therefore, EPA has not included SIC code 1011 in the list of facilities covered under EPCRA section 313 in this action. However, EPA does not believe that the rationale articulated by the state of Minnesota in exempting this SIC code from coverage in its program is consistent with the EPCRA section 313 standard for addition of industry groups. For instance, EPA has concerns regarding the interpretation of the article exemption under EPCRA section 313 which Minnesota used. This interpretation may have been used to exclude activities which were likely to be reportable under the federal program. EPA may reconsider the addition of this industry segment at a future date in light of additional information.

One commenter asked EPA to exclude an ilmenite mining facility from reporting under EPCRA section 313. The commenter claims no EPCRA section 313 chemicals are ''manufactured,'' ''processed,'' or ''otherwise used'' above *de minimis* concentrations at that facility. However, the commenter did not provide any additional information to substantiate this assertion. Ilmenite mining facilities are included in SIC code 1099 Miscellaneous Metal Ores, Not Elsewhere Classified. This SIC code classification contains a variety of somewhat unrelated metal mining facilities and includes facilities which extract and beneficiate a variety of metal

ores, and when taken as a group, EPA believes facilities in this classification are likely to provide reporting relevant to EPCRA section 313. Based on EPA's understanding of the activities conducted by facilities in this SIC code, including ilmenite mining, the Agency cannot conclude that this one facility is unlike other facilities in SIC code 1099. EPA received no additional comment specifically addressing ilmenite mining, or other mining segments in this 4–digit SIC code. If the commenter is correct regarding the lack of section 313 chemicals present above *de minimis* concentrations, its facility would likely not have to file any report, even though covered. EPA recognizes that coverage may still represent a burden to the particular facility; however, at this point, the commenter has not provided enough information to rebut EPA's conclusion that the body of information on ilmenite mining and the miscellaneous metal mining facilities in SIC code 1099 supports addition of this 4 digit industry group. The commenter's particular facility would not be different from many manufacturing facilities which, although covered under EPCRA section 313, do not file annual reports, presumably because they do not exceed chemical activity thresholds or they engage in exempt activities.

3. *Coal mining.* EPA received a number of comments specifically opposing the addition of coal mining to the EPCRA section 313 reporting system, but also received a number of comments specifically urging EPA to include this industry.

a. *Use of chemicals in coal mining.* Some commenters state that EPCRA section 313 chemicals are not ''routinely'' used in coal preparation activities. Only at selected steps in some coal preparation processes are these chemicals employed. While EPA recognizes that coal itself is not an EPCRA section 313 listed chemical, EPCRA section 313 toxic chemicals are generally ''otherwise used'' during coal preparation. As discussed in the *Economic Analysis* (Ref. 12), a number of EPCRA section 313 chemicals which are ''otherwise used'' during coal preparation include tetrachloroethylene, trichloroethane, 1,1,1-phenanthrene, dichlorodifluoromethane, xylene, acrylamide, and constituents of fuel oil. EPA believes, based on available data, that many coal preparation facilities within this industry ''otherwise use'' these chemicals. EPA recognizes that coal preparation practices may vary between facilities and by type of coal being prepared. If a particular facility does not ''otherwise use'' an EPCRA section 313 chemical in excess of the threshold, it does not have to report on the releases and waste management of that chemical, provided it does not otherwise exceed the ''manufacturing'' or ''processing'' threshold for that chemical.

b. *Coal preparation facilities should be exempt.* One commenter, ARCO, argues that their coal preparation plants in the western U.S. do not typically use EPCRA section 313 toxic chemicals, and are distinct from coal beneficiation plants. According to the commenter, the purpose of coal preparation plants is to crush and size coal to customer specifications, and EPA should exempt these plants or declare that no chemicals are used at these types of coal preparation facilities.

EPA disagrees with the commenter's suggestion that coal preparation is a distinct activity from coal beneficiation. Coal ''preparation'' is a general term used in the coal mining industry to describe the preparation of ores to regulate the size of the product, to remove unwanted constituents, or to improve the quality, purity, or grade of a desired product. EPA understands that these activities also describe what some in the coal and metal mining industry may call beneficiation. However, in general, coal ''preparation'' and coal ''beneficiation'' are used predominantly to describe any activity subsequent to extraction to prepare the coal for use. Thus, while the commenter may distinguish crushing and grinding activities from the other preparatory and beneficiation activities, EPA does not believe that this distinction is generally made within the coal mining industry.

Further, EPA has not categorically concluded that every coal preparation facility ''otherwise uses'' EPCRA section 313 listed chemicals, or that every coal preparation facility will ''otherwise use'' listed chemicals in excess of the ''otherwise use'' threshold. However, EPA believes that there are standard practices within the coal mining industry that involve the ''otherwise use'' of section 313 listed chemicals during coal preparation activities. Given this information, EPA anticipates that facilities preparing coal are likely to provide information relevant to the reporting purposes of EPCRA section 313.

Thus, because the industry is not generally severable as described by the commenter, and because EPA believes that coal preparation can, and in many cases does, involve the ''otherwise use'' of section 313 listed chemicals, EPA does not believe it would be appropriate to exempt coal preparation facilities as requested by commenter. For the same reasons, EPA cannot generally conclude that coal preparation facilities do not ''otherwise use'' section 313 chemicals.

To the extent that commenter's facilities solely conduct the crushing or grinding activities described by it, EPA agrees with commenter that these particular activities generally do not involve the ''otherwise use'' of section 313 listed toxic chemicals. The facility would be required to consider these crushing and grinding activities and other non-extraction activities in its threshold and reporting calculations. However, because these activities do not generally involve the ''manufacture,'' ''process,'' or ''otherwise use'' of a section 313 listed chemical above threshold quantities, the compliance determination that the facility has to do to determine that there is no need to file a report should be simple and straightforward. Only those coal preparation facilities which ''manufacture,'' ''process,'' or ''otherwise use'' section 313 listed toxic chemicals above thresholds would be reporting releases and other waste management information. If facilities engage in extraction and coal preparation (or beneficiation), they must determine whether any threshold has been exceeded as the result of non-extraction activities, including coal preparation. EPA believes that existing activity thresholds and exemptions provide sufficient means for facilities such as the commenter's to minimize the burden of compliance.

One commenter, the Kentucky Resources Council, argues that the inclusion of coal processing operations is an appropriate and important mechanism to track the generation and disposal of coal processing wastewaters and sludges, and that the inclusion of information from coal preparation plants will permit better tracking of these wastestreams.

EPA agrees that adding coal preparation or beneficiation facilities will provide a useful means of tracking toxic chemical releases and waste management at these facilities, but notes that wastewater and sludges from these operations may or may not be reportable when released, depending on the presence and concentration of EPCRA section 313 toxic chemicals in the materials ''processed'' or ''otherwise used.''

Two commenters believe that the purpose of EPCRA section 313 cannot be served by requiring marginal users of diesel fuel, such as coal preparation facilities, to report on their inventories while ignoring far larger sources, which are ''exempt'' from EPCRA section 313 reporting requirements. The commenters believe that such

information from coal preparation facilities would be inherently misleading and unnecessarily burdensome, and that diesel oil and kerosene do not contain section 313 chemicals in concentrations above *de minimis* levels. The commenters believe it is inherently contradictory for EPA to exempt diesel fuel that is used to power mobile equipment at all EPCRA section 313 covered facilities, but require the fuel to be reported if it is used in coal preparation.

EPA's treatment of the ''otherwise use'' of EPCRA section 313 toxic chemicals in fuel oil in coal preparation is consistent with its guidance to all other industries otherwise using EPCRA section 313 toxic chemicals in fuel oil. All uses of EPCRA section 313 toxic chemicals in fuel oil must be counted towards thresholds and release reporting unless they are exempt under one of the use exemptions defined under 40 CFR 372.38, such as toxic chemicals in fuels used in the maintenance of motor vehicles. Currently, manufacturing facilities which use fuels as part of their production processes are required to make ''otherwise use'' threshold determinations for the constituents of these fuels. Consequently, EPA believes reporting on the use of fuel oil by coal mining facilities is consistent with current reporting guidance issued in the past for the manufacturing industry.

EPA estimates that No. 2 fuel oil and diesel fuel will contain at least one listed toxic chemical above *de minimis* concentrations, based on data included in the *Economic Analysis* (Ref. 12). If EPCRA section 313 chemicals that are ''processed'' or ''otherwise used'' are present in a mixture such as No. 2 fuel oil below *de minimis* concentrations, they do not have to be factored into threshold or release determinations by the facility.

Several commenters believe that coal preparation requires careful definition or there is a real risk that what they see as the proposed rule's vague approach will wipe out the intended exemption for coal extraction. These commenters believe EPA has confused beneficiation and preparation in the proposal, and that without distinguishing those activities which involve the use of chemicals as ''preparation,'' EPA is not actually exempting extraction because some activities defined as beneficiation, such as the breaking or crushing of coal, are conducted during extraction. A commenter strongly recommends that EPA employ a definition which states that, ''the term 'coal preparation plant' means a facility where coal is subjected to chemical processing or cleaning in order to separate the coal from its impurities and then is loaded for transit to a consuming facility.''

In its proposal, EPA defined beneficiation in order to clarify the distinction between extraction and beneficiation. EPA used a definition consistent with the RCRA definition found at 40 CFR 261.4, which restricts beneficiation to certain activities, among which is crushing. EPA's proposal did not limit reporting coverage to only coal preparation (or beneficiation) activities. Rather, EPA proposed to exempt extraction activities and include coal preparation (and beneficiation) activities, activities that take place subsequent to extraction. To the extent that the commenter's facilities solely conduct the crushing or grinding activities described by it, EPA agrees with the commenter that these particular activities generally do not involve the ''otherwise use'' of section 313 listed toxic chemicals. Although the facility would be required to consider these crushing and grinding activities and other non-extraction activities in its threshold and reporting calculations, because these activities do not generally involve the ''manufacture,'' ''process,'' or ''otherwise use'' of a section 313 listed chemical above threshold quantities, the compliance determination that the facility has no need to file a report should be simple and straightforward. Only those coal preparation facilities which ''manufacture,'' ''process,'' or ''otherwise use'' section 313 listed toxic chemicals above thresholds would be reporting releases and other waste management information. If facilities engage in extraction and coal preparation (or beneficiation), they must determine whether any threshold has been exceeded as the result of non-extraction activities, including coal preparation. EPA believes that existing activity thresholds and exemptions provide sufficient means for facilities such as the commenter's to minimize the burden of compliance.

c. *Number of facilities and representativeness of data.* One commenter believes that the inclusion of coal preparation plants would also be contrary to EPA's ''screening criteria'' since more than 50 percent of the coal mining and processing facilities would be exempt by reason of employing fewer than 10 employees. This commenter believes EPA has exempted other industries on the premise that a substantial portion of the facilities within these industries would be exempt and that similar treatment is in order for an industry where more than half the facilities would be exempt.

EPA used its screening process to set priorities and to focus attention on those industry groups whose potential addition to EPCRA section 313 would result in significant environmental and public informational benefits. EPA did not screen industries based on whether a significant portion of facilities within an industry group might be likely to report. Rather, EPA focused on the informational value of adding candidate industries. In addition, EPA did not ''exempt'' industries not included in the proposal. These facilities were simply not included in this action. Further, EPCRA section 313 provides an exemption for facilities with fewer than 10 full-time employees in order to reduce burden on small facilities. Currently, out of the more than 300,000 manufacturing facilities in the U.S., roughly 23,000 filed section 313 Form Rs for the 1994 reporting year. In other words, less than 10 percent of manufacturing facilities actually report under EPCRA section 313. EPA estimates in its *Economic Analysis* that, based on 1992 data, approximately 342 coal preparation facilities were in operation in the U.S., and out of that number, 321, or approximately 94 percent, are expected to file reports (Ref. 12). (EPA's draft *Industry Profile for Coal Mining* stated that 610 plants were in operation in 1991, which was an incorrect figure. The correct figure is 345 which is reflected in the revised industry profile) Regardless, the possibility of less than half of the facilities in a given industry filing reports would not by itself cause EPA not to add that industry. EPA does not agree with the commenter's premise that unless a substantial number of facilities within an industry group are likely to file, reporting by those that do file would be valueless.

d. *Extraction exemption for coal mining.* In EPA's proposal to include the coal mining group, the Agency proposed to exempt coal mining extraction activities from coverage under EPCRA section 313. Industry commenters supported this exemption and agreed with EPA's understanding that coal extraction activities do not typically involve the presence or use of listed toxic chemicals in reportable concentrations, while a number of commenters urged EPA to withdraw its proposed exemption for coal mining extraction. EPA did not receive any additional information which would change its understanding of coal mining extraction from those comments objecting to the exemption. Many of the environmental consequences of coal extraction which these commenters cite,

based on EPA's understanding of the comments, are not likely to be reported under EPCRA section 313, primarily because section 313 chemicals are unlikely to be present above *de minimis* concentrations, or the sources of the releases, which concern commenters are abandoned or non-working mines and therefore would not be likely to trigger reporting.

EPA believes it is appropriate to exempt coal extraction activities from all EPCRA section 313 reporting requirements. EPA does not agree that coal extraction does not involve the presence or use of listed toxic chemicals. EPA does, however, believe that the presence and use of these chemicals during coal extraction is likely to be in concentrations below *de minimis*. As a result, facilities that extract coal for distribution in commerce would be able to take the *de minimis* exemption for the listed toxic chemicals in the coal. Consequently, little or no information would be provided by these facilities. EPA may reconsider this exemption at a later date in light of additional information. EPA interprets ''extraction'' for purposes of EPCRA section 313 to mean the physical removal or exposure of ore, coal, minerals, waste rock, or overburden prior to beneficiation, and to encompass all extraction-related activities prior to beneficiation. If an EPCRA section 313 toxic chemical that is a constituent of coal or overburden is ''processed'' or ''otherwise used'' in SIC code 12 during extraction, a facility is not required to consider the quantity ''processed'' or ''otherwise used'' when determining whether an applicable threshold has been met, or determining the amounts to be reported.

4. *Comments regarding the proposed addition of electric utilities.* EPA is finalizing the addition of coal- and oil-fired electric utilities in SIC codes 4911, 4931, and 4939 to the EPCRA section 313 list of covered industries. EPA believes that reporting by facilities in this industry is relevant to the purposes of EPCRA section 313. EPA received considerable comment in support of the addition of this industry, generally expressed in the context of support for the addition of all of the proposed industry groups. EPA also received significant comment opposing this addition from electric utility companies and trade associations. A majority of the comments received from the industry address whether subjecting electric utility facilities to EPCRA section 313 reporting requirements is consistent with the authority or purposes of EPCRA section 313, whether the EPCRA section 313 definitions can be applied reasonably to electric utilities, and whether such reporting will provide data of little or no value at considerable burden to the industry. Industry commenters also addressed concerns about the scope of facility coverage, the ''coincidental manufacture'' of metal compounds in combustion, and the disposal of combustion byproducts, among other issues. Further detail concerning the public comments received is in Ref. 15.

a. *Activity definitions.* Many industry commenters believe that the existing definitional framework of the EPCRA section 313 reporting program is tailored to manufacturers and does not suit the activities of the non-manufacturing industries such as electric utilities. Some commenters object that EPA considers the combustion process to be the ''manufacture'' of a ''product'' as those terms are commonly understood and that the intent of Congress was to apply the section 313 reporting requirements only to those industries that ''manufacture'' or ''process'' toxic chemicals. Commenters believe that, logically, substances present or incidentally formed during combustion (e.g., stack gases, fly ash, and bottom ash) are not ''manufactured'' or ''otherwise used,'' and that ''coincidental manufacture'' during combustion should not apply because the primary function of an electric generation facility is not the manufacturing of any chemical or mixture of chemicals.

EPA believes the existing regulatory and definitional framework of the EPCRA section 313 reporting program can be applied reasonably, logically, and effectively to non-manufacturing industries. In keeping with the EPCRA section 313(b)(1)(B) standard, EPA has acted to add those industry groups which, like facilities within manufacturing sector SIC codes 20 through 39, ''manufacture,'' ''process,'' or ''otherwise use'' toxic chemicals in a manner such that reporting by these facilities is relevant to the purposes of section 313. EPA believes the addition of coal and oil-fired electric generating facilities to the EPCRA section 313 reporting program is consistent with the legislative intent.

EPA believes that electric utilities engage in activities which involve or result in the ''manufacture,'' ''process,'' or ''otherwise use'' of EPCRA section 313 toxic chemicals, as do activities conducted by the manufacturing sector. In particular, EPA disagrees with the commenters that the existing definitional framework does not apply to the combustion process. Coal and oil-fired electric utilities combust fuel to generate electricity, a product which is distributed in commerce. As discussed in Unit V.E.3. of this preamble, the combustion process involves the ''otherwise use'' of EPCRA section 313 toxic chemicals in the fuel, and results in the ''coincidental manufacture'' of EPCRA section 313 toxic chemicals; both of these chemical activities are similar to activities conducted and reported by manufacturing facilities. Electric utilities also ''otherwise use'' EPCRA section 313 toxic chemicals in cleaning, maintenance, and purification activities in a manner similar to activities carried out by manufacturing facilities.

One commenter states that considering combustion byproducts to be ''manufactured'' is contrary to the logic and rationale that EPA appropriately used for excluding nuclear and gas plants from the proposed expansion. The commenter states that, according to EPA, cleaning, purification and maintenance activities using section 313 chemicals at non-coal/oil-fired electric utilities are support activities which ''are not the primary function of the facility'' (see 61 FR 33601). The commenter goes on to state that because of the secondary nature of these cleaning, purification, and maintenance activities, nuclear, gas and hydroelectric facilities were not included in the TRI expansion. The commenter states that combustion byproducts should be considered in the same light as these excluded secondary activities, because the creation of combustion byproducts is incidental to the production of electricity and their presence/formation is not the primary purpose for burning coal and oil.

As stated in the proposal, EPA proposed to add coal and oil-fired electric generating facilities because their primary function involves the combustion of fuels containing EPCRA section 313 chemicals and production of TRI chemicals during combustion. The commenter seems to conclude that, because EPA did not consider the ''otherwise use'' of EPCRA section 313 chemicals in support activities alone to be sufficient justification for adding non-coal/oil-fired electric utilities to EPCRA section 313 chemicals at this time, EPA therefore must believe that such use of EPCRA section 313 chemicals is not of sufficient importance to warrant reporting under EPCRA section 313. This is not correct. EPA's decision to not to include nuclear, hydroelectric, and natural gas facilities simply was an attempt to prioritize industry groups for this initial expansion effort by including only those

industry groups whose primary functions or activities involve the ''manufacture,'' ''process,'' and ''otherwise use'' of EPCRA section 313 chemicals. EPA's screening process and comments raised on the screening process are more fully described and addressed in Unit IV.B. of this preamble and in the *Response to Comments* document (Ref. 15).

As the proposal made clear, coal and oil-fired electric generating facilities will be required to factor into their threshold determinations and reporting calculations the quantities of EPCRA section 313 chemicals used in support activities such as cleaning, maintenance, and purification, in addition to chemicals ''otherwise used'' and ''coincidentally manufactured'' in the combustion process. This is consistent with the existing reporting requirements for manufacturing facilities, which must factor into their threshold determinations and release calculations all ''manufacture,'' ''process,'' and ''otherwise use'' of EPCRA section 313 chemicals, with the exception of quantities specifically exempted at 40 CFR 372.38. Thus, the commenter is wrong in characterizing activities such as cleaning, maintenance and purification at electric utilities as ''excluded'' from EPCRA section 313 reporting. Further, the Agency does not agree with the commenter that the use of EPCRA section 313 chemicals in activities such as cleaning, maintenance and purification at non-coal and oil-fired facilities is in any way analogous to the ''coincidental manufacture'' of EPCRA section 313 chemicals in the combustion process at coal or oil-fired facilities. The ''coincidental manufacture'' of EPCRA section 313 chemicals directly results from the combustion of coal or oil to generate electricity, which is the primary purpose of the facility. The fact that the ''coincidental manufacture'' of these byproducts is not actually the purpose of combusting the fuel is irrelevant. Therefore, the Agency disagrees that ''coincidental manufacture'' of EPCRA section 313 chemicals in the combustion of coal or oil is incidental, or should be disregarded as a basis for addition of these utilities.

b. *Facility coverage*. Most industry commenters express concern that EPA's explanation of which electric utility facilities in SIC codes 4911, 4931, and 4939 would be required to report was vague and did not adequately explain the scope of facility coverage. The commenters believe that EPA was ambiguous and inconsistent in its proposed exclusion of gas, nuclear, and hydroelectric electric utilities. The commenters point out that EPA proposed that any facility in SIC codes 4911, 4931, and 4939 which combusts coal or oil in whatever percentage of its fuel use, and whether for primary or backup generation, would become a covered facility for purposes of EPCRA section 313. The commenters contend that many non-coal/oil-fired electric utility facilities would be considered covered facilities under such a definition, despite EPA's stated intention to exclude them from coverage.

The commenters point out a number of purposes for which non-coal/oil-fired electric utility facilities would combust some quantity of coal or oil, including: support activities, such as heating the facility; start-up; emergency power generation (for maintaining operation of facility equipment in an emergency); periodic testing of emergency power equipment; periodic testing of backup power generation capability; and backup power generation when supply of the primary fuel source is curtailed. Commenters request clarification of which of these activities would subject a non-coal/oil-fired electric utility facility to EPCRA section 313 reporting requirements, and/or state their objections to facility coverage because of such activities.

In particular, many commenters recommend that EPA exempt from the reporting requirements all non-coal/oil-fired facilities which infrequently burn coal or oil for ancillary support operations or for backup power generation. A number of commenters recommend that EPA adopt for facility coverage purposes the definition of ''gas-fired'' which appears in the Clean Air Act Acid Rain implementation rules (40 CFR 72.2), exempting from EPCRA section 313 coverage facilities which burn natural gas or other gaseous fuel for at least 90 percent of the unit's average annual heat input during the previous 3 calendar years and for at least 85 percent of annual heat input in each of those 3 years. Several commenters recommend that EPA include in EPCRA section 313 reporting only those electric utility facilities which combust coal or oil for 50 percent or more of the fuel combusted or the electricity produced.

EPA's intention in the proposal was to include only those facilities in SIC codes 4911, 4931, and 4939 which combust coal or oil in any quantity to generate the electricity that the facility supplies to its customers, whether such combustion is for primary or backup power generation. EPA understands that the language in the proposal has been interpreted by some commenters to cover facilities EPA did not intend to add to EPCRA section 313 at this time (i.e., electric utilities that are essentially non-coal/oil-fired, but that use coal or oil only to provide electricity for support activities at the facility). EPA continues to believe that this rule should focus on electric utilities that use coal or oil for performing the primary function of the facility (i.e., generating the electricity the facility supplies to its customers). As a means of describing the universe of facilities it intends, EPA is using the phrase ''limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce'' for this industry in order to clearly limit coverage to facilities that combust coal or oil to generate electricity the facility supplies to its customers. Accordingly, in today's final rule, EPA has amended the facility coverage language for SIC codes 4911, 4931, and 4939 to read ''(limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).''

Combusting coal or oil for on-site support purposes (such as heating the facility), for testing or operation of emergency backup power systems (meaning systems designed to supply power to the facility itself in the event of an emergency), or for start-up purposes (i.e., to heat the boiler to an operational temperature prior to switching to the primary fuel) will not subject facilities to the EPCRA section 313 reporting requirements, provided such combustion of coal or oil does not itself generate power for distribution in commerce.

EPA does not agree with the commenters who recommend that EPA exempt non-coal/oil-fired facilities that combust limited quantities of coal or oil for the purposes of generating power for distribution in commerce, such as backup or peak power generation. EPA believes it is appropriate to include as covered facilities all facilities which burn any quantity of coal or oil to generate power for distribution in commerce. EPA does not agree with commenters who state that facility coverage should be based on the percentage use of coal and/or oil. Particularly in the case of large facilities, exempting facilities which burn 10 percent to 15 percent coal or oil, or 50 percent as some commenters recommend, could mean exempting facilities which burn very large quantities of coal or oil, even if such quantities are not large in percentage terms. Under such an exemption, a large facility which burns a comparatively low percentage quantity of coal or oil could be exempt from the reporting

requirements even if it burned more coal or oil than a small facility which was 100 percent coal or oil-fired and therefore was subject to section 313 requirements. Such a result would not be sensible from a public right-to-know standpoint.

EPA believes that the proper mechanism for relieving reporting burden for facilities which combust only limited quantities of coal or oil is the existing activity threshold system under EPCRA section 313(f)(1). (The employee threshold found at EPCRA section 313(b)(1)(A) will also provide burden relief for small electric utility facilities with fewer than 10 full-time employee equivalents.) Any facility which combusts only limited quantities of coal or oil for the purpose of generating power for distribution in commerce may be unlikely to exceed any reporting threshold, unless the facility also ''manufactured,'' ''processed,'' or ''otherwise used'' significant quantities of listed chemicals in other activities at the facility. Therefore, such a facility would not likely incur the burden of EPCRA section 313 reporting. The Edison Electric Institute and other commenters point out that such facilities would have to expend resources to determine or demonstrate that thresholds were not exceeded, even though exceeding the thresholds would be unlikely. Commenters also state that non-coal/oil-fired facilities with coal/oil-fired backup generation capability would have to develop information throughout the year as if section 313 applied to them, since they could not be sure that they would not have to operate their backup generating systems during a given year. EPA acknowledges that facilities which combust small quantities of coal and oil would have to expend a certain amount of resources to determine that thresholds were not exceeded. However, EPA believes that facilities would already track the quantity of each fuel type used, and that this would be a major component of both the compliance determination and the calculation of release and other waste management quantities. Moreover, establishing the facility definitions recommended by some commenters only adds another layer of compliance determinations. In addition, EPA points out that, pursuant to EPCRA section 313(g)(2), facilities when reporting ''may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved.'' The statute does not require the facility to obtain data beyond that which is readily available. A facility which combusts oil or coal late in the reporting year and thus becomes a covered facility because of that combustion of coal or oil would need only to use readily available data or make reasonable estimates in reporting under EPCRA section 313. In this case, these facilities would use the information it has collected throughout the year to support the end of the year threshold determinations and release and other waste management reporting estimates. Facilities which may or may not be subject to EPCRA section 313, depending on whether they combust coal or oil in a given year, would not have any greater burden of tracking information during the course of the year than a facility which knows that it will not be a covered facility. Facilities which may or may not be subject to EPCRA section 313, depending on whether they combust coal or oil in a given year, would only incur a compliance and reporting burden if they did in fact combust coal or oil that year, at which point they would have to perform threshold determinations and, possibly, release and other waste management calculations using the information available to them. EPA also points out that it intends to develop reporting guidance for the industry which will reduce burden on industry by assisting industry in making compliance determinations and reporting calculations based on information such as fuel quantity and type. EPA believes its approach for defining the utilities covered best balances the reporting interests of the public with the concerns expressed by the commenters given the existing burden reduction mechanisms in the statute and regulations.

A number of industry and trade association commenters state that EPA should define facility coverage for electric utilities in much the same way as multi-establishment complexes have been defined for manufacturing facilities under EPCRA section 313. According to the commenters, the preamble to the proposed rule suggested that EPA would not apply its existing ''multi-establishment rule'' to electric utility facilities that have both covered and non-covered plants within SIC codes 4911, 4931, and 4939 located at a single facility, and that EPA failed to provide a reasoned explanation for this inconsistent treatment. Some commenters believe that electric utilities should be allowed to divide such a facility into establishments and make a separate compliance determination for each establishment. One commenter, the Class of '85 Regulatory Response Group, recommended that EPA specifically exempt non-coal/oil-fired generating stations that are located on contiguous property and under common ownership with coal/oil-fired generating stations.

EPA disagrees with the commenters and believes the Agency is consistent in its application of the multi-establishment provision. Prior to this rulemaking, multi-establishment facilities with establishments in two or more different SIC codes would have been subject to reporting requirements, if: (1) All establishments are in a covered SIC code; (2) if the sum of products shipped and/or produced from those establishment(s) in a covered SIC code is greater than 50 percent of the total value of all products shipped and/or produced at the facility; or (3) one establishment in a covered SIC code contributes more in terms of value of products shipped and/or produced than any other establishment at the facility (see 53 FR 4526).

Establishments are defined as part of the SIC code system. The Standard Industrial Classification Manual (Ref. 4) indicates that the SIC codes 4911, 4931, and 4939 do not have an ''establishment'' distinction based on fuel type. Consequently, a facility using different fuel types, or operating two generators on different fuel types, is still considered a single establishment (i.e., within a single SIC code). For electric utilities, the multi-establishment provision applies only if a generating station is part of a facility with another establishment in a different SIC code, and the economic conditions described above are met by the establishment in the different SIC code. EPA believes that the multi-establishment provision can be applied consistently and similarly to electric utilities, and that there is no justification for interpreting the multi-establishment provision differently for facilities in this industry. EPA also believes it would be inappropriate to develop a specific exemption for non-coal or oil-fired generating units located on contiguous or adjacent property and under the same ownership as one or more coal/oil-fired units. The effect of such an exemption would be to divide a single establishment at a facility into covered and non-covered sections, which is inconsistent with the existing reporting requirements for manufacturing industries.

The American Public Power Association states that EPA should exclude electric utilities owned by local communities and regional governmental entities from the EPCRA section 313

reporting requirements. According to the commenter, EPA recognized the special circumstances of local government control of facilities when it decided to exclude from the proposal several industry groups primarily operated by local municipal and regional governmental entities. According to the commenter, there is little distinction between those excluded industry groups and publicly-owned electric utility systems. The commenter also stated that reporting of EPCRA section 313 toxic chemicals by publicly-owned utilities would be better left to the discretion of the local government entities that own and control them, because these governing bodies would be better able to define and implement reporting programs that are responsive to the needs of local citizens.

EPA did not include in the proposal several industry groups based on several ''additional considerations'' (see 61 FR 33592). None of the considerations were used to determine whether candidate industry groups met the statutory standard for addition. EPA may consider these industry groups in a future rulemaking. The publicly-owned facilities the commenter cites were not included for a number of reasons, including the potential impacts on other governmental entities. While EPA acknowledges this concern about impacts on other governmental entities is also relevant to publicly-owned electric utilities, EPA points out that this consideration was just one of many factors taken into account in screening industries. In evaluating this industry for addition, EPA judged that publicly-owned electric utilities conduct operations which are virtually indistinguishable from their investor-owned counterparts and that there are not other general issues meriting deferral of the utility industry. EPA does not believe that any significant difference exists between publicly-owned and privately-owned electric utilities for purposes of reporting under EPCRA section 313. Therefore, EPA believes it is appropriate to include both publicly- and privately-owned electric utilities in this facility expansion rule.

One commenter requests clarification regarding whether a facility which combusts oil and exceeds thresholds would have to include releases from natural gas combustion conducted at the same facility. If the facility combusts oil to generate power for distribution in commerce, the facility is a covered facility for purposes of EPCRA section 313. A covered facility must apply toward activity thresholds the quantities of listed toxic chemicals ''manufactured,'' ''processed,'' or ''otherwise used'' in all non-exempt activities at the facility, including natural gas combustion, which is not itself an exempt activity. The EPCRA section 313 reporting exemptions are codified at 40 CFR 372.38. If the facility exceeds a threshold for any listed chemical, it must include in its Form R for that chemical the release and other waste management quantities resulting from all non-exempt activities.

A number of industry commenters point out that facilities which combust only small quantities of coal or oil may exceed the ''otherwise use'' threshold only for chemicals used in support operations such as maintenance and cleaning. These commenters question whether this contradicts EPA's purpose in excluding non-coal or oil-fired facilities, which might also report on these same uses. Some of these commenters believe it is inconsistent of EPA to rely on ''otherwise use'' activities to justify adding coal and oil-fired facilities but not to add non-coal or oil-fired facilities which also conduct these activities. One commenter requests that EPA specifically exempt the ''otherwise use'' of chemicals in these support operations.

EPA is adding coal and oil-fired facilities because their primary function involves the combustion of fuels containing EPCRA section 313 chemicals and generation of toxic chemicals during that combustion. As covered facilities, these facilities must report on releases and other waste management activities of all EPCRA section 313 chemicals for which they exceed thresholds, excluding only certain specifically exempt activities codified at 40 CFR 372.38. This is consistent with the existing reporting requirements and guidance for manufacturing facilities. EPA does not agree that it is inconsistent to require coal and oil-fired facilities to report for support operations, when non-coal/oil-fired facilities will not have to report for similar support operations because they will not be considered covered facilities. EPA recognized in the proposal that reporting associated with the ''otherwise use'' of chemicals in support activities at non-coal or oil-fired facilities has some value. However, as a matter of prioritizing, EPA did not include nuclear, hydroelectric and natural gas facilities in this action because their primary function does not involve the combustion of fuels containing listed chemicals in reportable concentrations.

Two commenters observe that EPA discussed conventional oil-fired steam generation but did not discuss oil turbines in its proposal. One commenter requested that EPA clarify whether oil turbines are covered, and another believes EPA should exempt oil turbines from coverage since many of the EPCRA section 313 constituents in oil are consumed during combustion and turbines do not use listed chemicals in the large quantities associated with boiler operation and maintenance.

EPA described only conventional steam generation in the proposed rule because this is a common method of producing electric power. However, in describing this method of power generation, EPA did not mean to imply that only this method was subject to the EPCRA section 313 reporting requirements. EPA clearly stated that ''any facility which combusts coal or oil in whatever percentage of its fuel use, and whether for primary or back-up generation, would become a covered facility. . . .'' Facilities which combust oil in oil turbines to generate electricity for distribution in commerce would fall within SIC codes 4911, 4931, and 4939, and therefore would be considered covered facilities. Because facilities generating electricity using oil turbines fall within SIC codes 4911, 4931, and 4939, and because the combustion of oil in oil turbines results in the ''coincidental manufacture'' of EPCRA section 313 chemicals, EPA sees no reason to exclude such facilities from EPCRA section 313 coverage.

One commenter points out that some facilities may combust alternative fuels, including solid and liquid waste, used oil, and fuels derived from the processing of coal or oil. The commenter requests clarification about the applicability of the EPCRA section 313 reporting requirements to facilities which burn such fuels. An electric utility facility which combusts used oil, or solid or liquid waste containing coal or oil, would be considered a covered facility under EPCRA section 313. Because the commenter did not provide specific information about the alternative fuels ''derived from the processing of coal or oil,'' EPA cannot provide the requested clarification for such fuels. EPA will examine issues surrounding the combustion of alternative fuels, including waste oil and fuels derived from the processing of coal or oil, in its development of reporting guidance for this industry.

c. *Public misperception of risk.* Most industry commenters believe that requiring electric utilities to report emissions under EPCRA section 313 is inappropriate because such emissions are not hazardous and pose little risk to the public. The commenters state that emissions and combustion byproducts from utilities have been studied by EPA

and others and been proven not to pose a significant risk to human health or the environment. The commenters argue that because TRI data are provided as annual volume estimates without regard to factors such as chemical concentration, toxicity, or exposure potential, the data for electric utility combustion activities would be so oversimplified and unqualified that it would lead to public misperception of risk. A number of industry commenters state that TRI reporting does not take into consideration the fact that releases are regulated and permitted to ensure that health risks are controlled. Other industry commenters express concern that the large volume of reported releases from electric utilities could dwarf and obscure other, possibly more hazardous releases from other industries, such as the manufacturing industries which were the original subject of EPCRA section 313.

EPCRA section 313 is not a risk-based reporting system, and EPA makes no determination, through this action, of the risks to human health or the environment from fuel combustion or other activities at electric utilities. Further, any determination by EPA or others that a particular type of release from a facility does not pose an unacceptable risk does not constitute a reason to exclude from EPCRA section 313 such releases or the facility responsible for it. ''Risk'' is not an EPCRA section 313 criterion for addition of facilities. Congress intended EPCRA section 313 reporting to provide the public with information about toxic chemical release volumes. Reporting by electric utilities will increase the universe of information available to the public about toxic chemical releases. The public will be able to use this information, in combination with other information, to better understand any potential risks from electric utility operations. EPA recognizes that TRI release data may sometimes be mischaracterized or misperceived. EPA believes that, to the extent public misperceptions arise through TRI data, EPA must continue to improve its outreach and education efforts regarding the data collected under EPCRA section 313. EPA does not agree that large release volumes reported by one industry would ''obscure'' or improperly direct attention away from release volumes reported by other industries; however, to the extent that this may occur, EPA believes the appropriate solution is outreach and education to better explain the significance of other factors than volume of release, not denying the public access to the information at all. As noted previously, EPA will initiate a stakeholder process to consider these and other issues.

d. *Combustion byproducts.* Many commenters state that most trace metals and other impurities in coal and oil would be present below *de minimis* concentrations and therefore would not be subject to reporting under the ''otherwise use'' activity. The commenters maintain that combustion processes do not ''manufacture'' toxic chemicals and that including combustion under the definition of manufacture is in effect an attempt to remove the *de minimis* exemption for metals that exist as impurities in fuels.

EPA believes that all of the constituents of coal and oil are subject to the ''otherwise use'' activity thresholds when combusted for energy production and may be subject to the *de minimis* exemption for this activity. Therefore, toxic chemicals present in coal and oil ''otherwise used'' below *de minimis* levels would not be subject to reporting under the otherwise use activity. However, as discussed in Unit V.E.3. of this preamble, the combustion of metals and metal compounds in coal and oil does ''coincidentally manufacture'' new metal compounds as byproducts and thus these combustion processes are not eligible for the *de minimis* exemption. The combustion of coal and oil by electric utilities produces both a product (the energy produced) and byproducts (e.g., ash and combustion gases). Under EPCRA section 313, ''manufactured'' impurities that remain with a product are subject to the *de minimis* exemption, but ''manufactured'' byproducts that do not remain with the product are not subject to the *de minimis* exemption (see Unit V.E.1. of this preamble). In the case of the combustion of coal and oil there are no chemicals that remain in the product (energy) as impurities; therefore, all of the chemicals that are produced during combustion are byproducts that are separate from the product and therefore not eligible for the *de minimis* exemption.

e. *Determination of threshold and release quantities.* Many commenters state that it is not possible to determine changes in the valence state of metals that occur as a result of combustion, and that little information exists on what metal compounds are in coal and oil prior to combustion and what metal compounds are in the ash byproducts. The commenters state that the constituents of coal and oil and combustion byproducts vary, and since no monitoring or testing is required under EPCRA section 313, and is probably not possible, facilities will be forced to make threshold and release determinations based on various theories of what happens during combustion. The commenters state that for these reasons the determination of threshold and release quantities is difficult, if not impossible, and therefore, the data will be inconsistent and of little value to the public.

EPA disagrees with the commenters' statements regarding their inability to determine threshold and release quantities of EPCRA section 313 metal compounds ''manufactured'' as a result of the combustion of coal and oil. It is not necessary to measure the changes in the valence state of the metals that take place at the time of combustion or as a result of combustion in order to determine if EPCRA section 313 reportable metals or metal compounds have been ''manufactured.'' As has been discussed in Unit V.E.3. of this preamble, the test is not whether a metal's valence state has changed, but rather whether a new metal compound has been created. The determination of threshold quantities can be done by either estimating or measuring the metal compounds that exist after combustion occurs. As the commenters correctly state, EPCRA section 313 does not require any additional monitoring or testing; calculations are to be based on readily available data which may include monitoring data collected pursuant to other provisions of law, or if such data are not readily available, reasonable estimates can be used.

The issues raised by the commenters mainly relate to the determination of reporting thresholds rather than reporting of releases and transfers. EPA does not believe that it is difficult to accurately determine threshold quantities. Even if there were some difficulty in determining threshold quantities, EPA does not believe that is sufficient reason to exempt facilities from the reporting requirements of EPCRA section 313. In the absence of better facility-specific information, estimates can be used to determine whether thresholds have been exceeded. Data on what happens to the metal constituents in coal and oil indicate that most, if not all metals, are present as some form of metal compound that does not usually survive the combustion process (see Unit V.E.3. of this preamble and Refs. 1 and 16). Therefore, for estimating the amount of metal compounds manufactured from the combustion of coal and oil, EPA believes that, in the absence of better facility-specific information, a facility may assume that all of the metals present in the coal or oil are converted

to the lowest weight metal oxide (per unit of the metal) possible for each metal. For example, for purposes of threshold determinations only, if the average concentration of chromium in coal were 0.001 lb per ton, then its combustion would produce 0.0015 lbs of chromium (III) oxide (Cr_2O_3) per ton of coal combusted which would be counted towards the manufacturing threshold for chromium compounds. In order to determine threshold quantities, the same kind of calculation can be performed for all metals in coal and oil. EPA believes that it is unlikely that use of this estimation method would require reporting by any facilities that are not exceeding thresholds because at least some, if not many, of the metal compounds ''manufactured'' as a result of combustion will be heavier than the lowest weight metal oxide (Ref. 15).

One exception to the use of metal oxides for threshold determinations may be mercury. Data indicate that substantial amounts (approximately 90 percent) of the mercury in coal and oil is volatilized as the metal itself rather than converted to a metal compound (Refs. 1 and 16). However, this makes little difference in threshold calculations since in mercury oxide (HgO), the oxygen only accounts for 7.4 percent of the compound's weight. Therefore, using the metal itself or the metal oxide as the basis for threshold calculations for mercury will make little difference in the threshold determinations. Since the data indicate that most mercury remains volatilized as elemental mercury after combustion, the weight of the metal, rather than that of the metal oxide, can be used in threshold determinations, and this amount then applied towards the ''manufacture'' activity reporting threshold for mercury.

With regard to the reporting of release and transfer quantities, for the metal compound categories, the weight of the EPCRA section 313 metal itself, not the weight of the entire metal compound, is used to report quantities released and transferred. Therefore, it is not necessary to know what metal compounds have been ''manufactured'' in order to report on releases and other waste management activities of the EPCRA setion 313 metal. The only information needed is the amount of the EPCRA section 313 metals in the stack emissions and ash byproducts. Information on typical concentrations of metals in stack emissions and ash byproducts from the combustion of coal and oil is available (Refs. 1 and 16) and can be used as a basis for estimating quantities released per ton of coal or oil combusted. Again, if better facility-specific information is not available, then estimates can be used based on the average content of stack emissions and ash byproducts from coal or oil combustion. This information can come from data on the coal or oil the facility actually uses or if this is not available, then data on the average metal content of coal and oil can be used. Even estimates that vary from facility to facility will ultimately provide the public with better information than if nothing is reported concerning releases and other waste management that result from fuel combustion by electric utilities.

f. *Disposal of combustion byproducts.* Many industry commenters believe that toxic chemical constituents in electric utility combustion byproducts should not be subject to EPCRA section 313 reporting. The commenters state that EPA studies have concluded that such combustion byproduct ash is not a hazardous waste under RCRA and can be disposed of as any other non-hazardous waste. The commenters believe that reporting releases of EPCRA section 313 toxic chemicals in ash and sludge will mislead the public about risk from these substances. Several commenters stated that ash landfills and disposal units are highly regulated and are designed to protect the public and environment; one commenter suggested EPA require reporting only for quantities of listed toxic chemicals which migrate out of such units.

In its ''Final Regulatory Determination on Four Large-Volume Wastes from the Combustion of Coal by Electric Utility Power Plants'' (58 FR 42466, August 9, 1993), EPA specifically concluded that regulation under subtitle C of RCRA is inappropriate for fly ash, bottom ash, boiler slag, and flue gas emission control waste because of the limited risks posed by these substances and the existence of generally adequate state and federal regulatory programs. However, in this determination, the Agency did not conclude that ash and sludge from coal and oil combustion pose no risk. Rather, EPA stated that it ''believes that the potential for damage from these wastes is most often determined by site- or region-specific factors and that the current State approach to regulation is thus appropriate.'' In making the disposal of toxic chemicals contained in combustion byproduct ash a Form R reportable activity under the EPCRA section 313 reporting requirements, EPA is not drawing any conclusion about the risk of those wastes to communities. Rather, the Agency is providing the data on these wastes, as well as on metal wastes resulting from the removal of sulfur dioxide from flue gas emissions, to the public to allow the public to use the data, as well as information on the hazards of chemicals, site-specific information that will affect exposure, and other data on non-TRI sources of the chemical to determine if there is a risk. EPA acknowledges that reporting the disposal in a secure landfill or impoundment of constituents in combustion byproduct ash without explanation potentially could result in public misperception of the risks of such disposal. However, the Agency continues to believe that expanding the TRI reporting system to include additional industry sectors will provide the public with a more complete picture of toxic chemical releases, and that this increased information is intended to lessen, not increase, the possibility for misperception of toxic chemical risks.

EPA recognizes that TRI data may sometimes be mischaracterized or misperceived, but EPA believes that any such misperceptions are best addressed through continued and improved outreach and education efforts. The Agency has also made some changes to the EPCRA section 313 reporting form for the 1996 reporting year in order to address some of the concerns about public misperception and to better help the public understand the nature of the various releases to land. These changes are discussed in more detail in Ref. 15. As mentioned above, EPA will initiate a stakeholder process to discuss the reporting forms and other issues, including whether it should add an element relating to the intra-land movement of waste from landfills and possibly surface impoundments, and whether such reporting would enable the public to better characterize relative risks from the various forms of land disposal.

Many commenters object to the requirement that electric utilities report for combustion byproduct ash, when the Agency chose to exclude from EPCRA section 313 reporting non-hazardous waste facilities in SIC code 4953 which dispose of the same ash. Numerous commenters argue that it is inconsistent to require utilities which dispose of their ash onsite to report the quantities of listed chemicals in it, while utilities which sell or otherwise distribute their ash in commerce for reuse would not have to report these quantities.

The commenters are correct that certain facilities within SIC code 4953 which typically dispose of utility combustion byproduct ash were not included in this expansion initiative and therefore would not have to report disposal of this ash. However, EPA did not ''exclude'' these facilities from

coverage under EPCRA section 313; EPA simply chose not to add these facilities at this time. As EPA stated in the proposed rule, ''these facilities are primarily operated by local municipalities and regional government entities. Although each industry group may manage significant quantities of EPCRA section 313 listed toxic chemicals, the manner in which they manage these chemicals raises several cross-governmental issues EPA is continuing to address. As a result, EPA is not considering these industry groups at this time.'' EPA goes on to say that it ''may reconsider at a later date some or all of the industry groups which were excluded as a result of the considerations mentioned above.'' EPA also points out that any EPCRA section 313 covered facility which disposes of combustion byproduct ash would have to report for the EPCRA section 313 chemicals contained in that ash if the facility exceeded an activity threshold for the chemical. This requirement is not unique to electric utility facilities.

The commenters are correct that under the existing EPCRA section 313 reporting regulations, toxic chemicals contained in a substance which is disposed of on-site must be reported, while toxic chemicals contained in the same substance would not be reported if the substance is sold as a product. EPA recognizes that the public may have an interest in and benefit from knowing about the presence of toxic chemicals in products produced by facilities. EPA issued an Advance Notice of Proposed Rulemaking (61 FR 51322, October 1, 1996) (FRL–5387–6) concerning the possible collection of this and other types of information. Following a series of public meetings and evaluation of public comment, EPA will determine whether and how to proceed on that initiative.

g. *Addition of SIC code 4961.* In the proposal, EPA requested comment on whether to add SIC code 4961, Steam and Air Conditioning Supply, to EPCRA section 313. (This SIC code was misnumbered as 4960 although correctly described in the proposal.) Four commenters opposed the addition of SIC code 4961. No comments were received in support of adding this industry, and no comments were received which provided any additional information about this industry group. Therefore, EPA has not included this industry in this rule. EPA may reconsider this industry group in a future rulemaking in light of additional information.

5. *Commercial hazardous waste treatment and disposal.* EPA is adding to the list of industry groups covered under EPCRA section 313, facilities in SIC code 4953 which are regulated under the RCRA Subtitle C. EPA received a variety of comments regarding the inclusion of these facilities. Many of the concerns raised by industry representatives, such as the classification of waste disposal as a release under section 313, deferring the effective date of reporting, and considering treatment, stabilization, and disposal as an ''otherwise use'' under section 313, relate to more than one industry and therefore have been addressed in separate sections of this preamble. Other comments that raise major issues with this industry sector are addressed below. All of the issues are addressed in greater detail in the *Response to Comments* document (Ref. 15).

Some commenters stated that EPA's application of the EPCRA section 313 reporting requirements to commercial RCRA Subtitle C hazardous waste management facilities does not further the statutory purpose underlying EPCRA section 313 because no additional information concerning release of toxic chemicals will be provided. One commenter asserted that the only releases occurring at RCRA facilities are permitted releases to air and these are monitored and reported pursuant to the CAA; permitted releases to water and these are monitored and reported pursuant to the CWA; and unintended releases to the environment which are monitored, reported, and subject to corrective action under RCRA. The commenter stated that requirements under RCRA incorporate public participation during the permitting process, which ensure releases do not occur and that communities are well informed of any and all toxic releases that do occur.

EPA disagrees with these commenters. The information about toxic chemical releases to the environment that are permitted, monitored, reported on, or otherwise regulated under other environmental statutes is not available to the public in the same manner as information reported to TRI. This includes information about releases regulated under the CAA, the CWA, RCRA, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). TRI consolidates data addressing toxic chemical releases to all environmental media into an inventory that is a single, multi-media data resource, consistently defined and formatted, annually aggregated, and readily available to the public.

Furthermore, permitting processes under other environmental statutes, while providing opportunities for public participation, do not afford the public the kind of information made available through TRI. In fact, information reported to TRI is often used both by members of the public to enhance their participation in these permit processes, and by federal, state, and local government decision makers in administering these permit processes. In addition, legislative history indicates that Congress contemplated reporting under EPCRA section 313 to include activities and amounts permitted under other statutes such as the CWA and RCRA, and that the reporting would result in a cross-media inventory describing the disposition of EPCRA section 313 toxic chemicals to land, air, and water. (See, for example, A Legislative History of the Superfund Amendments and Reauthorization Act of 1986 (Pub. Law 99-499), Vol. II at 1083, and Vol. V at 4194, 4196-97, and 4200.)

Some commenters asserted that commercial RCRA Subtitle C hazardous waste management facilities do not ''manufacture,'' ''process,'' or ''otherwise use'' listed EPCRA section 313 toxic chemicals, and therefore, should not be included in TRI. Another commenter stated that commercial TSDs do not meet EPA's activity factor because TSDs do not ''otherwise use'' chemicals and added that:

> EPA concluded that the statute as originally written and implemented did not apply to Subtitle C facilities that would not ordinarily be subject to the rule. [Nothing] has changed other than EPA's desire to include these facilities and waste management activities in the section 313 reporting requirements. The Agency identifies no new information needs that were not available when it originally interpreted otherwise use to expressly exclude waste management activities from reporting under section 313.

EPA disagrees with these commenters. As identified in the *Economic Analysis* and Industry Profile, commercial RCRA Subtitle C hazardous waste management facilities may ''manufacture,'' ''process,'' or ''otherwise use'' listed toxic chemicals. EPCRA section 313 toxic chemicals are, for example, coincidentally manufactured during hazardous waste incineration and ''otherwise used'' for injection of hazardous waste or for hazardous waste treatment (Ref. 12). Further, there may be facilities within this SIC code that also recycle spent solvents for distribution in commerce and may therefore be ''processing'' EPCRA section 313 toxic chemicals. Finally, as noted in the *Economic Analysis,* under EPA's revised

interpretation of ''otherwise use,'' numerous chemicals contained in wastes received or generated from the management of wastes received are treated for destruction, stabilized, or disposed are ''otherwise used'' (Ref. 12).

In addition, contrary to the commenters' assertion, the proposal clearly explains the basis and purpose for EPA's revised interpretation of ''otherwise use.'' As EPA notes in the proposal, EPA is revising its interpretation of ''otherwise use'' to address the unintended consequence of its previous interpretation. EPA states that it ''is concerned that, based on current guidance, the public may not have access to information relating to releases of toxic chemicals from facilities within SIC codes 20 through 39 that are receiving materials for the purposes of treatment for destruction, stabilization, or disposal.'' (61 FR 33596) As EPA clearly expresses, it was concerned that its previous interpretation left a significant gap in the information reported by facilities within SIC codes 20 through 39, and did not want to perpetuate this informational gap when adding other industry groups. Thus, although recognizing that RCRA Subtitle C facilities could report information as a result of the ''manufacture,'' ''processing,'' or ''otherwise use'' activities described above and in support documents, EPA announced its intent to revise the interpretation of ''otherwise use'' for all industries subject to EPCRA section 313 to rectify this loss of information from facilities within 20 through 39 and the potential loss of information from any added facilities. EPA believes that the addition of facilities within this industry group and the revised interpretation will significantly add to the public's right-to-know about the use and disposition of toxic chemicals in their communities. EPA has provided further discussion of its revised interpretation in Unit V.F.2. of this preamble.

Comments submitted by two industry representatives stated that TRI reporting by commercial RCRA Subtitle C hazardous waste management facilities will be highly inaccurate because information on concentrations of constituents is not usually available for wastes received from manufacturing facilities, or from contaminated media received from CERCLA or RCRA corrective action and clean-up activities. The commenters asserted that the RCRA reporting and manifest system does not provide data on chemical concentrations in hazardous wastes, and that the information that is provided may not pertain to the total concentration of the compound or may be in range values that can be extremely wide. These commenters also repeated statements made by several others that, unlike manufacturing plants, it is impossible for a RCRA hazardous waste treatment or disposal facility to review the paperwork it receives and determine from it the quantities of chemicals entering the facility. Similar comments stated that information required from generators for wastes identifies if the waste may contain, or may leach, certain chemical constituents above a minimum level, or is generated by industry-specific processes. Accurate chemical constituents are not necessary for processing wastes.

EPA believes, based in part on industry comments, that commercial RCRA Subtitle C hazardous waste management TSDs receive and prepare information on chemicals contained in wastes that is sufficient for reporting under section 313, and that this information will be beneficial as reported. Generators that send hazardous waste to facilities for treatment, recovery, or disposal provide RCRA manifests which contain a variety of detail on the wastes they transfer. While this information is provided as a means to satisfy associated RCRA requirements, EPA believes that in many instances this information can contain significant detail and can be useful in developing constituent specific estimates required under section 313. In addition, one set of industry comments indicate that waste generators provide waste handlers with information on the concentration ranges of constituents in waste.

> Laidlaw utilizes a profile system in order to obtain information from the waste generator that is needed to properly treat, store or dispose of the hazardous waste. Variants of this type of system is generally used by all members of the hazardous waste management industry....Profiles typically provide information on RCRA hazardous constituents present in the waste, including concentration ranges.

Laidlaw attached examples of these profiles. For example, the profile for ''Line Rinse Mop Water'' lists the following constituents: Water - 50-80%, Methanol - 0-5%, Ethanol - 10-20%, Acetone - 0-2%, Isopropanol - 3-15%, Tetrachloroethylene - 0-1%, n-Butyl alcohol - 0-1%, Mineral spirits - 3-15%, Pyrethroids - 0-1%, Dirt - 1-5%. This range information is analogous to the information on Material Safety Data Sheets (MSDS) that the manufacturing sector uses to estimate the constituents of mixtures. For example, an MSDS for ''Xylenes'' lists the following constituents: m-Xylene - 40-65%, o-Xylene - 15-20%, p-Xylene - 0-20%, Ethyl benzene - 15-25%.

Further, EPA believes that TSD facilities that receive hazardous waste in many cases conduct additional analyses and develop profiles of the wastes they receive for purposes of treatment or disposal in order to ensure that the waste they receive meets their recovery, treatment or disposal specifications, or to otherwise properly manage wastes received. For example, TSDs are required under 40 CFR 264.13 and 265.13 to obtain a detailed chemical and physical analysis of a representative sample of any hazardous, and certain non-hazardous, wastes prior to any treatment, storage, or disposal, and to develop written waste analysis plans that specify the frequency of sampling.

EPA also disagrees that it would be nearly impossible or extremely expensive for TSDs to develop formulas to calculate concentrations of toxic chemicals received in hazardous wastes. EPA expects that developing toxic chemical concentration estimating techniques would not be extremely difficult for hazardous wastes listed as toxic hazardous wastes at 40 CFR 261.33(f) (''U-listings''), or acutely hazardous waste listed at 40 CFR 261.33(e) (''P-listings''). These materials are discarded commercial chemical products, off-specification species, container residues, and spill residues and are likely to be present as highly concentrated chemicals. These waste codes also represent a significant portion of the RCRA hazardous waste manifests required to accompany all shipments of hazardous waste to commercial RCRA Subtitle C hazardous waste management facilities. Similarly, many of the RCRA wastes listed at 40 CFR 261.31 and 40 CFR 261.32 are narrowly defined, such as F007 (spent cyanide plating bath solutions from electroplating operations) and K009 (distillation bottoms from the production of acetaldehyde from ethylene), and relate directly to process-specific waste steams that lend themselves readily to generic toxic chemical concentration estimating procedures.

EPA agrees that concentrations of toxic chemicals vary widely for RCRA hazardous wastes identified at 40 CFR 261.21 through 261.24 by hazardous characteristics (corrosive, ignitable, reactive, and toxic) and for contaminated media from Superfund or RCRA corrective action clean-ups, and that these wastes may represent a large portion of the total quantities of hazardous wastes received by commercial RCRA Subtitle C hazardous waste management facilities. However,

TSDs are required to develop a significant amount of information regarding the constituent composition of certain characteristic wastes to ensure compliance with RCRA requirements such as the treatment standards for underlying hazardous constituents. For example, 40 CFR 268.48 requires facilities to conduct routine sampling to ensure compliance with the treatment standards for the listed hazardous constituents. Despite the fact that concentration data available to these facilities for these wastes may be variable in some cases, or correspond to leachable fractions instead of total concentrations, EPA nonetheless believes that these data, along with RCRA manifests, waste profile reporting data, and facilities' knowledge of the waste management processes they operate, provide a substantial basis for facilities to develop reasonable estimates of annual quantities of each RCRA hazardous constituent contained in these waste streams. Furthermore, manufacturers currently reporting to TRI that operate on-site RCRA Subtitle C hazardous waste management facilities have nearly a decade of experience in developing reasonable release estimates associated with these processes. Such experience, along with the actual TRI reports provided by these facilities since 1987, can be drawn on to support the endeavor. In addition, EPA has provided guidance to current reporters in the proposed and final rules implementing the EPCRA section 313 reporting requirements (52 FR 2115-2116, 53 FR 4510-4511) and the 1995 Toxic Chemical Release Inventory Reporting Form R and Instructions (EPA 745-K-96-001) for making threshold determinations on the components of mixtures, which can be applied to wastes, even though waste is not a mixture. EPA's guidance includes the following scenarios: (1) The concentration range is known, (2) only the upper bound concentration is known, (3) only the lower bound concentration is known, and (4) when no concentration information is known.

Finally, many of the currently reporting manufacturers have worked through trade associations and other cooperative mechanisms to develop industry-specific estimating procedures that meet the EPCRA section 313 reporting requirements to provide reasonable release estimates based on information generally in the possession of reporting facilities. EPA believes similar cooperative endeavors could be initiated to develop similar estimating procedures for commercial RCRA Subtitle C hazardous waste management facilities, since the number of such facilities is relatively small, allowing most if not all members to participate in the endeavor.

Consequently, EPA believes that the combination of information received with waste transfers and information developed by the facility will enable TSD facilities to adequately determine their compliance requirements under section 313 and that the additional waste management information anticipated from these facilities will further the purposes of TRI.

One commenter asserted that EPA's approach to TRI release reporting at RCRA facilities is contrary to the fundamental goal of EPCRA, because communities will be misled into believing that all wastes placed in RCRA disposal units are released, and ''actual'' releases from RCRA disposal units are not to be reported pursuant to 1995 Form R instructions and guidance. Specifically, the commenter noted that amounts placed in managed units, such as subtitle C landfills, will be reported when they are disposed of, while the resulting emissions such as the amounts that migrate or are emitted to air will not be reported.

EPA does not believe that the manner in which information will be reported under section 313 by hazardous waste facilities will mislead communities or will be contrary to the goals served by section 313. Under section 313, facilities must report information on amounts of listed chemicals in wastes, including details regarding the environmental media into which releases occurred and the other measures that were taken to manage the wastes annually. For example, if a hazardous waste treatment facility exceeds the activity threshold for a toxic chemical within a given year and during that year the entire amount was disposed in a landfill and remained there, then the facility would report the entire amount as being disposed in a landfill and the information would appear as such. If the facility exceeded an activity threshold for another toxic chemical that may be more volatile, the facility would report the estimated amount disposed that remained in the landfill as disposed in a landfill and the fraction that could be estimated to have volatilized as released to air during the reporting period.

In order to address industry concerns, EPA modified the Form R for the 1996 reporting year in an effort to avoid public misperception and to promote a better understanding of the differences among various waste disposal methods. For additional detail regarding this reporting modification, refer to Unit V.F.1. of this preamble. In addition, as noted above, EPA will initiate a stakeholder process to consider these and other issues.

A number of commenters stated that the distortion of disposal as release would focus public attention on the end of the manufacturing cycle (treatment and disposal), when there is virtually nothing that commercial RCRA Subtitle C hazardous waste management facilities can do to minimize or reduce the use of EPCRA section 313 toxic chemicals, and that EPA will have missed the target of encouraging reduction and minimization by shifting the focus away from the manufacturing cycle to the waste treatment component which is least able to affect these goals.

EPA fully supports source reduction and waste minimization activities. One of the benefits of making information publicly available through TRI, but which has been predominately limited to sources within the manufacturing sector, has been the ability to detect shifts in amounts of waste directly disposed as compared to amounts being recycled for example. Encouraging reductions of toxic chemicals in waste and applying pollution prevention practices, however, are not the primary purposes under which section 313 was established. Section 313 was established in order to make publicly available information regarding routine chemical releases, and the management and disposition of listed chemicals within local communities, for all media, in one location. By including hazardous waste treatment and disposal facilities in TRI, the public will have ready access to more complete information on the management and disposition of toxic chemicals in their communities.

Several commenters proposed that, if EPA included commercial RCRA Subtitle C hazardous waste management facilities under section 313, EPA should delay reporting for their industry for 1 year and commence coverage on January 1, 1998, in order for them to develop data gathering systems.

EPA acknowledges that some commercial RCRA Subtitle C hazardous waste management facilities may want to implement data management strategies to best comply with TRI reporting. However, the Agency believes that such modifications will take substantially less than a year to implement, and that information corresponding to the portion of the reporting year during which tracking modifications are being developed can either be entered by facilities subsequent to completion of the modifications or extrapolated for the missing period based on information entered into such systems for the

duration of the reporting year. As noted in Unit V.D. of this preamble, EPA is not requiring reporting by any of the added industry groups for the reporting year 1997. This rule is effective December 31, 1997.

One commenter submitted a statement that TRI does not offer any mechanism to indicate beneficial destruction of a listed section 313 chemical, and therefore, TRI does not reflect risk reduction provided by the destruction, stabilization, recovery, or other treatment of hazardous wastes.

EPA disagrees that TRI does not offer any mechanism to indicate destruction, removal, or other management of EPCRA section 313 listed chemicals. Facilities report in section 6 of Form R the quantities of toxic chemicals discharged to Publicly Owned Treatment Works (POTWs) (section 6.1) or transferred to other off-site locations for further waste management (section 6.2). In section 6.2, facilities identify the receiving waste management facility, the quantity of the toxic chemical transferred to that facility, and the specific type of management practice to be applied to destroy, treat, combust for energy recovery, recover, or stabilize the toxic chemical in wastestreams (M codes). Facilities report in section 7 of Form R more detailed information describing on-site energy recovery and recycling of the toxic chemicals, and waste treatment methods applied to the waste streams containing the toxic chemical. In section 8 of Form R, facilities report on waste management activities applied to the listed toxic chemical. Facilities also report in section 8 whether and which types of source reduction were implemented for each reported toxic chemical. EPA believes that the sum of these information items does in fact provide significant insights into the risk reduction provided by information on methods used to manage the listed toxic chemical in waste streams.

Additionally, RCRA Subtitle C facilities will be faced with a unique opportunity to demonstrate their efficiency in reclaiming a toxic chemical or destroying the toxic chemical through reporting under section 313. Section 313 reporting by RCRA subtitle C facilities will be based on their commercial treatment and disposal activities and the amounts that they report as released will be amounts that are released as a result of their treatment processes or amounts that they directly dispose. A facility with an efficient treatment process will report smaller amounts disposed or otherwise released than a facility with a less efficient process.

Some commenters stated that expanding TRI to include commercial RCRA Subtitle C hazardous waste management facilities will have the effect of transferring the responsibility and liability for characterizing hazardous wastes from generator to treatment, storage, and disposal facilities, which is counter to RCRA philosophy and inconsistent with 40 CFR Subpart C Supplier Notification Requirements. Similarly, another commenter stated that expanding TRI to include commercial RCRA Subtitle C hazardous waste management facilities will have the effect of restructuring the entire RCRA waste characterization scheme, a concept that was not contemplated or clearly proposed by this rule.

EPA disagrees with the commenters that expanding the EPCRA section 313 facilities list to include commercial RCRA Subtitle C hazardous waste management facilities will have either the effect of restructuring the entire RCRA waste characterization scheme or transferring the responsibility and liability for characterizing hazardous wastes from waste generators to TSDs. As noted in both EPA's proposal and this preamble, EPA believes that these facilities will be able to meet EPCRA section 313 reporting requirements by determining whether thresholds were likely to have been met and to prepare reasonable estimates of annual quantities of toxic chemicals released/disposed, treated, recovered, and recycled, by using information already provided to them through existing practices, along with information they develop for operational needs and for compliance with other regulations.

While EPA anticipates that these facilities will undertake the development of estimation procedures, drawing on these data to bridge the difference between RCRA data resources and EPCRA section 313 requirements, the Agency does not agree that such endeavors, undertaken by individual facilities or on a collaborative basis among several facilities, amounts to or would have the effect of restructuring the entire RCRA waste characterization scheme.

RCRA TSD facilities are required to prepare waste analysis plans in accordance with 40 CFR 264.13 or 265.13 that establish procedures for identification and characterization of incoming wastes. Data collected by TSDs, as outlined in their site-specific waste analysis plans, which typically detail the data needs for initial waste profiles, in concert with shipment-specific information in the waste manifest, are believed to be sufficient to meet the EPCRA section 313 reporting requirements. No new RCRA waste characterization requirements are being established in this rulemaking. Similarly, EPA does not believe that summarizing these data at the chemical level by a receiving facility for TRI reporting purposes will alter the liabilities imposed by RCRA, CERCLA, and other environmental statutes, which require the generators of hazardous waste to properly manage and identify their wastes.

One commenter proposed that EPA establish a higher reporting threshold of 50,000 pounds for amounts injected into underground wells, because the wastes injected are relatively dilute, compared to other waste streams. The commenter described wastes injected as typically composed of 90 to 95 percent water with the remainder composed of soluble inorganic and dissolved organic fractions.

EPA would like to clarify that amounts considered toward thresholds are based on the amount of the listed toxic chemical and not the volume of the waste stream. Therefore, in the case described by the commenter, only the toxic chemical fraction of the waste would be evaluated for each individually listed chemical, and reporting would be limited to the amounts of each chemical that exceeds threshold quantities.

Another commenter suggested that generators of hazardous wastes be required to send to RCRA Subtitle C treatment and disposal facilities, information on quantities of section 313 listed chemicals contained in wastes.

Supplier notification requirements are not being amended by this rulemaking. Supplier notification applies to chemicals contained in mixtures or trade name products. 40 CFR 372.45. EPA does not consider wastes to be ''mixtures or trade name products.'' In addition, EPA does not believe that supplier notification is necessary for newly listed industry groups to be able to reasonably comply with EPCRA section 313 reporting requirements and provide information of sufficient quality. For this rulemaking, EPA selected industry groups that the Agency believes currently possess adequate information to report under section 313. As stated throughout this preamble, EPA believes that existing information provided to these facilities through RCRA manifests, reporting requirements and facility practices, taken together with facilities' knowledge of the waste management processes they operate, provide a sufficient basis for them to develop reasonable estimates for section 313 reporting. Accordingly,

EPA sees no reason at this time to extend supplier notification requirements to the generators that transfer hazardous wastes to these facilities.

One comment submitted by an industry representative stated that they were concerned that EPA is excluding Municipal Solid Waste Landfills and POTWs from reporting to TRI, even though these facilities many manage significant quantities of EPCRA section 313 toxic chemicals. The commenter stated that, unlike deep well injection facilities, these types of facilities emit EPCRA section 313 toxic chemicals which present high risks to surface and ground waters, about which EPA has the duty to notify the public.

As stated in the proposed rule, other sections of this preamble, and in the *Response to Comments* document (Ref. 15), EPA chose for a number of reasons to defer considering whether to add several other industries in this action. In electing not to exercise its authority to extend the EPCRA section 313 reporting requirements to Municipal Solid Waste Landfills and POTWs in this action, EPA has not made a determination that these industry segments should not be included in the section 313 facilities list. EPA will consider comments received during this action regarding these and other industries not included in today's action at a future date.

One commenter suggested that EPA exclude RCRA facilities that no longer accept off-site hazardous wastes and have notified the lead RCRA agency of their intention to close. The commenter noted that the RCRA closure process provides adequate public notification opportunities and comment on activities conducted at the facility.

EPA does not believe that a specific exemption should be granted for facilities that are closing. Facilities that are no longer receiving waste for treatment or disposal are potentially no longer subject to the EPCRA section 313 reporting requirements. If no threshold activities are conducted within a reporting year, then no reporting is required.

6. *Petroleum bulk terminals and stations*. EPA is adding to the list of industry groups covered under EPCRA section 313 SIC code 5171, bulk petroleum stations and terminals. The major issues raised in comments regarding this industry are addressed below. Greater detail can be found in the *Response to Comments* document (Ref. 15). General issues raised by commenters are addressed in separate sections of this preamble.

Two commenters claim that EPA has not provided factual or scientific justification for including SIC code 5171. One commenter noted that the proposal spends less than one page discussing their industry.

EPA disagrees with the commenters. The Agency has provided factual and scientific justification for including facilities operating within SIC code 5171. The discussion provided in the preamble to the proposed rule was intentionally brief and limited to providing a summary of EPA's findings for each industry group. However, EPA cited and has made available several support documents that describe in detail information relating to bulk petroleum facilities, and facilities identified in each of the other industry groups being added. These support documents include industry profiles (Refs. 6-10 in the proposed rule and Refs. 5-7 and 18 in the final rule), which provide descriptions of activities within the industries, and the *Economic Analysis* (Refs. 11 and 12) which provides statistical and market information on the particular industry as a whole, as well as projections of estimated impacts for each industry group anticipated as a result of this rulemaking.

Many commenters state that bulk petroleum plants and terminals provide different functions which involve different practices, and are different types of facilities that should not be considered equivalent. Many argue that the SIC code 5171 industry classification covers types of facilities with unique differences and that EPA's action does not adequately address these differences. Many commenters stated that for this regulation, ''one size does not fit all.'' Most of the comments from smaller companies state that implementing this action will put them at an economic disadvantage as compared to larger facilities such as many bulk terminals. Another commenter provides sales information supporting the point that terminals have much greater throughput quantities which allow them to spread costs over much larger profits. Many of these commenters and others claim to be classified as ''small'' according to the Small Business Administration (SBA) definition and add that if this action goes into effect as proposed, many companies will be forced out of business, prices will increase, and, in some cases, a gap in the market may be created limiting options for their present customers.

EPA does not believe that the distinctions within the petroleum distribution industry the commenters raise are sufficiently relevant to the purposes of EPCRA section 313 to warrant a division among facilities within SIC code 5171 for purposes of EPCRA section 313 reporting. While EPA recognizes that a substantial range in facility size and in the quantity of product managed exist within SIC code 5171, EPA believes that bulk terminals and bulk plants manage similar mixtures containing EPCRA section 313 chemicals, often manage these chemicals in a similar manner, and that each may reasonably be anticipated to provide information that will appreciably further the purposes of EPCRA section 313. In other words, both bulk terminals and bulk plants meet the statutory standard for listing.

In addition, EPA believes that existing thresholds associated with EPCRA section 313, such as the employee threshold, will reduce the regulatory burden substantially for small companies within this industry. These thresholds have reduced the burden for the manufacturing industry. EPA also recognizes that existing exemptions will reduce the reporting burden; for example, fuels that do not contain EPCRA section 313 toxic chemicals above *de minimis* concentrations will not be counted towards activity thresholds. Thus, for facilities operating within SIC code 5171, EPA believes that existing thresholds or exemptions such as the *de minimis* exemption will serve to significantly reduce overall burden, and inherently recognize the differences in facility sizes and products managed.

A number of commenters assert that the Agency has inadvertently and unintentionally included small petroleum bulk plants in the proposed expansion. These commenters state that EPA incorrectly assumed marketers with small bulk plants would be classified as SIC code 5172, despite the fact that all marketers with any size bulk plants are classified as SIC code 5171 not SIC code 5172. Furthermore, they note that EPA's economic analysis erroneously refers to ''bulk plants'' as a synonym for SIC code 5172. They further state that unless this mistake is corrected, EPA's action will result in a disproportionately large economic impact on small marketers. Similar comments were submitted by the Petroleum Transportation and Storage Association (PTSA) which state that they believe EPA intended to capture only larger bulk plants and terminals with average product throughput amounts of 36.5 million gallons as compared to facilities with typical annual throughputs of 5 to 6 million gallons as evidenced by EPA support documents and EPA discussions. PTSA further states that they believe the Agency intended this rulemaking to be

much less expensive than it has the potential of being, and that the Agency has not adequately considered the impact of the rule as currently written, in part, because EPA's economic analysis mistakenly classified 7,000 bulk plants in 5172, which actually operate within SIC code 5171. Their comments also mention that small bulk plants are very similar to facilities that operate in SIC code 5172, which were specifically exempted. They state that bulk plants operating in SIC code 5171 and facilities operating in SIC code 5172 share many regulatory interests and their primary distinction is that facilities in SIC code 5172 have access to terminals and do not need to have on-site storage capacities.

The proposed rule (see 61 FR 33587) clearly specified the addition of SIC code 5171, and included an industry description based on the SIC code classification, which includes both petroleum bulk plants and terminals. While some portions of EPA's economic analysis mistakenly labeled certain facilities as operating in SIC code 5172, the information used to estimate costs and economic impacts on the industry was based on facilities classified as SIC code 5171. EPA's analysis did not consider the 7,000 facilities identified by the commenter in estimating the costs and economic impacts on 5171, because their storage capacities are below 10,000 gallons and thus these facilities are properly classified as 5172, or because the facilities, even though they are properly classified as 5171, fall below the 10 full-time employee threshold. Therefore, EPA's analysis included those bulk plants that are properly classified in SIC code 5171 and that are expected to report. Consequently, EPA believes that its economic analysis accurately calculated the burden of reporting for this industry group.

EPA would also like to clarify that SIC code 5172 was not ''specifically exempted'' from reporting to TRI. Rather, EPA deferred further consideration of this industry prior to the proposal for reasons identified as ''Additional Considerations,'' which were discussed in the proposed rule (see 61 FR 33588) and in the *Development of SIC Code Candidates: Screening Document* (Ref. 10).

Two commenters stated that EPA should have also included SIC code 5172 in this action. These commenters state that facilities in SIC code 5172, which they refer to as ''fixed based operators,'' provide services to many major airports, among other locations. Commenters state that these facilities are responsible for 10 to 20 percent of the releases of ethylene glycol, and that by not listing this industry group, EPA has missed an opportunity to capture a source of large releases. These commenters also state that the distinctions between the SIC codes 5171 and 5172 classifications are not that clear and by not including both, EPA creates an incentive for facilities formally classified in SIC code 5171 to reclassify themselves into SIC code 5172. These commenters note that EPA's proposed rule states that facilities in SIC code 5172 ''may be adversely affected at a substantially high rate'' but request that EPA explain how these facilities would be adversely affected.

EPA believes that the distinctions between establishments classified in SIC code 5171 and those classified in 5172 based on the Bureau of the Census' *1992 Industry and Product Classification Manual* are adequate for the purposes of designating industry groups to report under section 313 (Ref. 8). Petroleum wholesale facilities are assigned to either SIC code 5171 or 5172 based on their storage capacity, which is numerically defined. EPA believes this is a clear distinction.

EPA disagrees that its decision to defer further consideration of 5172 was based on a finding that these facilities ''may be adversely affected at a substantially high rate.'' As noted in the proposal, EPA's preliminary analysis indicated that, due to existing thresholds and exemptions, ''the projected value of reporting for these industry groups is questionable.'' (see 61 FR 33592) In addition, EPA's preliminary analysis identified facilities in SIC code 5172 as possibly having ''a disproportionately large economic impact if EPCRA section 313 reporting requirements were extended to their industry.'' (see 61 FR 33592) This finding is based on a projected estimate of the anticipated cost to comply with this rule relative to the gross sales. This finding is not an absolute determination, but was a consideration in EPA's screening process that was taken into account in EPA's decision to defer SIC code 5172 for further consideration in this rulemaking.

Several commenters state that many facilities within SIC code 5171 do not perform mixing or blending activities. They state that storage and simple redistribution should not be included in the processing activities for threshold calculations. Several of these commenters argue that this activity is analogous to ''transportation or storage incidental to transportation'' which is exempt under section 313. Some claim that no distinction should be made simply because a terminal takes possession of the product it receives, and note that simply taking possession of the product does not increase the possibility of releases. Another commenter suggests that all transport and storage incidental to transport of their product should not be subject to EPCRA section 313 reporting or threshold calculations based on the EPCRA section 327 transportation exemption. Based on their interpretation of this exemption, they contend that most of the activities occurring at bulk plants would not be covered, and therefore, these facilities do not meet EPA's ''activity factor'' used to select industries.

Section 327 of EPCRA establishes an exemption for activities involving the transportation and storage incidental to transportation of listed chemicals for purposes of section 313 requirements. For the purposes of EPCRA section 313, this exemption applies to chemicals under active shipping. EPCRA section 313 toxic chemicals that are in transit and held temporarily at facilities that do not take formal possession or ownership of these chemicals are considered under ''active shipping'' and are exempt from the EPCRA section 313 reporting requirements. When the receiving facility takes possession and ownership of materials, these materials are no longer under active shipping and, in terms of the EPCRA section 313 requirements, potentially subject to reporting. EPA has determined that the facilities operating within SIC code 5171 generally take possession and ownership of the chemicals that they manage, that these chemicals are not under active shipping, and therefore, not eligible for the exemption established under section 327 (Ref. 12). The commenters have provided no information to convince EPA to amend the information and conclusions in EPA's *Economic Analysis* (Ref. 12).

Additionally, the EPCRA section 313 statutory ''processing'' definition is explicit in terms of what it includes. EPA would like to clarify that amounts of listed EPCRA section 313 toxic chemicals retained in storage are not counted toward activity thresholds, such as ''processing.'' However, when these amounts are transferred, such as from a bulk storage unit to a truck, for further distribution in commerce, the amounts of listed EPCRA section 313 toxic chemicals must be considered toward the ''processing'' threshold because this is considered repackaging of the EPCRA section 313 toxic chemicals. This interpretation is consistent with EPA's guidance as it has pertained to the manufacturing sector. Question 149 of the most recent

Question and Answer document developed for the TRI program includes the following discussion: ''. . .the facility loads other tanker trucks with gasoline which distribute the gasoline to service stations. . .are the chemicals in the gasoline processed.'' EPA's response was: ''[s]ince the facility repackages the gasoline by transferring it between trucks and bulk storage containers for further distribution in commerce, the facility is processing the toxic chemicals in the gasoline.'' (Ref. 17). Activities being conducted by facilities operating within SIC code 5171 are directly analogous to those previously interpreted for facilities within the manufacturing sector who have reported on like activities.

Several commenters state that their industry is substantially regulated under other environmental statutes, which removes the need for the bulk petroleum distribution industry to be included under this action. Some of the existing statutory and regulatory provisions cited include CAA Title V, the National Standards for Hazardous Air Pollutants (NESHAPS) for Source Category; gasoline distribution, and the Marine Vapor Recovery Program; EPCRA sections 311 and 312; the Oil Pollution Prevention Act; and 40 CFR part 112. These commenters state that routine reporting and inspection requirements under these statutes make EPCRA section 313 reporting by their industry unnecessary and would result in duplicative reporting.

While bulk petroleum distribution facilities are regulated under several existing environmental regulations, EPA does not believe that current regulations satisfy the objectives sought by inclusion of facilities under EPCRA section 313. A comparison between existing regulations and the EPCRA section 313 reporting requirements was prepared in support of the proposed rule and is discussed in Unit V.I.1. of this preamble. EPA believes that these findings confirm that similar information is not provided by other requirements, so that the extension of section 313 reporting requirements to this industry is not duplicative. Additionally, as discussed in Unit V.A. of this preamble, Congress was well aware of the existing requirements that collect a variety of information and, in enacting EPCRA section 313, determined that there was a need to provide a single source of readily available information regarding chemicals entering all environmental media.

Commenters from the bulk petroleum distribution companies suggest a variety of alternatives to standard EPCRA section 313 reporting requirements. These alternatives range from adopting definitions used under existing regulations issued pursuant to other environmental statutes, to modifying reporting definitions under section 313. Each of these alternatives, if implemented, would exempt a portion of the facilities operating within SIC code 5171. The most commonly suggested alternative to EPA's proposed action is for EPA to establish a storage capacity exemption. Most of the commenters proposed that facilities with storage capacities of less than 150,000 gallons be excluded while others suggested the Agency consider 200,000 gallons as a cut-off. Several other commenters suggested that if a storage capacity exemption were not acceptable, then the Agency should consider a throughput exemption in order to provide regulatory relief to smaller facilities that handle ''smaller'' bulk quantities.

EPA does not believe that a storage capacity qualifier is suitable for adoption by the TRI program at this time. The amounts suggested by commenters potentially equate to very large amounts of product throughput, which EPA believes would deprive the public of useful information that is not currently available. While a large portion of the facilities operating in this industry primarily perform simple product transfers, and amounts processed greatly influence the quantity of releases or toxic chemicals in wastes which result, EPA believes that existing thresholds and exemptions will adequately serve to remove a substantial number of smaller facilities. Based on EPA's economic analysis, 10,292 facilities have been identified as being classified in SIC code 5171. With the application of existing thresholds, EPA estimates that 3,842 will meet reporting requirements. Therefore the existing thresholds are anticipated to exempt approximately 62 percent of those facilities classified within SIC code 5171, which EPA believes provides substantial burden reductions (Ref. 12).

Several commenters requested that EPA adopt the definition of bulk gasoline terminals used under certain CAA regulations and thereby exempt all bulk plants, or consider either a throughput level or combination of the two in this rule. These commenters support any of these alternatives over listing the entire 4-digit SIC code of 5171 and argue that this would effectively exempt most if not all bulk plants and could be structured to remove any small business issues.

Certain CAA regulations only apply to bulk gasoline terminals. For example, under the New Source Performance Standards (NSPS) for gasoline distribution, these are defined as establishments that receive petroleum via ship, barge, or pipeline in amounts equal to or greater than 20,000 gallons per day. This definition may effectively exclude all petroleum bulk plants, regardless of the product throughput they manage. However, contrary to the commenter's implication, the CAA definitions do not equate to a determination that emissions from bulk plants are insignificant. Nor are bulk plants exempt from all CAA provisions; for example, bulk plants may still be covered by various State Implementation Plans (SIPs). Further, EPA believes that exemption under the CAA provides additional justification for the addition of SIC code 5171. One of the purposes of EPCRA section 313 is to monitor the success of existing environmental regulations, and by gathering TRI data on emissions from bulk plants EPA could evaluate, for example, whether CAA regulation may be warranted for some bulk plants under section 112(k), which makes special provision for urban air toxics.

In addition, EPA believes that the purposes served by the CAA and implementing regulations are unique and different from those associated with EPCRA section 313. While the distinctions between petroleum bulk terminals and plants may be appropriate for regulatory requirements under the CAA, EPA believes that existing thresholds both for activities and employee size provide adequate regulatory relief appropriate for fulfilling the objectives of section 313.

Several commenters describe operations at typical bulk plants as having relatively few employees physically located at the facility on a regular basis. Some of these commenters noted that delivery personnel, who are infrequently physically at the facility, will cause many facilities to exceed the employee threshold and thereby be subject to reporting. These commenters suggested that, as a result, facilities may decide to no longer employ these personnel, but to use contracted services, which must be an unintended result of this rulemaking. Similar comments were submitted by another commenter which stated that due to the low numbers of employees at many petroleum marketing terminals, and the annual application of reporting requirements, many facilities will ''teeter'' on the brink of coverage in any given year. This will cause many facilities to engage in full-blown recordkeeping and track their activities over the course of the year, even though

they may not be required to report. With the exception of actually filling out Form Rs, which the commenter stated is a minor component, the burden on the facility will be the same whether or not it is covered. Likewise, with the annual fluctuations likely to occur, trend analysis will not be possible, which will affect industry comparisons and TRI overall.

EPA has received similar requests to make distinctions among employees in order to increase the effect of this statutory exemption for their industry. EPA believes that the employee threshold established by Congress serves the purposes of EPCRA section 313. For purposes of section 313, facilities with fewer than 10 ''full-time'' employee equivalents are not subject to any of the EPCRA section 313 reporting requirements. For purposes of section 313, a full-time employee is defined as 2,000 work hours per year and the employee threshold is based on the total number of work hours expended per year. In order to determine the number of full-time employees working at a facility, all hours worked by all employees during the calendar year, including contract employees and sales and support staff working at the facility, are totaled. The total number of hours worked during a calendar year is then divided by the ''full-time'' employee number of 2,000 and if the result is 10 or greater, then the facility has exceeded the employee threshold under section 313. The application of the employee threshold to personnel based at the facility applies a relatively consistent degree of equity in reporting. Even though this threshold may exclude some facilities who manage and release significantly larger amounts with fewer employees, EPA is not at this time aware of another mechanism that can be implemented fairly across the program. At this time, EPA believes that a modification to this threshold, such as an exclusion for delivery operators or ''non-process'' related staff, would potentially lead to greater inequalities in how reporting requirements are applied.

The comment raising issues with facilities within the petroleum distribution industry that have employee numbers that fluctuate above and below the section 313 threshold, describes a situation that also exists within the manufacturing industry and that has affected their obligations under the EPCRA section 313 reporting requirements since the TRI program has been in place. While it may be the case that the petroleum distribution industry is particularly subject to employee fluctuations, it may also be true that their product and customer requirements are more consistent than other industries and therefore, they may be better equipped to predict annual activities.

Another commenter states that if EPA decides to include petroleum bulk terminals and stations in the final rule, the Agency should modify the reporting frequency, so that after their initial report, facilities in SIC code 5171 would only be required to report whenever a predetermined threshold, such as change in storage capacity, loading activities, or types of chemicals handled is triggered. This would achieve the intent of the TRI program, while minimizing the burden imposed upon the reporting facilities and the state and federal offices that process these reports. Another commenter described the releases from petroleum bulk stations as being consistent from year-to-year and therefore, if EPA must have SIC code 5171 facilities report to TRI, it should require a one-time filing by such facilities with an obligation to amend that filing if there is a significant change at a facility.

EPCRA section 313(i) provides EPA with limited authority to modify the reporting frequency and requires EPA to follow a complex administrative procedure to do so. To modify the reporting frequency, EPA must first notify Congress and then delay initiating the rulemaking for at least 12 months. In addition, EPA must make a specific finding; EPCRA section 313(i)(2) requires EPA to:

> (A) make a finding that the modification is consistent with the provisions of subsection (h) of [section 313] based on-
>
> (i) experience from previously submitted toxic chemical release forms,
>
> (ii) determinations made under paragraph (3).

EPA believes that the determinations it currently could make pursuant to paragraph (3) would not support a modification, because the Agency does not have sufficient information to make the necessary findings in paragraph (3). Specifically, paragraph 3(B) provides that EPA must determine:

> the extent to which information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through as State program.

As EPA has noted elsewhere in this preamble, EPA does not believe that equivalent information is publicly available in the same manner as TRI data. Nor is it clear that EPA would have sufficient information to make the necessary findings pursuant to EPCRA section 313(i)(3)(A) and (C) because these facilities have not reported to TRI in the past. Thus, EPA could not adopt the commenter's suggestion for purposes of this rulemaking.

Moreover, even if EPA could adopt the commenter's suggestion in this rulemaking, EPA would not. While some commenters have described activities within the bulk petroleum distribution industry as being consistent from year-to-year, EPA has received other comments stating that many changes have occurred within this industry in terms of both the chemical composition of some products and some management practices. EPA believes that while some facilities in the bulk petroleum industry have operations that are reasonably consistent, others may not. EPA also believes that the same situation exists within the manufacturing sector, although perhaps to a lesser extent. EPA recognizes that one of the benefits of TRI information is its annual collection of information which allows interested parties to access and evaluate year-to-year fluctuations by facilities or industry groups. EPA believes that to provide this benefit, annual reporting of information is generally necessary. Further, EPA believes that while activities may be relatively standard throughout an industry, and for a particular facility, repeated routinely, it is fairly rare for amounts of chemicals or products not to change. EPA also does not believe that most facilities would desire that data from a previous year be applied to a facility's report for another year without prior review by the facility. EPA also believes that relatively consistent operations would reduce the burden on facility's annual calculations in meeting reporting requirements under section 313. Therefore, EPA believes that, at this time, the best and most accurate means of providing TRI data is to require each facility in this industry sector to submit that information themselves annually.

Other commenters made various statements regarding the benefits derived from the reporting anticipated from the bulk petroleum industry. Many of these commenters note that greater benefits could be derived by spending the resources that reporting will require on other more environmentally beneficial activities. Another commenter stated that residents around their facilities have not asked for this information and that very little is actually emitted from their facilities. This commenter states that their larger bulk petroleum storage facilities with submerged loading and vapor recovery devices have throughput of approximately 1.4 million gallons of

gasoline and that their operations emit approximately 800 pounds of volatile organic compounds (VOCs) annually. This represents 2.1917 pounds per day, which they claim is less than the VOCs emitted from 1 gallon of applied oil base paint.

While a particular facility or company may not have received any requests for information on their chemical releases and waste management practices, EPA has received numerous comments supporting the extension of section 313 reporting requirements to those industries included in EPA's proposal, including SIC code 5171. For example, EPA received comments from a state environmental agency and from a public interest group encouraging EPA to include facilities in SIC code 5171 in this rule. Specifically, the comments submitted by the public interest group stated that some toxic chemicals contained in petroleum products, namely toluene, are now detectable in ambient samples in the Phoenix, AZ area and stated that it would have been extremely useful to have had TRI reports from bulk petroleum facilities located in the area for risk assessments conducted by the state.

With regard to the commenter's estimated emissions, the amount of product throughput described is far below the levels EPA believes are representative of the average distribution facility. EPA does not believe that the estimated annual releases characterized by the commenter are representative of the petroleum distribution industry and instead, refers the commenter to other sources including comments submitted by an industry trade association. Estimates from a member survey conducted by a trade association found that a typical bulk plant had an average throughput of 9.4 million gallons per year. Additionally, EPA questions whether the facilities operated by the commenter, a regional agricultural supply and grain marketing cooperative that have bulk petroleum storage and distribution elements, are properly classified as SIC code 5171 (bulk petroleum facilities) as opposed to SIC code 5191 (farm supplies) based on primary economic activity. If they are more appropriately classified as SIC code 5191, it would be inappropriate to compare these facilities to those whose primary function involves bulk petroleum distribution. EPA also questions whether the commenter's facilities would be subject to EPCRA section 313 reporting requirements, even if some of their facilities primarily function as petroleum distribution facilities. For these reasons, EPA does not believe that the estimated annual releases characterized above are representative of the petroleum distribution industry (Ref. 15).

7. *Chemical distributors.* EPA is adding to the list of industry groups covered under EPCRA section 313, facilities operating within SIC code 5169, Wholesale Nondurable Goods—Chemicals and Allied Products, Not Elsewhere Classified. Many of the major issues raised in comments concerning the addition of SIC code 5169 related to preproposal outreach activities conducted by EPA with the chemical distribution industry. These comments and others specifically relating to chemical distributors are addressed below. Other more general issues were addressed in separate sections within this preamble. EPA has provided greater detail in comments summarized and Agency responses in the *Response to Comments* document (Ref. 15).

Many individual chemical wholesale distribution companies make three general points in their comments: (1) EPA conducted almost no outreach to chemical distributors before issuing the proposed rule, (2) the chemical distribution industry should be given more time to gather data and respond to EPA, and (3) EPA should eliminate chemical distributors from this rule if EPA plans to make 1997 the first reporting year under the rule.

EPA believes that adequate notice was provided regarding the Agency's intention to expand the EPCRA section 313 reporting requirements to several additional industries, including the bulk chemical distribution facilities operating in SIC code 51. EPA also believes that adequate opportunity existed for representatives from this industry, and any of its member companies, to have contacted EPA and requested discussions on EPA's intent to add SIC code 5169 to the EPCRA section 313 list of covered facilities. EPA addresses these comments in greater detail in the *Response to Comments* document (Ref. 15). As noted in Unit V.D. of this preamble, EPA is not making 1997 the first reporting year.

The National Association of Chemical Distributors (NACD) asserts that EPA's lack of consultation with the industry implies that EPA did not have access to accurate information on several important factors used in EPA's decisonmaking. According to NACD, such questions as whether additional data exist on uses, releases, and other waste management; what activities use significant volumes of EPCRA section 313 toxic chemicals; how many of these might meet reporting thresholds; and whether data are available to assist in reporting have not been adequately addressed. NACD does not support inclusion of SIC code 5169 and stated that ''if the Agency feels that it lacks adequate information to make such a decision at this time, NACD urges the EPA to defer consideration of SIC code 5169 facilities until a partnership can form to develop a common-sense alternative to reporting to satisfy the goal of right-to-know and considerations of NACD facilities.

EPA believes that it has adequate information to decide whether SIC code 5169 meets the statutory standard for addition. EPA considered existing data reported under state regulations, in addition to industry specific information, and concluded that facilities operating within the chemical distribution industry manage significant volumes of EPCRA section 313 listed toxic chemicals, which may result in relevant information on releases and wastes managed that would beneficially contribute to furthering a right-to-know data base. As noted in the proposal (see 61 FR 33599-33600), EPA believes that many facilities within SIC code 5169 clearly conduct EPCRA section 313 reportable activities. EPA believes that existing guidance will transfer directly to assist facilities within this industry in making accurate threshold determinations and to develop reasonable reporting estimates. However, EPA invites the industry to assist in efforts to develop more specific guidance tailored to facilities within their industry sector as additional reporting needs are identified. EPA will initiate a stakeholders process to discuss this and other issues.

Comments submitted by NACD refer to a letter they sent to EPA dated July 25, 1996, which states that they believed a member survey was needed because ''EPA appears to be relying upon incorrect data or assumptions about the industry.'' The commenter, along with the SBA, refer to EPA's use of data collected by Massachusetts' Toxic Use Reduction Act (TURA), which are similar to the data collected by TRI and which collect information from the chemical distribution industry. Both commenters focus on the accuracy of one submission reported by one chemical distribution facility in the Massachusetts data set, which EPA included in limited summary statistics that appear in the preamble to the rule.

EPA generally disagrees with these commenters. While it is true that on December 6, 1996, the chemical distribution facility in question requested a revision to a data submission to Massachusetts for the 1992, 1993, and 1994 reporting year, to

report significantly lower methyl ethyl ketone (MEK) releases, EPA disagrees that this demonstrates that EPA had insufficient information about the industry to support the addition of SIC code 5169. The particular facility discussed by the commenters reported lower releases of MEK, they did not report that they do not ''manufacture,'' ''process,'' or ''otherwise use'' any listed chemicals, or that they should have filed no reports for the past years. The specific amounts of releases reported were essentially irrelevant; EPA did not project releases, and determine on that basis whether candidate industries met the statutory standard. Rather, the TURA data were used to further support EPA's determination that SIC code 5169 facilities are reasonably anticipated to have involvement with one or more listed chemicals, to process listed chemicals, and to file Form R reports that could be expected to contain release data.

One commenter questions whether facilities in SIC code 5169 generally have the types of product transfer and release tracking systems or programs in place to accurately track fugitive emissions and indicated that it would be difficult to begin tracking this type of information by January 1, 1997.

EPA does not disagree that many of the trade association's members may not have the type of tracking system currently in place that the facilities may want to implement, but emphasizes that the EPCRA section 313 reporting requirements require only the facility use its best available information and estimation techniques. However, EPA believes that most facilities have some sort of tracking system in place to track their products. If additional tracking systems, or even any tracking systems, are not in place on the date that these requirements take effect January 1, 1998, the industry is required only to provide the best estimates that can be made based on existing business information.

A number of commenters argue that a significant portion of the industry engages solely in product distribution and conducts no ''processing'' activities.

EPA agrees with the commenter that a significant portion of the industry simply engages in product distribution without any actual processing taking place, and such facilities should not have to file a report. However, EPA has also documented that many facilities within SIC code 5169 conduct reformulation and repackaging activities which are ''processing'' activities. This is confirmed by other comments received from the industry. EPA believes that these facilities engage in reportable threshold activities and should be required to report their releases and other waste management activities when thresholds are exceeded.

An industry trade association argues that EPA's screening analysis for facilities within SIC code 5169 is flawed because it defines chemical distributor's reformulation and repackaging operations as ''processing'' under EPCRA section 313. NACD disagrees that these activities are similar to the operations of SIC codes 20 through 39, which result in reportable information on releases and waste management activities. NACD therefore claims that SIC code 5169 does not satisfy the Agency's ''activity factor.'' NACD refers to section 313(b)(1)(B) and emphasizes that any addition is limited to ''the extent necessary to provide that each SIC code is relevant to the purposes of the act.'' NACD repeats a portion of EPA's summary statement from the proposed rule (see 61 FR 33599) that discusses the similarity of activities conducted in the manufacturing section to those conducted in SIC code 5169. Many other commenters from this industry sector claim they conduct no ''processing'' activities.

EPA disagrees with the commenter. EPA's interpretation and application of the statutory standard for the purposes of this rulemaking and how industries were screened and selected for inclusion in this rulemaking is discussed in detail in Unit V.A. through V.C. of this preamble.

Contrary to comments submitted on behalf of a trade association, EPA believes that facilities in SIC code 5169 do conduct activities that are similar to those performed and subsequently reported by manufacturing facilities such as ''processing'' a toxic chemical as a formulation component or repackaging. Based on 1994 TRI data, manufacturing facilities submitted 18,465 forms indicating a toxic chemical was ''processed'' as a formulation component and 3,782 forms indicating the toxic chemical was repackaged. These are the types of activities that EPA has identified as being performed by facilities within the chemical distribution industry and EPA's determination is confirmed in comments submitted by a trade association which stated, ''SIC code 5169 facilities generally engage in . . .operations includ[ing]: (1) distributing; (2) warehousing; (3) repackaging; and (4) blending or formulating.'' This commenter notes that ''blending'' in this context refers to creating products by adding two or more precursor chemicals through a simple, non-reactive mixing process at ambient pressure,'' which they compare to ''reactive or synthetic operations conducted at elevated pressures by facilities in SIC codes 20-39.'' EPA disagrees with the commenter that the activities conducted in SIC codes 20 through 39 are limited to the reactive-type operations described by the commenter. There are many non-reactive processing activities that occur in SIC codes 20 through 39, such as paint formulation. Further, EPA disagrees that ''blending'' is synonymous with ''chemical reaction.'' EPA believes that there is little, if any, overlap between the two terms. In any event, reformulation and repackaging activities clearly fit within the processing definition and therefore meet EPA's ''activity factor.'' The fact that some chemical distributors do not conduct activities that would be reportable threshold activities under section 313 is not a reasonable basis to not add those that do conduct such activities.

Most commenters from the chemical distribution industry requested that their industry either be exempted from this rulemaking, be granted an extension of the comment period, or that EPA defer reporting for their industry for at least one year. The request for a deferment was primarily based on the lack of earlier involvement with EPA prior to publication of the proposal. A similar comment was made by a trade association which stated that neither they nor their membership had adequate time to evaluate the regulatory alternatives suggested by EPA. A lengthier discussion on the issue of deferral can be found in Unit V.D. of this preamble.

As stated previously, EPA believes sufficient notice was provided to the chemical distribution industry so that it could adequately respond to issues raised in the proposal, including the alternatives suggested by EPA. EPA believes that this industry is uniquely well informed with regard to considering the various issues raised by EPA's proposal; for example, some of the alternatives posed by EPA were taken from the chemical distribution industry's reporting experience in Minnesota. In part as a result of requests from representatives from the chemical distribution industry, EPA did extend the comment period for 30 additional days in order to allow commenters more time to prepare their comments. In addition, these requirements will not take effect until January 1, 1998.

As part of EPA's obligation under the Regulatory Flexibility Act (RFA), several alternatives were proposed for facilities operating within SIC code 5169, due to potential economic impacts estimated to result from this action. Some of the

commenters address these alternatives but raise concerns regarding the actual relief that would be provided. One of the alternatives suggested by EPA for this industry was to expand eligibility of the Alternate Threshold, found at 40 CFR 372.95. A trade association stated that the alternate threshold reporting option currently in place ''does little'' to ease the burden on facilities in SIC code 5169 for the reason that many chemical warehousing facilities often exceed the 1 million pound threshold that limits its application. SBA also proposed that this reporting option be revised.

EPA believes that each of the alternatives suggested in the proposed rule have significant drawbacks, while offering questionable reductions in burden. Individual alternatives are discussed in detail in EPA's *Response to Comments* document (Ref. 15).

EPA does not believe a revision of the existing Alternate Threshold reporting option is appropriate at this time. Currently this reporting option allows facilities which do not exceed 500 pounds of annual reportable amounts to apply a 1 million pound manufacture, process, or otherwise use threshold on a per chemical basis (referred to as an alternate threshold). This threshold is far greater than the existing 25,000 pound manufacture or process threshold, or the 10,000 pound otherwise use threshold. If a facility does not exceed the 1 million pound alternate threshold then it may submit an abbreviated form, Form A, rather than a full Form R.

EPA noted in the final rule establishing the Alternate Threshold that part of its rationale for establishing the Alternate Threshold was in response to the increased level of reporting that was expected in response to the addition of numerous chemicals and industry sectors (59 FR 61489). This reporting option has only been in effect for activities beginning on January 1, 1995. July 1, 1996, was the first opportunity for facilities to apply this reporting option. The Office of Management and Budget (OMB) has authorized the information collection period for this reporting alternative until June 1998, in order to provide the Agency additional time to sufficiently evaluate the benefits of the existing reporting option and propose any adjustments through rulemaking, if necessary. As EPA noted in the proposal, EPCRA section 313(f)(2) requires that any revision to the current reporting thresholds continue to capture a substantial majority of total releases of each listed chemical or chemical category. Because the facilities added in this rule have not reported in the past, also EPA noted in the proposal that it may not have sufficient information about releases (both types of chemicals and release levels) with which to justify expanding the alternate threshold eligibility for this industry group. EPA has not received any information since the publication of the proposal to convince the Agency that it has sufficient information to support the necessary findings. Indeed, the Massachusetts TURA data indicates that facilities in SIC code 5169 are often below the 1 million pound threshold. Until EPA gains additional experience with the existing Alternate Threshold and with the reporting from the newly added industry sectors, the Agency does not believe that it is in a position to expand the eligibility for this reporting option. EPA has committed to review the Alternate Threshold in light of the Agency's additional experience with this reporting option and with the reporting from the newly added industries.

Numerous comments were also submitted that raised concerns over the issue of confidential business information (CBI). A trade association commented that none of the small business alternatives presented in the proposal, offered acceptable options for protecting CBI. The alternatives presented by EPA included an expansion of the range values available for reporting, a modification of the data to be submitted such that EPA could extrapolate estimates of releases and other waste management for the industry and a reduction in data elements to be reported by facilities in SIC code 5169. This commenter stated than none of EPA's alternatives acknowledge or resolve the CBI problems that they anticipate if distributors are included in the TRI program. The type of throughput data, suggested in one of EPA's alternatives, is claimed by the commenter to be a core business activity and as such, disclosure on Form R or any alternative reporting system would allow customers, suppliers, and competitors to either learn directly or estimate confidential information that in turn would reveal sensitive purchasing and marketing information that would jeopardize competitiveness.

EPA does not agree that existing trade secret provisions in EPCRA do not offer adequate protection for sensitive business information, and that the existing reporting scheme is appropriate for SIC code 5169. EPA believes that the commenters' assertions are inconsistent with the record developed from state TRI reporting programs, and with the EPCRA sections 311, 312, and 313 programs. Chemical wholesalers are currently required to report actual throughput under the Massachusetts Toxic Use Reduction Act, and yet the commenters have neither asserted, nor shown that any actual harm has resulted, nor otherwise provided examples to substantiate their assertions of the serious CBI problems that would result from TRI reporting. The commenters are also currently required to report release data in Arizona and Minnesota; according to the commenters, this should allow competitors to back-calculate throughput, yet the commenters have not provided specific data or examples to substantiate their assertions that TRI reporting would release CBI. Further, the chemical wholesalers asked Minnesota to allow them to use a simple method of estimation (emission factors) which would appear to make back-calculation easier; again, they have shown no actual harm resulting from reporting to the Minnesota TRI. The commenters also currently report under section 312, which publicly releases information that could theoretically be used to calculate throughput, and they have not provided any information or examples to support their allegations. In addition, there are facilities that have a primary SIC code within 20 through 39, but that also have establishments at their facilities that fall within SIC code 5169. These facilities have not made a disproportionate number of trade secret claims.

EPA is also not convinced that the information reported on TRI would necessarily permit competitors to back-calculate. Notwithstanding the commenter's assertion, facilities in SIC code 5169 conduct activities other than repackaging; some product remains in original containers, which is not reportable. Consequently, without additional information, competitors would not know what fraction was actually reported. Elsewhere in its comments, NACD also comments that reporting is very burdensome, in large part because many variables influence releases, and they would have to account for all of these variables in compiling their reports. EPA disagrees with this characterization of reporting, but notes that if this is accurate, it should not be possible for competitors to back-calculate throughput, even with what NACD claims is a ''reasonable degree of accuracy.''

8. *Solvent recovery operations*. EPA is adding to the list of industry groups covered under EPCRA section 313, facilities that operate within SIC code 7389, limited to facilities that are primarily engaged in solvent recovery

services on a contract or fee basis. EPA received relatively few comments on the proposed inclusion of this industry. Several commenters do not support EPA's addition of solvent recyclers. Several commenters support EPA's proposal to add those facilities within SIC code 7389 that are primarily engaged in solvent recovery activities. One of these commenters notes that 36 Superfund sites and 83 damage incidents have been recorded as resulting from facilities involved in solvent recovery and hazardous waste recycling activities. In many cases, the comments submitted by this industry raise issues that apply to more than this industry and these have been addressed in other sections of this Notice. Major issues relating to this industry are addressed below. In each case, EPA has provided greater detail of comments and responses in the Response to Comment document (Ref 15).

Safety-Kleen believes that by limiting the addition of solvent recycling facilities to those that are in SIC Code 7389, EPA will exclude a significant number of similar facilities that operate in other industries. The commenter believes that EPA should require EPCRA section 313 reporting by all industries that recover solvents received from off-site, irrespective of SIC code and regardless of whether these facilities are commercial recovery facilities.

EPA disagrees with the commenter. EPA believes that identifying solvent recyclers other than by SIC code would cause confusion. Further, EPA believes that through today's action, particularly in the addition of facilities in SIC codes 5169, 4953, 7983 and through the original SIC code coverage, the majority of facilities (in all SIC codes) conducting solvent recovery operations that meet both the chemical and employee thresholds will be covered. As discussed in the *Economic Analysis* (Ref. 12) some facilities that conduct solvent recovery operations have a primary SIC code within 20 through 39, and therefore are already subject to section 313. The commenter lists facilities that conduct commercial recycling activities that have primary SIC codes in 5169 or 4953 that by this rulemaking are being made subject to the EPCRA section 313 reporting requirements.

Facilities that are subject to the EPCRA section 313 reporting requirements must consider all (non-exempted) manufacturing, processing, and use activities when determining threshold, release and other waste management quantities. Thus, a facility with a primary SIC code of 20 through 39, 5169, or 4953 would not exclude from threshold and release and other waste management determinations, quantities of the chemical associated with activities not directly associated with the ''primary'' SIC code of the facility. For example, a facility with a primary SIC code of 4953 and a secondary SIC code of 7389 would not exclude from threshold determinations those activities that occur within the SIC code 7389 establishment. Nor would a facility with one SIC code, e.g., 4953, that conducted activities similar to the activities conducted by solvent recycling facilities in SIC code 7389 be able to exclude these activities from threshold determinations.

One commenter contends that the SIC code classification system is being redesigned as the proposed North American Industrial Classification System (61 FR 35384, July 5, 1996). They state that as this redesign is scheduled for implementation in 1997, EPA should postpone its addition of industry groups to EPCRA section 313 until the reclassification has been completed and industries have had an opportunity to evaluate their activities under the new classification system.

As stated in Unit V.I.3. of this preamble, EPA will address the impact of the revision of the current SIC code structure based on the North American Industrial Classification System on both industries added under this action and those currently within the manufacturing sector, after the revision becomes final.

Several commenters contend that solvent recyclers should not be added to EPCRA section 313 because they do not have the same amount and type of information that the currently covered manufacturing facilities have to make threshold and release and other waste management determinations. They contend that manufacturing facilities have a reporting advantage over solvent recovery facilities because the manufacturing facilities control the composition of the raw materials they purchase. They assert that manufacturers know both the identity of the chemicals and their ''exact concentrations or ranges.'' In contrast, they contend, the facilities that receive toxic chemicals in waste rely on generator information and limited analysis necessary to evaluate RCRA classifications. The commenters believe this information is insufficient to make the determinations necessary for compliance with the EPCRA section 313 reporting requirements. They believe that inbound streams would have to be analyzed, and that the cost of this analysis, which has not been considered by EPA, would be prohibitive. One commenter claimed that in some cases standard methods do not exist for determining the amount of some EPCRA section 313 chemicals or compounds within a category.

Generators that send hazardous waste to facilities for treatment, recovery or disposal provide RCRA manifests which contain a variety of detail on the wastes they transfer. While this information is provided as a means to satisfy associated RCRA requirements, EPA believes that in many instances this information can contain significant detail and can be useful in developing constituent specific estimates required under the EPCRA section 313 reporting requirements. Further, EPA believes that those facilities that receive hazardous waste for the purposes of recovery, treatment or disposal in many cases conduct additional analyses to ensure that the waste they receive properly meet their recovery, treatment or disposal specifications. In addition, comments provided by Laidlaw indicate that waste generators provide waste handlers with information on the concentration ranges of constituents in waste. ''Laidlaw utilizes a profile system in order to obtain information from the waste generator that is needed to properly treat, store or dispose of the hazardous waste. Variants of this type of system is generally used by all members of the hazardous waste management industry. . .Profiles typically provide information on RCRA hazardous constituents present in the waste, including concentration ranges.'' Laidlaw attached examples of these profiles. For example the profile for ''Line Rinse Mop Water'' lists the following constituents: Water - 50-80%, Methanol - 0-5%, Ethanol - 10-20%, Acetone - 0-2%, Isopropanol - 3-15%, Tetrachloroethylene - 0-1%, n-Butyl alcohol - 0-1%, Mineral spirits - 3-15 %, Pyrethroids - 0-1%, Dirt - 1-5%. This range information is analogous to the information on Material Safety Data Sheets (MSDS) that the manufacturing sector uses to estimate the constituents of mixtures. For example, an MSDS for ''Xylenes'' lists the following constituents: m-Xylene - 40-65%, o-Xylene - 15-20%, p-Xylene - 0-20%, Ethyl benzene - 15-25%. Further, both the proposed and final rules implementing the EPCRA section 313 reporting requirements (52 FR 2115-2116, 53 FR 4510-4511) and the 1995 Toxic Chemical Release Inventory Reporting Form R and Instructions (EPA 745-K-96-001) provide guidance for the reporting of the components of mixtures, given the following scenarios: (1) The concentration range in known,

(2) only the upper bound concentration is known, (3) only the lower bound concentration is known, and (4) when no concentration information is known. While for EPCRA section 313 reporting purposes, a waste is not considered a mixture, the guidance for making threshold determinations on the components of mixtures can be applied to wastes. Although EPA agrees that facilities in SIC codes 20 through 39 often control the composition of their raw materials, EPA disagrees that the level of information that facilities in SIC codes 20 through 39 use to make threshold determinations is significantly different than the level of information that waste handlers, including solvent recyclers are expected to have to make threshold determinations.

Further, EPCRA does not require additional monitoring or sampling in order to comply with the requirements under EPCRA section 313. EPCRA section 313(g)(2) states:

> In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released in the environment beyond the monitoring and measurement required under other provisions of law or regulation.

EPA believes that the combination of information received with waste transfers and information developed by the recovery facility will enable solvent recovery facilities to adequately determine their compliance requirements under section 313 and that the additional waste management information anticipated from these facilities will further the purposes of TRI.

EPA has not included the cost of consitutent analysis in its estimates of the costs of reporting for SIC code 7389 because, as discussed above, such analysis is not required.

Another commenter suggests that the 40 CFR 372.45 supplier notification requirements be applied to facilities that generate and transfer to other facilities wastes containing EPCRA section 313 toxic chemicals. They contend that this would assist the facility receiving the wastes containing EPCRA section 313 toxic chemicals in making section 313 reporting determinations. The commenter further states that if the supplier notification requirements are extended in this way, there would no longer be the need for receivers of the wastes to report under EPCRA section 313, because information provided by the generators would already be available.

The supplier notification requirements are not being amended by this rulemaking. Supplier notification applies to chemicals contained in mixtures or other trade named products. EPA does not consider wastes to be ''mixtures or trade name products.'' Even if supplier notification could be applied, EPA disagrees with the commenter that supplier notification information would satisfy the purposes of section 313 reporting. The information provided by supplier notification requirements by itself may not be adequate for EPCRA section 313 reporting purposes. It includes the notification that a section 313 chemical is contained in a mixture and the concentration in which it exists provided it is above certain *de minimis* levels. Information provided, as part of the supplier notification requirements, may not accompany each shipment of a mixture, such as identical mixtures being sent to the same receiving facility multiple times within a year. The information once received is not required to be entered into any readily available format. Supplier notification information is intended to assist facilities in making compliance determinations under section 313, but it is not a substitute for the calculations resulting in information on how associated wastes from mixtures are managed. Supplier notification information alone does not answer the questions of how much of the chemical was received by the facility during the year, or how much was released to air, water, land or how much was then transferred to another facility for treatment. Thus, supplier notification information in itself is not a surrogate for TRI Form R information.

EPA also received comments that question whether the current Form R and its reporting elements will promote adequate reporting from nonmanufacturing industries. One commenter states that Form R does not readily lend itself to reporting data from solvent recyclers, and that a separate form may be necessary because solvent recovery facilities are involved in processes which are the reverse of those performed by manufacturing facilities. A solvent recycler receives waste and creates a product, and it is the product that leaves the facility with non-recyclable materials remaining as waste. This commenter states that without a modification to current reporting, the extent of data manipulation required to conform to Form R requirements may result in reporting that is essentially meaningless. Other commenters offered suggestions that might improve how solvent recovery facilities could report. One commenter stated that hazardous waste manifests could be modified to note if EPCRA section 313 chemicals have been reported by the generator. Amounts that had been reported would then not be considered for reporting by the receiving facility, and amounts that had not would be included in the receiving facility's Form R report.

EPA does not believe that because solvent recyclers use wastes as their input that information on the quantities of chemicals that they process and manage as waste cannot be represented on Form R. Nor does the commenter provide adequate rationale as to why a new form would be needed. The TRI program has not focussed exclusively on the ''manufacture,'' ''processing,'' or ''otherwise use'' of non-waste in the past. The Form R has captured information on chemicals in ''waste'' that have been manufactured, for example chemicals that have been ''coincidentally manufactured'' often as part of a waste stream (see the discussion on ''coincidental manufacture'' elsewhere in this preamble) and on waste that is combusted for energy recovery (this has been considered to be ''otherwise used'' because it is a fuel, see the *1995 Toxic Chemical Release Inventory Form R and Instructions* (EPA 745-K-96-001), p. 23 for a discussion of otherwise use activities). Nor does EPA believe that the ''manipulation'' that will be required to make threshold determinations from available information is significantly different from that done in the manufacturing sector.

EPA does not agree that waste management is the reverse of manufacturing. For both the manufacturer and the recycling facility inputs come into the facility, a product leaves the facility, and waste is often the byproduct of the activities that occur at the facility. As such, EPA does not believe that a separate form is required for solvent recyclers.

Further EPA does not believe that annotating hazardous waste manifests in lieu of reporting under the EPCRA section 313 reporting requirements is a viable option for a number of reasons. The information presented on a waste manifest is at the waste stream level. While the manifest contains some information on the constituents present in the waste, it does not identify the quantity of each individual constituent. EPA does not believe that the level of information present on a manifest can be used in lieu of TRI data. Also as

discussed elsewhere (particularly see Unit V.F.2. of this preamble), EPA believes that requiring both the generator of a toxic chemical waste and a downstream manager of that toxic chemical waste to report to TRI will not result in double counting. Each facility will manage the waste differently, which will be reflected in how and what each facility reports. When a hazardous waste facility receives waste from a generator many activities may occur. The waste may be stabilized, incinerated or in some other way treated. As a result of these activities, the amount finally deposited in a landfill may be significantly different from the amount of the toxic chemical in waste that initially entered the facility. Releases to air and water as well as transfers off-site for further waste management will undoubtedly cause a smaller quantity of the toxic chemical to be reported as landfilled, while the remainder will be captured as releases to other media transfers off-site. The amount to be reported in the Form R as disposed in a landfill is the final amount of EPCRA section 313 constituent that is landfilled, not the amount received by the facility. Only in the case of a direct transfer from the truck, barge, etc. to the landfill would this number be similar.

A comment from a trade association recommended that recyclers be granted TRI ''credits'' for wastes successfully reclaimed. The commenter does not explain what a ''TRI-credit'' is.

As stated in the proposed rule (61 FR 33607), EPA recognizes the beneficial role that many solvent and other chemical recyclers play in decreasing the demand for raw materials. Current EPCRA section 313 and PPA section 6607 reporting requirements are adequate to provide meaningful information from facilities within the manufacturing sector that conduct solvent recovery activities, and those reporting elements currently distinguish among the various waste management activities conducted on toxic chemicals. However, after experience with the newly added industry sectors and subsequent review, EPA may conclude that greater informational benefits could result by further distinguishing among waste management practices that recirculate toxic chemicals in commerce. The commenter poses an interesting concept that EPA is willing to take into consideration and EPA invites the industry to develop the concept more fully. EPA will initiate a stakeholders process to discuss this and other issues.

Safety-Kleen states that the wording of the 5 citations where the SIC code 7389 is further limited is not consistent with the Office of Management and Budget's (OMB) SIC Manual. The commenter contends that the citations in the proposed rule appear to have omitted a word. The OMB SIC Manual lists the subgroup of SIC code 7389 involved with solvent recovery as ''Solvents recovery service on a contract or fee basis.'' The commenter believes that the phrase at Proposed 40 CFR 372.22(b), (b)(1), (b)(2), (b)(3)(I), and (b)(3)(ii) (see 61 FR 33618) should be modified to include the word ''or'' that was omitted. They believe that without this change potentially affected parties would read the language to say that only contractual applications are subject to the rule.

EPA agrees with the commenter that the word ''or'' should be inserted in the phrase modifying SIC code 7389 in the language at proposed 40 CFR 372.22(b), (b)(1), (b)(2), (b)(3)(I), and (b)(3)(ii). EPA has incorporated this change.

I. Miscellaneous Comments

1. *Duplication of reporting requirements and available data.* Many commenters from industry believe the information that would be reported under EPCRA section 313 is not necessary, since other sources of data exist at the state and federal level which can provide the public and government with the information necessary to understand the environmental consequences of industry activities. Therefore, reporting would yield data which are either duplicative or unnecessary for informing the public regarding the risks resulting from releases of toxic chemicals. A large number of commenters, including environmental and community groups, as well as private citizens, believe that information is not generally available from many facilities in the proposed industry groups on toxic chemical releases, and therefore they support this action.

EPA recognizes that facilities may be subject to other reporting requirements at the federal and state levels. In enacting EPCRA, Congress recognized that information available under other environmental statutes such as the CWA or the CAA exists, but ''has been difficult to aggregate and interpret, which has made it difficult, if not impossible, for the public to gain an overall understanding of their toxic chemical exposure.'' (H.Rep. 99-975, 99th Cong., 2nd Sess., p. 5212 (October 7, 1986)). EPA believes that very little additional data exist which are comparable to EPCRA section 313 data, and has found that other available information does not typically include annual data regarding releases and other waste management of toxic chemicals from facilities in the industry groups included in this rulemaking. EPA discusses more fully other data sources in the *Economic Analysis* (Ref. 12) and in the *Response to Comments* document (Ref. 15).

Section 313 of EPCRA requires manufacturing facilities to report annually their routine and accidental transfers and releases of listed toxic chemicals and chemical categories. Data reported under EPCRA section 313 are contained within TRI and are accessible to the public via electronic media (i.e., CD-ROM and Internet) and printed media. Data are reported annually, allowing reporters and the public to monitor trends in releases, transfers, and waste management activities. TRI is unique among environmental data bases because of the multimedia data it collects, and because it was specifically designed to facilitate public access. TRI is also unique in terms of its chemical coverage, with over 600 toxic chemicals and chemical compound categories, which exhibit a variety of adverse health and environmental effects, reported to TRI.

EPA currently maintains several other data bases that are designed to support the enforcement and compliance efforts of the Agency's major program offices. Existing data sources include the Aerometric Information Retrieval System (AIRS), the Permit Compliance System (PCS), the Biennial Reporting System (BRS), and the Tier I and II reports submitted under sections 311 and 312. However, these alternate data sources do not provide an adequate substitute for the information reported to TRI, nor do they create the same incentives to implement pollution prevention measures that TRI does. Currently available non-TRI sources of information cannot provide release and transfer, inventory, or pollution prevention data with the scope, level of detail, and chemical coverage as data currently included in TRI. EPA's review of these data sources, summarized below, is presented in full in the Economic Analysis for this final rule (Ref. 12).

a. *Sources of air release data.* EPA's Office of Air and Radiation (OAR) uses the AIRS Facility Subsystem (AFS) to track emissions of pollutants that have been shown to be detrimental to public health (known as the *criteria pollutants*). States are required to report ambient air quality data on a quarterly basis, and point source data on a yearly basis, for the criteria pollutants listed. States may also use the AIRS system to store data on other pollutants in

addition to the six criteria pollutants. However, AFS data do not duplicate TRI air release data primarily because the majority of air toxics are not reported in AIRS. Currently, there is no requirement for states to report hazardous air pollutants (HAPs)[2] to AFS, although some states with toxics reporting requirements that exceed federal requirements may upload their air toxics information to AFS. In contrast, EPCRA section 313 currently requires that facilities report fugitive (non-point) air emissions and point source (stack) air emissions of over 600 chemicals and chemical categories. Since data on chemical releases in AFS are limited to the six criteria pollutants, an application known as ''SPECIATE'' is required to estimate specific toxic emissions, but it allows the estimation of only 18 percent of section 313 listed chemicals. In addition, SPECIATE suffers from technical limitations and is not recommended for the development of toxics inventories. In contrast, TRI provides the public with data on the release of more than 600 toxic chemicals and chemical categories, including HAPs, that have been determined to pose a risk to public health and the environment.

b. *Sources of water release data.* EPA's Office of Enforcement and Compliance Assurance (OECA) currently manages the Permit Compliance System (PCS) which tracks the enforcement status and permit compliance of facilities regulated under the National Pollutant Discharge Elimination System (NPDES). PCS tracks all point source discharges to surface waters, but does not include indirect releases such as discharges to POTWs. As required under the CWA, dischargers report compliance with their NPDES permit limits through Discharge Monitoring Reports (DMRs). Data collected via DMRs are entered into PCS. Only data reported by ''major dischargers'' are entered into the data base.

PCS is a permit tracking system and therefore does not substitute for TRI release data. In addition, PCS discharge data are only available for major facilities, and are reported in terms of PCS parameters, not specific chemicals. In addition, only those chemical parameters actually specified in the facility permit have monitoring requirements. In some cases, data may be reported in units of concentration rather than units of mass. If flow rates are also reported, concentration data can be used to estimate total releases, although there are several complicating factors in producing such an estimate. In contrast, EPCRA section 313 requires that facilities report total direct releases to receiving streams or water bodies. Releases to water are reported in pounds per year and include the name of the receiving stream or water body. The PCS data base does not substitute for the data reported to TRI.

c. *Sources of underground injection, on-site releases to land, discharges to POTWs, and transfers to off-site facilities data.* Under section 3002(a)(6) of the Resource Conservation and Recovery Act, facilities that generate an amount of hazardous waste that exceeds a defined threshold are required to submit biennial reports on that waste to EPA (or to state agencies that run RCRA programs). Data are reported to the states and EPA regions, which then provide it to EPA headquarters. Information is entered into the Biennial Reporting System (BRS) and is maintained by EPA's Office of Solid Waste and Emergency Response (OSWER). The data base provides an overview of the progress of the RCRA program through tracking trends in hazardous waste generation and management. Large quantity generators (LQGs) and treatment, storage, and disposal facilities (TSDs) are required to report every 2 years. BRS contains data for about 23,000 LQGs and 4,000 TSDs. BRS requires reporting of several data elements including: underground injection, on-site releases to land, and off-site transfers.

BRS contains data on hazardous wastes as defined by RCRA, which are designated as either ''listed waste'' or ''characteristic waste.'' Listed wastes have been identified as hazardous as a result of EPA investigations of particular industries or because EPA has specifically recognized a chemical waste's toxicity. Characteristic wastes are determined hazardous because they exhibit one or more of the following ''characteristics'': ignitability, corrosivity, reactivity, or toxicity. All RCRA wastes are designated by a waste code rather than a Chemical Abstract Service (CAS) number, and not all waste codes used in BRS reporting map directly to a single, unique chemical. A RCRA waste stream may be reported under multiple waste codes, but at present there is no mechanism to apportion the waste stream volume to particular waste codes where multiple codes are reported. Also, the quantities of specific chemicals cannot be determined from reported quantities of waste streams, which contain various constituents including EPCRA section 313 toxic chemicals contained in various concentrations in a non-hazardous matrix, such as water. Out of the over 600 chemicals and chemical categories on the current EPCRA section 313 toxic chemical list, 185 can be mapped to a single unique RCRA waste code.

BRS requires individual reporting of underground injections on-site, on-site releases to land, transfers to off-site locations as well as discharges to POTWs, as does TRI. However, only half of the volume reported in BRS can be assumed to identify individual chemicals. In addition, the waste classification system results in waste quantities being reported to BRS that do not identify quantities of the individual chemicals. The quantity reported to BRS represents the quantity of the entire waste stream, and not individual chemicals.

d. *Sources of chemical inventory data.* EPCRA sections 311 and 312 requires that states establish plans for local chemical emergency preparedness and that inventory information on hazardous chemicals be reported by facilities to state and local authorities. EPCRA section 312 outlines a ''two-tier'' approach for annual inventory reporting. All facilities that store hazardous or extremely hazardous substances must submit at least a Tier I and often a Tier II form (the Tier I form collects a subset of the information collected on the Tier II form). Tier I requires reporting on broad categories of physical hazards such as fire, sudden release of pressure, and reactivity, as well as acute and chronic health hazards. Upon request by a Local Emergency Planning Committee (LEPC), State Emergency Response Commission (SERC), or fire department, a facility may be required to submit the more detailed Tier II form, which requires chemical specific information by CAS number. Approximately 33 states require regulated facilities to submit Tier II forms, and most of the remaining states recommend that facilities submit Tier II forms.

While both the Tier II form and the Form R collect information on the name of the facility, the facility's address, the parent company, the parent company's address, the name of the chemical, the CAS number, and both contain a data element on the maximum amount of the chemical on-site (the Form R data element is ''maximum amount of the toxic chemical on-site at any time during the calendar year;'' the Tier II data element is ''maximum daily amount in pounds''), the remainder of the information collected is different. The Tier II form collects information on

[2]Hazardous Air Pollutants (HAPs) are defined in section 112 of the Clean Air Act (CAA). Section 112 lists 189 HAPS, of which 181 are also listed in TRI.

the physical health hazards associated with the chemical, additional information on inventory, and specific information about the conditions under which the material is stored (e.g., temperature and pressure) and the locations of the chemical at the facility. EPCRA section 313 does not require the collection of any of this information; rather, it focuses on information concerning releases and other waste management activities.

In summary, existing EPA data bases do not substitute for the multi-media data reported under EPCRA section 313. In addition to the limited chemical universes encompassed by these alternate data sources, the program data bases do not substitute for TRI data in terms of frequency of reporting, reporting thresholds, and ease of use. EPA is committed to improving the usefulness of the data it collects, and maximizing public access. TRI is a cornerstone of this effort, and serves as a model for toxic chemical release data collection and dissemination.

e. *State data sources*. EPA recognizes that facilities may face various reporting requirements at the state level. EPA examined available state data, but did not find data comparable to that collected under EPCRA section 313. As of 1994, only Arizona, Massachusetts, Minnesota, and Wisconsin required or were planning to require expanded state TRI reporting to include facilities outside of SIC codes 20 through 39. Some states require facilities to report release information beyond that required by the federal TRI program. Overall, however, the additional data collected by states are far less complete and uniform than would be available under an expanded EPCRA section list of covered facilities. A number of states and regional agencies also maintain their own air emissions inventories, including California and the Great Lakes states. Difficulties in replicating TRI data from these sources include variations in the type of data collected, and the fact that only some states maintain these types of inventories.

In summary, existing EPA data bases do not substitute for the multi-media data reported under EPCRA section 313. In addition to the limited chemical universes encompassed by these alternate data sources, the other EPA data bases do not substitute for TRI data in terms of frequency of reporting, reporting thresholds, and ease of use. State data sources are limited and vary widely in coverage as well. EPA is committed to improving the usefulness of the data it collects, and maximizing public access.

2. *Limits of TRI data*. A number of commenters identified shortcomings in the TRI reporting system which they say cause public misunderstanding of the information and limit its utility. For example, a number of commenters state that the existing TRI system is of limited utility in identifying risks and may mislead the public about risk, because it focuses on volume alone without regard to factors such as chemical toxicity, bioavailability, concentration, and exposure potential. Other commenters state that EPA should devote resources to improvements in such areas as compliance, data quality assurance, chemical list coverage, outreach and data dissemination prior to expanding the TRI program to include additional industries.

EPA acknowledges that there is room for improvement and refinement of the TRI reporting system. Since the inception of the program, EPA has worked continually to improve the reporting system and the ability of the general public and others to use the information contained in it. In addition to ongoing programs of enforcement, compliance assistance, data quality assurance, data use assistance, and general outreach, EPA has several initiatives now underway which address the commenters' concerns, including: revising the Form R to address concerns about the reporting of underground injection and land releases; screening the EPCRA section 313 chemical list to ensure that all listed chemicals meet the statutory listing criteria; conducting a major assessment of the accuracy of data submitted by facilities; and hosting a national conference to discuss and promote TRI data use. EPA does not agree that adding non-manufacturing industries will exacerbate any existing deficiencies in or misperceptions resulting from the TRI reporting program. To the contrary, EPA believes that this expansion, as well as the recently completed expansion of the EPCRA section 313 toxic chemical list, will improve the utility of the TRI data by providing the public more complete information about toxic chemicals in their communities. EPA will initiate a stakeholders process to discuss this and other issues.

3. *SIC code loophole*. Several commenters, including the Working Group on Community Right-to-Know and a number of other environmental organizations, urge EPA to abandon the SIC code-based system of coverage under EPCRA section 313 or to lower the economic determination for multi-establishment facilities. These commenters believe that a number of facilities are able to avoid reporting under EPCRA section 313 by classifying their facilities in non-covered SIC codes. These facilities may ''manufacture,'' ''process,'' or ''otherwise use'' listed toxic chemicals in a manner similar to covered facilities, but since the facilities can claim that 51 percent or more of their economic activity is derived at an establishment within a non-covered primary SIC code, reporting is not required.

EPA recognizes that some facilities with more than one establishment are able to avoid reporting under EPCRA section 313 through a determination that one or more establishments, classified in non-covered SIC codes, are responsible for a majority of the economic activity at that facility. EPA interpreted SIC coverage in this manner to remove ambiguity and confusion created by the linkage between facility and SIC code at the time of the final rulemaking originally implementing EPCRA section 313 (see 53 FR 4502). EPA believes that today's rulemaking partially addresses the commenters' concern by adding other SIC codes to the list of covered SIC codes in EPCRA section 313, even while acknowledging the weaknesses and limitations of the present SIC code system. A revision of the SIC code system, called the North American Industry Classification System (NAICS), has recently become effective (61 FR 57006), and may address the commenters' concerns by developing production-oriented classifications. EPA believes that, at present, abandoning SIC codes (or future NAICS codes) entirely would create significant problems in terms of compliance and enforcement, and would lead to an unmanageable reporting system. EPA will continue to consider future expansions, and methods of more completely capturing toxic chemical releases and waste management information.

4. *Compliance with NEPA*. Several commenters contend that EPA failed to comply with the National Environmental Policy Act (NEPA), which requires that the agency prepare an Environmental Impact Statement for any major federal action having a significant impact on the environment, or that it issue a finding of no significant impact due to the action. Commenters assert that the proposed TRI industry expansion rule is not exempt from NEPA based on functional equivalence, because it has not provided the public with a meaningful opportunity to participate in the evaluation of environmental factors, or discussed the alternatives it may have considered, including a no-action alternative.

EPA does not believe that today's action is subject to the requirements of the National Environmental Policy Act. Although the commenter is correct that EPCRA does not contain a statutory exemption from NEPA, the procedures followed by EPA in promulgating this environmental regulation have provided the functional equivalent of the procedures required by NEPA--examination of the environmental impacts of the proposed rule and alternatives to it, with an opportunity for the public to comment on the proposal and consideration of those comments. Under these circumstances, the courts have applied the functional equivalence doctrine to hold that EPA's action is not subject to NEPA's procedural requirements. See Western Nebraska Resources Council v. EPA, 943 F.2d 867, 871-72 (8th Cir. 1991); Alabama v. EPA, 911 F.2d 499, 504 (11th Cir. 1990); Limerick Ecology Action, Inc. v. NRC, 869 F.2d 719 (3d Cir. 1989); Wyoming v. Hathaway, 525 F.2d 66, 70 (10th Cir. 1975), cert. denied, 426 U.S. 906 (1976); South Terminal Corp. v. EPA, 504 F.2d 646, 676 (1st Cir. 1974); Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375, 380 (D.C. Cir. 1973), cert. denied, 417 U.S. 921 (1974).

VI. Economic Analysis

EPA has prepared an economic analysis of the impact of this action, which is contained in a document entitled Economic Analysis of the Final Rule to Add Certain Industries to EPCRA Section 313 (Ref. 12). That document is available in the public docket for this rulemaking. The analysis assesses the costs, benefits and associated impacts of the rule, including potential effects on small entities and the environmental justice implications of the rule, among others. The major findings of the analysis are briefly summarized here.

A. Market Failure

One purpose of federal regulations is to address significant market failures. Markets will fail to achieve socially efficient outcomes when differences exist between market values and social values. Two of the causes of market failure are externalities and information asymmetries. In the case of negative externalities, the actions of one economic entity impose costs on parties that are ''external'' to the market transaction. For example, entities may release toxic chemicals without accounting for the consequences to other parties, such as the surrounding community, and the prices of those entities' goods or services thus will fail to reflect those costs. The market may also fail to efficiently allocate resources in cases where consumers lack information. For example, where information is insufficient regarding toxic releases, individuals' choices regarding where to live and work may not be the same as if they had more complete information. Since firms ordinarily have a disincentive to provide information on their releases and other waste management activities involving toxic chemicals, the market fails to allocate society's resources in the most efficient manner.

This rule is intended to ameliorate in part the market failure created by the lack of information available to the public about the release and other waste management activities involving toxic chemicals, and to help address the externalities arising from the fact that market choices regarding toxic chemicals have not fully considered their external effects. Through the provision of such data, TRI overcomes firms' disincentive to provide that information, and thereby serves to inform the public of releases and other waste management of toxic chemicals. Individuals can then make choices that better optimize their well-being. Choices made by a more informed public, including consumers, corporate lenders, and communities, may lead firms to internalize into their business decisions at least some of the costs to society relating to their releases and other waste management activities involving toxic chemicals. In addition, by helping to identify hot spots, set priorities and monitor trends, TRI data can also be used to make more informed decisions regarding the design of more efficient regulations and voluntary programs, which also moves society towards an optimal allocation of resources.

If EPA were not to take this final action adding industries to TRI, the market failure (and the associated social costs) resulting from the lack of information on the use and disposition of toxic chemicals would continue. EPA believes that today's action will improve the scope of multi-media data on the use and disposition of toxic chemicals. This, in turn, will provide information to the public, empower communities to play a meaningful role in environmental decision-making, and improve the quality of environmental decision-making by government officials. In addition, this action will serve to generate information that reporting facilities themselves will find useful in such areas as highlighting opportunities to reduce chemical use and thereby lower costs of production. EPA believes that these are sound rationales for adding the selected industry groups to the TRI program.

B. Existing Reporting Requirements

The Toxics Release Inventory contains multimedia data on environmental releases and other management activities for over 600 toxic chemicals. While no other national data base is comparable to TRI, several other data sources exist that contain some media-specific environmental data. Sources maintained by EPA include the Aerometric Information Retrieval System (AIRS) Facility Subsystem or AFS, which tracks air emissions from industrial plants; the Permit Compliance System (PCS), which tracks permit compliance and enforcement status of facilities regulated under the National Pollutant Discharge Elimination System (NPDES) under the CWA; and the Biennial Reporting System (BRS), which tracks hazardous waste generation and disposal. Other sources include the chemical inventory data collected under sections 311 and 312 of EPCRA, and Clean Air Act Title V operating permits. TRI data cannot be replicated using these sources. Nor could information from these data bases be combined to form a satisfactory approximation of the data contained in TRI, because none of these sources provides the release and transfer or pollution prevention information that is reported to TRI. In addition, these other data collections differ in the information collected, chemical and facility coverage, applicable various thresholds and reporting frequencies, and how the data are reported. The definitional consistency provided by TRI creates important advantages over any data system that might be assembled from non-TRI sources. These other data sources perform the functions for which they were designed, but they were not intended to serve the same purposes as TRI. Therefore, EPA has concluded that while there may be some degree of overlap between the reporting required under EPCRA section 313 and PPA section 6607 and that required under other statutes, these reporting requirements do not duplicate or conflict with each other. This issue is discussed in detail in the *Economic Analysis* for the final rule (Ref. 12).

C. Summary of Reporting and Costs

Table 1 in Unit VI.F.4. of this preamble displays the reporting level and cost estimates by industry for the rule. EPA estimates that under this rule, a total of approximately 6,600 facilities will submit approximately 46,200 reports (both Form Rs and Form As) annually. This total is based on 6,300

facilities in the new industry groups submitting 42,500 reports, and approximately 360 facilities in the existing manufacturing sector submitting 3,600 reports as a result of the change in the definition of otherwise use. Total incremental compliance costs are also presented in Table I by industry sector. As shown, aggregate costs in the first year are estimated to be $226 million; in subsequent years they are estimated to be $143 million per year.

D. Associated Requirements

There are various state and federal requirements under other statutes and regulations that may be triggered when a facility files a report under EPCRA section 313. The associated requirements include state taxes and fees, state pollution prevention planning requirements, and special requirements in certain NPDES storm water permits issued by EPA. These associated requirements are discussed in detail in the *Economic Analysis* for the final rule (Ref. 12).

Although the state fees, taxes and pollution prevention planning requirements are associated with EPCRA section 313 reporting, they are not required by this or any other rule issued under EPCRA section 313. Therefore, EPA has not included either the costs or benefits of associated state requirements along with the costs and benefits of the rule. States imposing these associated requirements may wish to assess the benefits and costs of applying them to new industries.

EPA has also established associated requirements in certain general storm water permits under the NPDES program, which apply to some facilities regulated under those general permits. EPA has not included those NPDES requirements as costs of this rule, because they are not triggered by this action, but may be made applicable to facilities added to the TRI program by this rule only at the time the NPDES general permit is renewed. Should the Agency extend NPDES requirements to the facilities being added by this rule at some point in the future, that would be the appropriate time to consider the costs and benefits of those requirements.

E. Benefits

In enacting EPCRA and PPA, Congress recognized the significant benefits of providing information on toxic chemical releases and other waste management. TRI has proven to be one of the most powerful forces in empowering the federal government, state governments, industry, environmental groups and the general public to fully participate in an informed dialogue about the environmental impacts of toxic chemicals in the United States. TRI's publicly available data base provides quantitative information on toxic chemical releases and other waste management. With the collection of this information starting in 1987 came the ability for the public, government, and the regulated community to understand the magnitude of chemical releases in the United States, and to assess the need to reduce the uses and releases of toxic chemicals. TRI enables all interested parties to establish credible baselines, to set realistic goals for environmental progress over time, and to measure progress in meeting these goals over time. The TRI system has become a neutral yardstick by which progress can be measured by all stakeholders. The information reported to TRI increases knowledge of the levels of toxic chemicals released to the environment and the potential pathways of exposure, improving scientific understanding of the health and environmental risks of toxic chemicals; allows the public to make informed decisions on where to work and live; enhances the ability of corporate leaders and purchasers to more accurately gauge a facility's potential environmental liabilities; provides reporting facilities with information that can be used to save money as well as reduce emissions; and assists federal, state, and local authorities in making better decisions on acceptable levels of toxics in the environment.

Analytically, there are two types of benefits associated with TRI reporting--direct and follow-on. Direct benefits include the value of improved knowledge about the use and disposition of toxic chemicals, which leads to improvements in understanding, awareness and decision-making. It is expected that this rulemaking will generate such benefits by providing the public with readily accessible information that otherwise would not be available to them.

The second type of benefits derive from changes in behavior that may result from the information reported to TRI. These changes in behavior, including reductions in the releases and changes in the waste management practices for toxic chemicals, yield health and environmental benefits. These changes in behavior come at some cost, and the net benefits of the follow-on activities are the difference between the benefits of decreased chemical releases and transfers and the costs of the actions needed to achieve the decreases. These follow-on activities, however, are not required by the rule.

Because the current state of knowledge about the economics of information is not highly developed, EPA has not attempted to monetize the direct informational benefits of adding new industry groups to the list of industries required to report to TRI. Furthermore, because of the inherent uncertainty in the subsequent chain of events, EPA has also not attempted to predict the changes in behavior that result from the information, or the resultant net benefits, i.e., the difference between benefits and costs. EPA does not believe that there are adequate methodologies to make reasonable monetary estimates of either the direct or follow-on benefits related to this rule.

Rather, EPA assessed the potential for the rule to generate benefits comparable to those generated by currently reporting industries by seeking data on certain characteristics of the use and disposition of toxic chemicals, specifically air release data, which could be compared among the various sectors already subject to or now being added to the TRI program. EPA analyzed release data collected under authority of the CAA and maintained in the AFS. While limitations in the data set and methodology did not permit estimates to be made of the amounts of potential TRI releases, the analysis clearly supported EPA's belief that substantial volumes of TRI releases and other waste management of EPCRA section 313 toxic chemicals will be captured by expanding the coverage to include the additional industry groups. EPA believes this evidence supports its determination that the industry groups being added are likely to generate valuable information as part of the TRI program. In addition, the experience of the past 8 years shows that reporting to TRI by manufacturing facilities has produced real gains in understanding the use, release and othe waste management of toxic chemicals, and opportunities to minimize the potential for human and environmental exposure to toxics. EPA believes that the additional reporting to be generated by this rule will yield similar benefits.

F. Impacts on Small Entities

In accordance with the Regulatory Flexibility Act (RFA) and the Agency's longstanding policy of always considering whether there may be a potential for adverse impacts on small entities, the Agency has also evaluated the potential impacts of this rule on small entities. The Agency's analysis of potentially adverse economic impacts is included in the Economic Analysis for this rule (Ref. 12). The following is a brief overview of EPA's findings.

1. *Overall methodology*. This rule may affect both small businesses and small governments. For the purpose of its analysis for the final rule, EPA defined a small business using the small business size standards established by the SBA. In conjunction with the proposed rule, EPA had analyzed the small business impacts in two ways, using a definition of 10 to 49 employees and using SBA's size standards. Although EPA has chosen to use SBA's size standards for the final rule, it will continue to investigate whether an alternate small business definition such as 10 to 49 employees would be appropriate for the purpose of EPCRA section 313 rulemakings, and may choose such an alternate definition in future rulemakings. EPA defined small governments using the RFA definition of jurisdictions with a population of less than 50,000.

Only those small entities that are expected to submit at least one report are considered to be affected for the purpose of the small entity analysis. The number of affected entities will be smaller than the number of affected facilities, because many entities operate more than one facility. Economic impacts on affected small entities were calculated assuming that all TRI reports would be filed using the longer Form R (and not the Form A), which yields a conservative estimate of costs (i.e., it is likely to overestimate the true impacts). Impacts were calculated for both the first year of reporting and subsequent years. First year costs are typically higher than continuing costs because firms must familiarize themselves with the requirements. Once firms have become familiar with how the reporting requirements apply to their operations, costs fall. EPA believes that subsequent year impacts present the best measure to judge the impact on small entities because these continuing costs are more representative of the costs firms face to comply with the rule.

EPA analyzed the potential cost impact of the rule on small businesses and governments in each of the newly added industry sectors separately in order to obtain the most accurate assessment for each. EPA then aggregated the analyses for the purpose of detemining whether it could certify that the rule ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' RFA section 605(b) provides an exemption from the requirement to prepare a regulatory flexibility analysis for a rule where an agency makes and supports the certification statement quoted above. For reasons detailed in the ''Assessment of the Impacts on Small Entities'' prepared and submitted to the rulemaking docket for this rule, EPA believes that the statutory test for certifying a rule and the statutory consequences of not certifying a rule all indicate that certification determinations may be based on an aggregated analysis of the rule's impact on all of the small entities subject to it.

2. *Small businesses*. EPA used compliance costs as a percentage of annual company sales to assess the potential impacts on small businesses of expanding the TRI program to additional industry groups. This is a good measure of a firm's ability to afford the costs attributable to a regulatory requirement, because comparing compliance costs to revenues provides a reasonable indication of the magnitude of the regulatory burden relative to a commonly available measure of a company's business volume. Where regulatory costs represent a small fraction of a typical firm's revenue (for example, less than 1 percent, but not greater than 3 percent), EPA believes that the financial impacts of the regulation may be considered not significant. As discussed above, EPA also believes that it is appropriate to apply this measure to subsequent year impacts.

At proposal, EPA indicated that the rule might have a potentially significant impact on some small businesses in the chemical wholesaling industry (SIC code 5169 - Chemicals Allied Products). EPA found that those chemical wholesalers required to submit reports would file between 1 and 27 reports each, but that the actual number of reports per facility would be distributed throughout this range. Impacts above 1 percent were predicted for small businesses reporting the high number of reports (i.e., 27 reports). However, EPA stated that the majority of companies would not have to submit the maximum number of reports and would face lower costs.

In response to comments, EPA has reanalyzed its data, including reporting levels from the three States that require reporting from this industry, and has adjusted its reporting estimates downward as a result. Although EPA calculated small business impacts for the proposed rule using only the minimum, maximum, and average number of reports per facility, EPA stated that there is a distribution of reports per facility between the low and high ends. For the final rule, EPA calculated small business impacts using a distribution, and was able to better estimate the actual small business impacts that are expected.

At proposal, EPA also found that there were sufficient uncertainties regarding the impacts on one other industry, RCRA subtitle C hazardous waste facilities in SIC code 4953, that the Agency could not confidently make a determination regarding the magnitude and incidence of the impacts. Therefore, EPA stated that its initial analysis of reporting by RCRA Subtitle C Facilities in SIC Code 4953 indicated that reporting could impose a significant burden on some small businesses in this industry. However, EPA stated that it was not highly confident of the accuracy of its estimated average number of reports per facility, and believed that it had overestimated the actual number and consequently overestimated the small business impacts.

In the **Federal Register** of August 21, 1996 (61 FR 43207) (FRL–5393–4), EPA published a notice announcing the availability of additional information related to the impact of changing the definition of otherwise use. This included information on the impact on facilities in SIC code 4953. After receiving public comment on this analysis, EPA further refined it to better estimate the number of reports from this industry.

Based on its calculations for all the industry sectors being added by the final rule, the Agency estimates that approximately 4,800 businesses will be affected by the rule, and that approximately 3,600 of these businesses qualify as small based on the applicable SBA size standards. For the first reporting year, EPA estimates that approximately 570 small businesses may bear compliance costs between 1 percent and 3 percent of revenues, and that approximately 120 may bear costs greater than 3 percent. In subsequent years, about 170 small businesses are predicted to face compliance costs between 1 percent and 3 percent of revenues; only about 60 businesses are estimated to experience impacts over 3 percent. As stated above, EPA believes that subsequent-year impacts are the appropriate measure of small business impacts.

3. *Small governments*. To assess the potential impacts on small governments, EPA used compliance costs as a percentage of annual government revenues to measure potential impacts. Similar to the methodology for small businesses, this measure was used because it provides a reasonable indication of the magnitude of the regulatory burden relative to a government's ability to pay for the costs, and is based on readily available data.

EPA has estimated that 49 publicly owned electric utility facilities, operated by a total of 41 municipalities, may be affected. Of these, an estimated 18 are operated by small governments (i.e., those with populations under 50,000). None of these small governments will bear costs greater than 1 percent of annual government revenues.

4. *All small entities*. As discussed above, only 230 small businesses are expected to bear costs over 1 percent of revenues (roughly 6 percent of the 3,600 small businesses affected by the rule) and only 60 (a subset of the 230) are expected to bear costs over 3 percent of sales (less than 2 percent of all affected small entities) after the first year of reporting. None of the affected small governments are estimated to bear costs greater than one percent of revenues. Thus, the total number of small entities with impacts above this level does not change when the results are aggregated for all small entities (i.e., both small businesses and small governments). Based on this analysis which itself is based on conservative assumptions, EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. In keeping with Agency policy, however, EPA has nontheless prepared an assessment of the small entity impact of this rule and of alternative regulatory approaches that might minimize that impact consistent with the objectives of EPCRA. (See Ref. 14) EPA considered this assessment in making final decisions about the scope and terms of the rule to ensure that the rule would not unduly burden small entities. That assessment, which builds on the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule and on the Response to Comments on the IRFA, is available in the docket for this rulemaking.

Table 1.--Summary of Reporting and Costs

Industry	Number of Reporting Facilities	Number of Reports	Estimated Industry Costs ($ million per year)	
			First Year	Subsequent Years
Metal Mining	234	677	3.9	2.2
Coal Mining	321	642	5.4	2.1
Electric Utilities	977	9,898	44.9	29.4
Hazardous Waste Treatment Disposal Facilities	162	4,784	22.4	15.3
Chemicals Allied Products--Wholesale	717	8,352	39.6	25.3
Petroleum Bulk Stations Terminals--Wholesale	3,842	18,053	39.7	56.2
Solvent Recovery Services	14	117	0.6	0.4
Manufacturing	357	3,631	17.3	11.6
Total	**6,624**	**46,154**	**225.8**	**142.5**

VII. Agency Guidance and Stakeholder Process

As EPA has expanded the community right-to-know program, first by nearly doubling the number of chemicals for which release and other waste management information is required, and now through today's expansion, adding seven new industrial sectors, the Agency has had the opportunity to discuss various aspects of the program with a broad range of stakeholders, including industry, small businesses, states and citizens groups. Through this outreach, and the Agency's own experience in running the program, we have confirmed our belief that right-to-know is a fundamental part of how the Agency provides public health and environmental protection. TRI is the backbone of the Agency's community right-to-know program.

EPA, however, is committed to improving the TRI program by reducing the cost of reporting while increasing the utility of toxic release information. EPA believes that the program could be made even more effective through a careful evaluation of the current reporting forms (''Form R'' and ''Form A,'' the alternate threshold certification form) and the information gathering practices used by businesses in completing the forms. Specifically, EPA believes these forms can be revised to make it simpler and less costly for businesses to meet their recordkeeping and reporting obligations, while making it easier for communities and citizens groups to understand and use toxic chemical release information. EPA will also look at other ways to reduce reporting burdens, having to do with how companies handle records and how they make estimates of quantities for threshold determinations and for release and other waste management determinations. Upon the promulgation of this final rule, EPA is initiating an intensive stakeholder process-involving citizens groups, industry, small businesses and states--to conduct a comprehensive evaluation of the current TRI reporting forms and reporting practices with the explicit goal of identifying opportunities, consistent with community right-to-know and the relevant law, to simplify and/or reduce the cost of TRI reporting. EPA will announce the details of this process in a future **Federal Register** notice.

VIII. Public Record

EPA has established a public record for this rulemaking (docket control number OPPTS–400104). The record includes all information considered by EPA in developing this final rule. This includes all information discussed or referenced in the preamble as well as all information in the docket and referenced in documents in the docket. A public version of the record without any confidential information is available in the TSCA Public Docket Office from noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G607, Northeast Mall, 401 M St., SW., Washington, DC.

IX. References

1. Edison Electric Institute. *Comments of the Edison Electric Institutes and the Utility Solid Waste Activities Group on EPA's Proposed Rule Adding Certain Electric Utilities to EPCRA section 313 Reporting Requirements* (61 FR 33588 (June 27, 1996)). September 25, 1996 (attachment: Letter from John H. Pavlish, University of North Dakota Energy Environmental Research Center to EEI EPCRA Subcommitte (August 22, 1996)).

2. Kirk Othmer Encyclopedia of Chemical Technology, 3rd edition, Vol 24, John Wilely Sons 1984).

3. Minnesota Emergency Response Commission. *A Study on Expansion of the Toxic Chemical Reporting Requirements (Section 313 of the Emergency Planning and Community Right-to-Know Act). Report to the Legislature* (1990).

4. OMB. *Standard Industrial Classification Manual 1987*. Executive Office of the President, Office of Management and Budget, Washington, DC (1987).

5. SAIC. *SIC Code Profile 10 Metal Mining.* Science Application International Corporation, Falls Church, VA (Draft 1996 and Final 1997).

6. SAIC. *SIC Code Profile 12 Coal Mining.* Science Application International Corporation, Falls Church, VA (Draft 1996 and Final 1997).

7. SAIC. *SIC Code Profile 49 Electric, Gas and Sanitary Services.* Science Application International Corporation, Falls Church, VA (Draft 1996 and Final 1997).

8. U.S. Bureau of the Census. *Industry and Product Classification Manual*, (1992) pp. 212-213.

9. U.S. Congress, House of Representatives. *Conference Report No. 962*. 99th Cong., 2nd Session (1986).

10. USEPA/OPPT. *Development of SIC Code Candidates: Screening Document.* U.S. Environmental Protection Agency, Washington, DC (1996).

11. USEPA/OPPT. *Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313*. U.S. Environmental Protection Agency, Washington, DC (1996).

12. USEPA/OPPT. *Economic Analysis of the Final Rule to Add Certain Industries to EPCRA Section 313*. U.S. Environmental Protection Agency, Washington, DC (1997).

13. USEPA/OPPT. *Interpretations of Waste Management Activities: Recycling, Combustion for Energy Recovery, Treatment for Destruction, Waste Stabilization, and Release*. U.S. Environmental Protection Agency, (1996).

14. USEPA/OPPT. *Assessment of the Impacts on Small Entities of the Final Rule Entitled ''Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxics Release Invetory; Community Right-to-Know.''* U.S. Environmental Protection Agency, (1997).

15. USEPA/OPPT. *Response to Comments Received on the June 27, 1996 Proposed Rule to Expand the EPCRA Section 313 List of Industry Groups*. U.S. Environmental Protection Agency, Washington, DC (1996).

16. USEPA/OPPT. *The Effect of Combustion on Trace Metals in Coal and Oil Fuels for Electric Generating Facilities*. U.S. Environmental Protection Agency, Washington, DC (1996)

17. USEPA/OTS. *Toxic Chemical Release Inventory Questions and Answers Revised 1990 Version*, U.S. Environmental Protection Agency, EPA 560/4-91-003 (January 1991).

18. SAIC. *SIC Code Profile 50-51 Wholesale Trade Durable and Nondurable Goods*. Science Application International Corporation, Falls Church, VA (Draft 1996 and Final 1997).

X. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is a ''significant regulatory action'' because it is likely to have an annual effect of $100 million or more. This action therefore was submitted to the Office of Management and Budget (OMB) for review, and any substantive comments or changes made during that review have been documented in the public record.

B. Regulatory Flexibility Act

For the reasons explained in Unit VII.F. of this preamble, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.), the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In brief, the factual basis of this determination is as follows: there are 18 small governments that may be affected by the rule (i.e., will have to file reports under the rule), none of which will bear costs greater than one percent of annual government revenues. Of the approximately 3,600 small businesses affected by the rule, EPA estimates that only approximately 230 or 6 percent will experience compliance costs exceeding 1 percent of annual sales, and of those 230, only 60 (less than 2 percent) will experience costs exceeding 3 percent of annual sales. Given these relatively small estimated impacts and the relatively small number of entities affected, for purposes of the RFA EPA believes that the rule will not have a significant economic impact on a substantial number of small entities. EPA's estimates are based on the economic analysis, and, as noted above, are discussed further above, in Unit VII.F. of this preamble, as well as in a document available in the public docket for this rulemaking, entitled *Assessment of the Impacts on Small Entities of the Final Rule Entitled ''Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxics Release Inventory; Community Right-to-Know''* (Ref. 14). This determination is for the entire population of small entities potentially affected by this rule, since the test for certification is whether the rule as a whole has a significant economic impact on a substantial number of small entities.

At proposal, the Agency did not have sufficient information to determine whether or not the the rule would have a significant economic impact on a substantial number of small entities. Therefore, EPA prepared an initial regulatory flexibility analysis of the proposed regulation, and presented that analysis for public comment in conjunction with the proposed rule. EPA considered all comments received on its initial analysis and its assessment of the impacts of the proposed rule on small entities; these comments and EPA's responses are discussed in the *Response to Comments* document (Ref. 15) and in Ref. 14.

Notwithstanding the Agency's certification of this final rule under section 605(b) of the RFA, EPA remains committed to minimizing small entity impacts when feasible and to ensuring that small entities receive assistance to ease their burden of compliance. Therefore, EPA has reviewed the considerations identified in section 604 of the RFA relating to the final regulatory flexibility analysis, and that review is set forth in the above-referenced document, Assessment of the Impacts on Small Entities of the Final Rule Entitled (Ref. 14). In addition, although not required, EPA intends to prepare sector-specific guides for the new industry sectors in order to assist facilities in determining their compliance needs and in properly completing the appropriate form. EPA has prepared such documents for existing sectors and has received positive feedback on their utility from the targeted facilities. In addition, the Agency is always interested in any comments regarding the economic impacts that this regulatory action imposes on small entities, particularly suggestions for minimizing that impact. Such comments may be submitted to the Agency at any time, to the address listed above.

Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is

included in the docket for this rulemaking.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. Since this action generally involves the extension of a currently approved information collection requirement, OMB has approved this action as an addendum to the ICR approved under OMB Control No. 2070–0093. The OMB control number for this action is 2070-0157. Pursuant to section 3507 of the PRA and 5 CFR 1320.5(b) and 1320.6(a), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This notice announces OMB's approval and the OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and, if applicable, also appear on the information collection instrument.

EPA's estimates with regard to the burden associated with the information collection requirements contained in the proposed rule (EPA ICR No. 1784.01), were submitted to OMB pursuant to 5 CFR 1320.11 and presented for public comment pursuant to 5 CFR 1320.8(d)(1). Pursuant to 5 CFR 1320.11(c), OMB provided comments on the proposed ICR, a copy of which has been included in the public docket for this rule. In addition, the Agency received a number of public comments. Both OMB's and relevant public comments are addressed in the final ICR, which also reflects any changes to the burden estimates that have been made as a result of the comments received.

Provision of this information is mandatory, upon promulgation of this final rule, pursuant to EPCRA section 313 (42 U.S.C. 11023) and PPA section 6607 (42 U.S.C. 13106). EPCRA section 313 requires owners or operators of certain facilities manufacturing, processing, or otherwise using any of over 600 listed toxic chemicals and chemical categories (hereinafter ''toxic chemicals'') in excess of the applicable threshold quantities, and meeting certain requirements (i.e., at least 10 FTEs or the equivalent), to report environmental releases and transfers of and waste management activities for such chemicals annually. Under section 6607 of the PPA, facilities must also provide information on the quantities of the toxic chemicals in waste streams and the efforts made to manage those waste quantities. The regulations codifying the EPCRA section 313 reporting requirements appear at 40 CFR part 372. Respondents may designate the specific chemical identity of a substance as a trade secret, pursuant to EPCRA section 322 (42 U.S.C. 11042). Regulations codifying the trade secret provisions can be found at 40 CFR part 350.

Currently, facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 must use the EPA Toxic Chemical Release Inventory Form R (EPA Form No. 9350-1), unless they qualify to use the EPA Toxic Chemical Release Inventory Form A (formerly ''Certification Statement'') (EPA Form No. 9350-2). Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For Form A, EPA established an alternate threshold for those facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the applicable reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds, can take advantage of an alternate manufacture, process, or otherwise use threshold of 1 million pounds per year for that chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. OMB has approved the reporting and recordkeeping requirements related to Form R, supplier notification, and petitions under OMB Control No. 2070-0093 (EPA ICR No. 1363) and those related to Form A under OMB Control No. 2070-0143 (EPA ICR No. 1704).

Currently, approximately 23,000 facilities report to the TRI. For Form R, EPA estimates the industry reporting burden for collecting this information (including recordkeeping) to average 74 hours per report in the first year, at an estimated cost of $4,587 per Form R. In subsequent years, the burden is estimated to average 52.1 hours per report, at an estimated cost of $3,203 per Form R. For Form A, EPA estimates the burden to average 49.4 hours per report in the first year, at an estimated cost of $3,101 per Form A. In subsequent years, the burden is estimated to average 34.6 hours per report, at an estimated cost of $2,160 per Form A. These estimates include the time needed to review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection of information; and transmit or otherwise disclose the information. The actual burden on any specific facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility.

This final rule is estimated to add 6,267 facilities to the number of respondents currently reporting to TRI, and to increase the number of reports submitted by 357 currently reporting facilities. These facilities will submit an estimated additional 39,000 Form Rs and 7,100 Form As. This final rule therefore results in an estimated total burden of 3.6 million hours in the first year, and 2.3 million hours in subsequent years, at a total estimated cost of $225.8 million in the first year and $142.5 million in subsequent years. In approving the information collection requirements contained in this final rule, which in essence increases the number of respondents subject to the requirements without changing the underlying requirements, OMB has increased the approved burden hours in its inventory for the two existing ICRs, in order to accommodate the burdens associated with the final rule.

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, where applicable, 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. EPA's burden estimates for the rule take into account all of the above elements, considering that under section 313, no additional measurement or monitoring may be imposed for purposes of reporting.

A copy of the final ICR may be obtained from Sandy Farmer, OPPE Regulatory Information Division, Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460, by calling (202) 260-2740, or electronically by sending an e-mail message to ''farmer.sandy@epamail.epa.gov.'' A copy is also included in the Public Docket for the final rule, and is available electronically as a supporting document to the final rule on the EPA homepage.

D. Unfunded Mandates Reform Act and Executive Order 12875

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)

(Pub. L. 104-4), EPA has determined that this action contains a ''federal mandate'' that may result in expenditures of $100 million or more for the private sector in any 1 year, but that it will not result in such expenditures for state, local, and tribal governments, in the aggregate. Accordingly, EPA has prepared a written statement for this final rule pursuant to section 202 of UMRA, and that statement is available in the public docket for this rulemaking. The costs associated with this action are estimated in the economic analysis prepared for this final rule (Ref. 12), which is included in the public docket and summarized in Unit VI. above. The following is a brief summary of the UMRA statement for the final rule.

This rule is being promulgated pursuant to section 313(b)(1)(B) of EPCRA, 42 U.S.C. section 11023(b)(1)(B), and section 6607 of the Pollution Prevention Act, 42 U.S.C. section 13106. The economic analysis contains a calculation of the benefits and costs of this rule, which estimates that the total costs of the rule will be $226 million in the first year and $143 million thereafter, and concludes that the benefits will be significant but cannot be assigned a dollar value due to the lack of adequate methodologies. This information is also summarized above in Unit VI.D.-F. of this preamble. EPA believes that the benefits provided by the information to be reported under this rule will significantly outweigh the costs imposed by today's action. The benefits of the information will in turn have positive effects on health, safety, and the natural environment through the behavioral changes that may result from that information.

EPA has not identified any federal financial resources that are available to cover the costs of this rule. As set forth in the economic analysis, EPA has estimated the future compliance costs (after the first year) of this rule to be $143 million annually. Of those entities affected by today's action, EPA has not identified any disporportionate budgetary impact on any particular region, government, or community, or on any segment of the private sector. Based on the economic analysis, EPA has concluded that it is highly unlikely that this rule will have a measurable effect on the national economy.

EPA has determined that it is not required to develop a small government agency plan as specified by section 203 of UMRA or to conduct prior consultation with state, local, or tribal governments under section 204 of UMRA, because the rule will not significantly or uniquely affect small governments and does not contain a significant federal intergovernmental mandate. Nevertheless, EPA has engaged in numerous discussions with state and local officials. EPA's consultation and outreach activities are discussed in Unit II.B. of this preamble. The Agency believes that its extensive consultations with other levels of government throughout the rulemaking process for this regulatory action are consistent with both the intergovernmental provisions of sections 203 and 204 of UMRA, and Executive Order 12875, Enhancing the Intergovernmental Partnership. See 58 FR 58093 (October 28, 1993).

Finally, EPA believes this rule complies with section 205(a) of UMRA. The objective of this rule is to expand the public benefits of the TRI program by exercising EPA's discretionary authority to add SIC codes to the program, thereby increasing the amount of information available to the public regarding the use, management and disposition of listed toxic chemicals. In making additional information available through TRI, the Agency increases the utility of TRI data as an effective tool for empowering local communities, the public sector, industry, other agencies, and state and local governments to better evaluate risks to public health and the environment, particularly at the local level. Throughout the rulemaking process, EPA considered numerous regulatory alternatives concerning all aspects of the rule, including, for example, which SIC codes should be added to the program and for those added, whether some activities should not be subject to reporting, and whether existing or new alternate reporting provisions, regulatory exemptions, and/or other options should be applied or adopted. (Such alternatives were discussed in the preamble to the proposed rule, and are addressed elsewhere in this Preamble, and/or in the *Response to Comments* document (Ref. 15).) In many instances, EPA selected burden-reducing alternatives (e.g., deferring the addition of certain candidate industries or excluding certain activities for included industries) because information available at the time suggested that a burden would have been imposed without obtaining TRI reporting that EPA had confidence would contribute significantly to the purposes of the TRI program. In addition, existing burden-reducing measures (e.g., the use of readily available monitoring data or, if such data are not available, reasonable estimates; alternate reporting thresholds; and statutory and regulatory exemptions from reporting) will apply to the industry groups being added by this rule. EPA also will be assisting small entities subject to the rule, by such means as providing meetings, training, and compliance guides in the future, which also will ease the burdens of compliance.

While many steps have been and will be taken to further reduce the burden associated with this rule, EPA rejected some alternatives that also would have reduced burden (e.g., complete exclusion of certain candidate industry groups from the rule), because they would have significantly reduced the information obtained and thereby reduce the degree to which the rule met its objective. EPA believes that any further steps taken to minimize the burden of this rule by reducing its scope or requirements would necessarily lower the degree to which the rule achieves its objective, and to EPA's knowledge there is no available alternative to the final rule that would obtain the equivalent information in a less burdensome manner. For all of these reasons, EPA believes the rule complies with UMRA section 205(a).

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the Agency has considered environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in relevant communities. As a part of its economic analysis (Ref. 12), which is summarized in Unit VI. of this preamble and included in the public docket, EPA examined the distribution patterns of the public information to be generated by today's final action. EPA believes that exploring the distribution of information benefits in demographic terms, particularly for rulemaking activities such as this one, is an important part of the Agency's compliance with this Executive Order and the Agency's overall environmental justice strategy.

EPA's analysis found that households with annual incomes less than $15,000, and minority and urban populations, are slightly over-represented in communities containing facilities in the industry groups that are expected to report releases and transfers of toxic chemicals under this rule. This rule will provide people in a large number of communities with TRI information about facilities in their vicinity for the first time. Therefore, EPA concludes the

rule will have beneficial environmental justice impacts.

F. Submission to Congress and the General Accounting Office

This action is a ''major rule'' as defined by 5 U.S.C. section 804(2). Therefore, pursuant to 5 U.S.C. section 801(a)(1), as added by the Small Business Regulatory Enforcement Flexibility Act of 1996, EPA has provided information about this action to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to its publication in today's **Federal Register**.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: April 22, 1997.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 372 is amended to read as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11028.

2. In § 372.3, revise the definition for ''Otherwise use'' and add the following definitions in alphabetical order to read as follows:

§ 372.3 Definitions.

* * * * *

Beneficiation means the preparation of ores to regulate the size (including crushing and grinding) of the product, to remove unwanted constituents, or to improve the quality, purity, or grade of a desired product.

Boiler means an enclosed device using controlled flame combustion and having the following characteristics:

(1)(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit's combustion chamber and primary energy recovery sections(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(2) The unit is one which the Regional Administrator has determined, on a case-by-case basis, to be a boiler, after considering the standards in § 260.32 of this chapter.

* * * * *

Coal extraction means the physical removal or exposure of ore, coal, minerals, waste rock, or overburden prior to beneficiation, and encompasses all extraction-related activities prior to beneficiation. Extraction does not include beneficiation (including coal preparation), mineral processing, in situ leaching or any further activities.

* * * * *

Disposal means any underground injection, placement in landfills/surface impoundments, land treatment, or other intentional land disposal.

* * * * *

Industrial furnace means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(1) Cement kilns.

(2) Lime kilns.

(3) Aggregate kilns.

(4) Phosphate kilns.

(5) Coke ovens.

(6) Blast furnaces.

(7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces).

(8) Titanium dioxide chloride process oxidation reactors.

(9) Methane reforming furnaces.

(10) Pulping liquor recovery furnaces.

(11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid.

(12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

(13) Such other devices as the Administrator may, after notice and comment, add to this list on the basis of one or more of the following factors:

(i) The design and use of the device primarily to accomplish recovery of material products;

(ii) The use of the device to burn or reduce raw materials to make a material product;

(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(v) The use of the device in common industrial practice to produce a material product; and

(vi) Other factors, as appropriate.

* * * * *

Otherwise use means any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms ''manufacture'' or ''process.'' Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless:

(1) The toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of futher waste management; or

(2) The toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical.

Overburden means the unconsolidated material that overlies a

deposit of useful materials or ores. It does not include any portion of ore or waste rock.

* * * * *

RCRA approved test method includes Test Method 9095 (Paint Filter Liquids Test) in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992.

* * * * *

Treatment for destruction means the destruction of a toxic chemical in waste such that the substance is no longer the toxic chemical subject to reporting under EPCRA section 313. Treatment for destruction does not include the destruction of a toxic chemical in waste where the toxic chemical has a heat value greater than 5,000 British thermal units and is combusted in any device that is an industrial furnace or boiler.

Waste stabilization means any physical or chemical process used to either reduce the mobility of hazardous constitutents in a hazardous waste or eliminate free liquid as determined by a RCRA approved test method for evaluating solid waste as defined in this section. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are ''stabilization,'' ''waste fixation,'' or ''waste solidification.''

3. In § 372.22, revise paragraph (b) to read as follows:

§ 372.22 Covered facilities for toxic chemical release reporting.

* * * * *

(b) The facility is in Standard Industrial Classification (SIC) (as in effect on January 1, 1987) major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis) by virtue of the fact that it meets one of the following criteria:

(1) The facility is an establishment with a primary SIC major group or industry code in the above list.

(2) The facility is a multi-establishment complex where all establishments have primary SIC major group or industry codes in the above list.

(3) The facility is a multi-establishment complex in which one of the following is true:

(i) The sum of the value of services provided and/or products shipped and/or produced from those establishments that have primary SIC major group or industry codes in the above list is greater than 50 percent of the total value of all services provided and/or products shipped from and/or produced by all establishments at the facility.

(ii) One establishment having a primary SIC major group or industry code in the above list contributes more in terms of value of services provided and/or products shipped from and/or produced at the facility than any other establishment within the facility.

* * * * *

4. In § 372.38, add paragraphs (g) and (h) to read as follows:

§ 372.38 Exemptions.

* * * * *

(g) *Coal extraction activities.* If a toxic chemical is manufactured, processed, or otherwise used in extraction by facilities in SIC code 12, a person is not required to consider the quantity of the toxic chemical so manufactured, processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25 or § 372.27, or determining the amounts to be reported under § 372.30.

(h) *Metal mining overburden.* If a toxic chemical that is a constituent of overburden is processed or otherwise used by facilities in SIC code 10, a person is not required to consider the quantity of the toxic chemical so processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25 or § 372.27, or determining the amounts to be reported under § 372.30.

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Part III

Department of Transportation

Coast Guard

46 CFR Parts 108, 110, 111, 112, 113, and 161

Electrical Engineering Requirements for Merchant Vessels; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 108, 110, 111, 112, 113, and 161

[CGD 94–108]

RIN 2115–AF24

Electrical Engineering Requirements for Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: As part of the President's Regulatory Reinvention Initiative, the Coast Guard is amending its electrical engineering regulations to reduce the regulatory burden on the marine industry, purge obsolete and out-of-date regulations, and eliminate requirements that create an unwarranted differential between domestic rules and international standards. This rulemaking harmonizes, where possible, the electrical engineering regulations with recent amendments to the International Convention for the Safety of Life at Sea, 1974, as amended. Additionally, this rulemaking dramatically revises certain prescriptive electrical equipment design, specification, and approval requirements and replaces them with performance-based requirements that incorporate international standards.

DATES: This final rule is effective June 16, 1997. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on June 16, 1997.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Hamman, Project Manager, Office of Design and Engineering Standards (G–MSE), 202–267–2206.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 2, 1996, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Electrical Engineering Requirements for Merchant Vessels'' in the **Federal Register** (61 FR 4132). There were two correction notices published for the NPRM on February 23, 1996 (61 FR 7050), and March 5, 1996 (61 FR 8539). The Coast Guard received 45 letters commenting on the proposal. As a result of requests from a national trade association, a notice was published on February 26, 1996 (61 FR 7090), extending the comment period from March 18, 1996, to April 2, 1996, and announcing a public meeting on March 25, 1996. Over 20 persons attended the meeting and 9 commented on the NPRM. A recording and summary of the meeting are in the rulemaking docket. On June 4, 1996, the Coast Guard published an interim rule in the **Federal Register** (61 FR 28260).

Correction notices were published on June 26, 1996 (61 FR 33045), July 3, 1996 (61 FR 34927), July 11, 1996 (61 FR 36608), July 12, 1996 (61 FR 36786), July 30, 1996 (61 FR 39695), and September 23, 1996 (61 FR 49691), in the **Federal Register.** Also, the Coast Guard published a notice of policy on October 4, 1996 (61 FR 51789), in the Federal Register. The Coast Guard received 30 letters commenting on the interim rule. No public meeting was requested, and none was held.

Drafting Information

The principal persons involved in drafting this document are Mr. Gerald P. Miante, Office of Design and Engineering (G–MSE–3), and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Purpose

Under the authorities cited in the ''Authority'' section for each part amended, the Coast Guard is amending its electrical engineering and equipment regulations for certain Coast Guard-inspected vessels in 46 CFR chapter I, subchapters I–A, J, and Q to accomplish the following:

(1) To reduce the regulatory burden on the marine industry by eliminating obsolete and unnecessary regulations and by clarifying the remaining ones. This objective is consistent with the President's Regulatory Reinvention Initiative and the Coast Guard's regulatory reform program.

(2) To replace, where appropriate, requirements that are prescriptive in nature with performance-based requirements that incorporate national or international standards and allow increased flexibility for small businesses.

(3) To eliminate requirements that create an unwarranted differential between domestic rules and international standards. This rulemaking harmonizes, where possible, the electrical engineering regulations with amendments to the International Convention for the Safety of Life at Sea, 1974, (SOLAS 74) since the electrical engineering regulations were last revised in 1982.

(4) To address comments received from the marine industry and from Coast Guard field and inspection offices.

This rulemaking is intended to serve the needs of industry while maintaining a comparable level of safety.

Discussion of Comments and Changes

The following is a summary of the comments received and the changes made to the regulatory text since the interim rule was published. The items are grouped first by those that address a general issue, then by those that relate to a specific provision in the text.

I. General Comments.

(1) Several comments congratulated the Coast Guard for its revision of subchapter J which offers the manufacturers more flexibility, increases clarity of the regulations and enhances safety of U.S. flag vessels. It was observed that the revision process reflects a lot of ''hard work and good common sense.''

(2) As in response to the NPRM, a number of comments recommended changes that may require further consideration by the Coast Guard. Several comments recommended that certain other standards be referenced in the regulations as replacements for, or options to, those cited in the interim rule. However, not all changes could be incorporated at this final rule stage, due to the complexity of the requests or the necessity to allow the public an opportunity to comment on new requirements. Several additional standards for incorporation by reference are included in this final rule.

The Coast Guard has a long-range plan to broaden the use of acceptable standards. Until those standards are incorporated into the regulations, any vessel owner or operator who desires to employ a fitting, material, apparatus, equipment, or arrangement other than that required by this subchapter may submit a request using the equivalency provision in § 110.20–1.

Items the Coast Guard may consider for a subsequent rulemaking include—

(a) Incorporation of the new Institute of Electronic and Electrical Engineers (IEEE) Std 45, when approved by the IEEE standards board and published;

(b) Addition of a requirement that all manufacturer's conducting self-certification should be International Organization for Standardization (ISO) 9001 registered;

(c) Incorporation of performance-based inclination criteria into § 111.01–19;

(d) Consideration of requirements for high impedance grounding systems to be added to § 111.05–19;

(e) Establishing a new subpart that would address the necessary supply of clean, uninterrupted power for modern AC-powered, solid-state equipment, which would complement the requirements of §§ 111.15–3 and 111.20–1;

(f) Addition of a ventilation alarm requirement to § 111.35–1.

(g) Prohibition of screw-in, porcelain or glass-cap fuses in subpart 111.53;

(h) Incorporation of new standards that provide guidance for high voltage cable in § 111.60–1(e);

(i) Incorporation of the Canadian Standards Association

(CSA) flame test CSA FT–4 either as another option or in place of American National Standards Institute/ Underwriters Laboratories (ANSI/UL) 1581 test VW–1 in §§ 111.60–2 and 111.30–19(b)(4);

(j) Incorporation of Underwriters Laboratories (UL) 2225 into § 111.60–23(h) to provide guidance on the use of metal-clad (Type MC) cable in hazardous (classified) locations;

(k) Incorporation of Illuminating Engineers Society

(IES) Recommended Practice (RP) 12 for marine lighting in § 111.75–15(c);

(l) Permission of third-party testing for lighting, appliances, oil immersion heaters, and electric heaters in §§ 111.75–20, 111.85–1, and 111.87–3;

(m) Incorporation of International Electrotechnical

Commission (IEC) 1892 in § 111.105–5 for electrical installations aboard mobile offshore drilling units (MODU's) and floating platforms;

(n) Incorporation of pump room ventilation and monitoring requirements of American Bureau of Shipping (ABS), Rules for Building and Classing Steel Vessels, section 4/5.151.6 into § 111.105–31;

(o) Replacing IEC 332–3, Category A flame test with IEC 332–3, Category A/F in § 111.107–1;

(p) Restricting the color red for general emergency or fire alarms only in § 113.25–10;

(q) Application of the cable routing and fire testing requirement of § 113.30–25(i) to all safety related circuits in part 113;

(r) Incorporation of additional requirements in § 113.50–20 to align the regulations with the International Maritime Organization (IMO) Code of Alarms and Indicators; nd

(s) Establishing a new subpart 113.70 for gas detection systems.

(3) A number of comments commended the Coast Guard's effort to streamline its electrical regulations and incorporate industry standards, both domestic and international.

Consistent with the President's Regulatory Reinvention Initiative, the Coast Guard is taking this approach in all its rulemaking projects.

(4) Two comments voiced several specific concerns and requested extending the effective date of the interim rule by six months to allow the U.S. shipbuilding community an opportunity to compile detailed comments and suggestions regarding the change. Additionally, the comment specified major concerns relating to degree of protection requirements for enclosures, ambient temperatures for equipment, ground detection regulation, and marine battery installations.

In response, the Coast Guard, after a detailed analysis of these concerns, determined that the extension of the comment period was unnecessary. In response to the comment's specific concerns and until this final rule could be finalized, the Coast Guard published a notice of policy for interim rule (61 FR 51789; October 4, 1996). This policy notice pointed out that persons wishing to apply a provision from the 1996 draft of IEEE Std 45 or the 1996 ABS Rules for Building and Classing Steel Vessels instead of a provision in the interim rule could submit, for approval on a case-by-case basis, a request under the equivalency provisions in the interim rule.

(5) One comment requested clarification on what standards are approved for incorporation by reference and who determines if a standard is approved.

The Coast Guard determines which standards are acceptable for incorporation by reference. In order to use a system arrangement or individual piece of equipment that does not meet the standards incorporated by reference or the specific requirements in this subchapter, a request may be submitted under the equivalency provision of § 110.20–1. Requests under the equivalency provision will be considered at the time a specific system design is submitted to the Coast Guard for plan review and may be accepted as part of the system plan approval.

(6) Several comments indicated that, contrary to the Coast Guard's intentions, the interim rule significantly increases the cost of doing business internationally for U.S. shipyards. They expressed concern that equipment protection, temperature, and operational characteristic requirements have been increased beyond conventional practice. Due to this perceived increase in requirements, the comments stated that electrical equipment might require extensive additional testing to demonstrate operability. These comments also noted that the requirements for alarm, indicating and internal communications systems have been greatly expanded. Finally, the comments pointed out that the interim rule invokes requirements that did not previously exist and are not found in trade literature. The comments' specific concerns are addressed in the discussion of comments for the relative section.

Generally, however, the perceived increases and changes to the requirements in the final rule are actually a harmonization of the Coast Guard's electrical engineering requirements with classification society (ABS) and international (IEC) performance-based standards.

(7) One comment expressed concern that the Coast Guard is heavily reliant on ABS Rules when the ABS Rules may not be aligned with the requirements of the International Association of Classification Societies (IACS) Member Societies. Also, the comment expressed concern that the regulations unfairly forced Member Societies to follow ABS requirements for vessels operating in U.S. waters.

The Coast Guard has traditionally incorporated by reference various sections of ABS Rules into its electrical engineering regulations. This rule expands on the use of ABS Rules as an option or alternative to prescriptive requirements. However, the incorporation by reference of specific ABS rules does not preclude the use of other rules approved for specific applications under the equivalency provisions in § 110.20–1.

Additionally, port state control inspections are performed mainly to determine compliance with SOLAS 74 and some related Coast Guard regulations. The requirements of subchapter J and its referenced material apply to Coast Guard-certificated, U.S.-flag vessels only and are not generally applicable to foreign vessels, unless specified elsewhere in Coast Guard regulations.

(8) One comment recommended incorporating more performance-based standards and more Coast Guard policies to reduce the number of requests seeking equivalency determinations under these regulations. The comment expressed belief that adherence to performance standards

will foster greater innovation and improved overall safety.

Throughout the regulation, the Coast Guard has incorporated, wherever possible, a significant number of additional industry standards, both domestic and international. Time and resource limitations prevent the inclusion of every applicable standard. The allowance of equivalencies would permit the inclusion of appropriate standards that the Coast Guard has yet to review. This practice does foster innovation and is consistent with the Coast Guard's intention to serve the needs of industry while maintaining a comparable level of safety.

(9) Several comments pointed out that, at the time of the publication of the interim rule, which incorporated the 1995 ABS Rules for Building and Classing Steel Vessels, ABS had already published the 1996 edition of these rules.

The text of this final rule incorporates the ABS Rules for Building and Classing Steel Vessels, 1996 edition. ABS updated section 4/5 of the ABS Rules for Building and Classing Steel Vessels by incorporating international requirements and, at the same time, reorganized the section into a more user-friendly format by dividing it into parts and renumbering the paragraphs.

II. Comments to Specific Sections

Section 110.01–3. (1) Now that the rule is finalized, the option of complying with regulations in effect at the time the alterations or modifications are made has been removed from paragraph (b). Compliance with this regulation is now mandatory.

(2) Paragraph (c) has been amended to better define the term ''conversion.''

Section 110.10–1. (1) One comment suggested incorporating by reference IEEE Recommended Practice on Surge Voltages in Low-Voltage AC Power Circuits (IEEE Std 62.41–1991); UL 1449, Standard for Transient Voltage Surge Suppressors; and UL 1778, Standard for Uninterruptable Power Supply Equipment.

These standards apply to uninterruptable power supplies (UPS) which are not presently addressed in these regulations. While the value of these standards are realized and their use is not prohibited by these regulations, the Coast Guard will not include specific provisions or requirements on this subject in this rule without allowing an opportunity for public comment.

(2) One comment suggested that American Petroleum Institute (API) Recommended Practices (RP) should not be incorporated into these regulations because they set forth domestic practices for fixed platform and shoreside facilities and do not reflect international consensus for vessels. It was suggested to consider incorporation of IEC 1892, which is presently under development at an international level.

The Coast Guard agrees and is awaiting the publication of the IEC standard for review. The Coast Guard may consider IEC 1892 in a subsequent rulemaking where the public will have an opportunity to comment. Until its publication, subchapter I–A, subparts 111.105 and 111.107, of this chapter and Coast Guard policy provide guidance for MODU's and other Outer Continental Shelf (OCS) vessels.

Section 110.15–1. (1) One comment recommended that the definition of ''independent laboratory'' be changed to clarify that the certification may not be performed in the absence of listing.

The intent of the definition is to ensure that testing must always be performed but also recognizes that laboratories vary in the terminology of promulgating successful results. Certain laboratories ''list'' products; other laboratories ''certify'' that products meet certain standards.

(2) One comment suggested that the requirement for watertight enclosures of National Electrical Manufacturers Association (NEMA) Type 6 or 6P is excessive and suggested that NEMA Type 4 or 4X most closely matches the IEEE Std 45 definition of watertight and exceeds the definition of waterproof.

The Coast Guard agrees and the definitions of ''watertight'' and ''waterproof'' have been revised in accordance with IEEE 100. Examples of industry accepted minimum degrees of protection requirements are included.

(3) One comment stated that the increase in the degree of protection requirements for ''dripproof'' to IEC ingress protection (IP) 32 will cause manufacturers to redesign electrical installations aboard vessels; and IEC IP 22 is acceptable as the current industry standard. Additionally, the comment recommended reinstating NEMA 250 Type 12 in this category.

The Coast Guard agrees with all the recommendations and the definition of ''dripproof'' has been revised accordingly.

Section 110.25–1. (1) One comment recommended adding wording to paragraph (i)(6) to clarify that, when required by the standard, proof of listing and certification must also be submitted. This change would align the regulatory language with the note to the same section.

Paragraph (i)(6) has been revised accordingly.

(2) Several comments suggested that, in the note to paragraph (n), items required to meet an industry standard should only be certified by an independent laboratory approved by the Commandant, and not simply self-certified by the manufacturer. One comment pointed out that elimination of this requirement would result in inferior equipment severely jeopardizing shipboard safety. The comment suggests that at a bare minimum any manufacturer conducting self-certification should be ISO 9001 registered, which requires third-party evaluation of the manufacturer's quality program.

Before the recent revisions of subchapter J, the regulation in this area required proof of listing only for equipment required to meet UL standards; manufacturer's self-certification was allowed for other standards such as IEEE, NEMA, and ANSI. The interim rule modified this requirement by consolidating UL into the latter group. The Coast Guard may consider requiring manufacturers, who wish to self-certify, to be ISO 9001-registered in a subsequent rulemaking where the public will have an opportunity to comment.

(3) One comment recommended removing from paragraph (c) Marine Safety Center (MSC) review of components to expedite review and eliminate redundant review by the MSC and the Officer in Charge, Marine Inspection (OCMI). The comment states that the certificate of inspection is a better measure of safety.

The inspection for certification of a vessel cannot be conducted at the component level for most systems. The Coast Guard has a long-standing policy to allow plan review by third parties, such as professional engineers and ABS, with oversight functions distributed between the MSC and OCMI. The Coast Guard continues to find component verification by the MSC necessary for these essential systems.

Section 111.01–1. One comment suggested adding wording to prohibit the use of combustible materials in the construction of electrical equipment, for example, enclosures and foundations.

It is Coast Guard policy, which is congruent with SOLAS 74, Regulations II–2/34 and 49, to avoid the unnecessary use of combustible materials. Therefore, new paragraph (b) has been added to this section.

Section 111.01–9. (1) Several comments noted that, in paragraphs (a) and (c), IEC IP 32 is an unduly severe degree of protection instead of a NEMA 250 Type 2 enclosure and that IEC IP 22

is acceptable as the current industry standard.

The Coast Guard agrees and has revised paragraphs (a) and (c) accordingly.

(2) Several comments suggested that the Coast Guard incorporate by reference table 4/5B.1 of the 1996 ABS Rules for Building and Classing Steel Vessels as acceptable minimum degrees of protection.

This table has been added to paragraph (b) and to the note to this section.

(3) Several comments pointed out that the degree of protection requirements NEMA 250 Type 6 or 6P and IEC IP 67 are too severe to be designated as ''watertight''.

The Coast Guard agrees and has revised the requirement to be NEMA 250 Type 4 or 4X and IEC IP 56 in paragraph (b) of this section and wherever the watertight requirement appears in part 113 of this chapter.

(4) One comment suggested that an addition be made to these regulations to avoid the possibility that the National Electrical Code (NEC) requirements for land-based equipment near seashores might exceed requirements in this subchapter.

This subchapter addresses Coast Guard certificated vessels. Land-based electrical installations fall under different standards and are not subject to this subchapter. The Coast Guard is not responsible for the development of NEC requirements.

Section 111.01–15. (1) Several comments pointed out that, in paragraph (c), circuit breakers be allowed to be rated at 40 °C instead of 45 °C because this is in accordance with marine circuit breakers covered in UL 489, supplement SA incorporated into § 111.54–1(b) of this chapter. This would not preclude the option of using 50 °C Navy type circuit breakers.

Paragraph (c) has been revised accordingly.

(2) One comment suggested that requiring a 55 °C rating for all control and instrumentation equipment will cause manufacturers to recertify and redesign equipment.

The increase to 55 °C rating for these critical circuit elements is in harmony with ABS Rules for Building and Classing Steel Vessels, table 4/11.1, IEC 68, and IEC 92–101, table 4. Therefore, the requirement is retained.

(3) One comment noted that an ambient temperature of 40 °C differs with the generally accepted IACS and IEC temperature of 45 °C.

The Coast Guard has accepted 40 °C electrical equipment with specific exceptions in areas of special concern as noted in this section.

Section 111.01–17. One comment noted that the regulations establish new requirements and vendor testing to demonstrate operability.

These requirements conform to the international standard IEC 92–101 and 1996 ABS Rules for Building and Classing Steel Vessels, table 4/5.1.

Section 111.01–19. (1) One comment suggested that if the Coast Guard were to provide a performance-based inclination criteria, the result would be the elimination of equivalency determinations applicable to any single class of vessel.

No performance criteria were submitted in response to the interim rule; however, the Coast Guard may consider any performance criteria submitted for incorporation into a subsequent rulemaking.

(2) One comment recommended changing the wording to exclude certain items, such as dishwashers, toasters, and coffee makers, that are not necessary to the maneuvering and safety of the vessel.

This section has been revised to apply these requirements to critical equipment and systems.

(3) One comment stated that the new requirements, which ensure that all electrical equipment is operable under certain extreme conditions of list, roll, and trim, will result in greater expense due to the installation of new equipment requiring additional tests.

Although this section has been revised to apply to critical systems, the inclination requirements are consistent with IEC 92–101, table 3.

Section 111.05–7. (1) One comment noted that this section is redundant to § 111.60–5.

This section is retained because of its specific reference to armored cable and grounding.

(2) One comment recommended removing the reference to IEC 92–3 because this standard does not address installation guidance for armor and sheathing.

The reference to IEC 92–3 is retained because several sections of Part 3 of the IEC publication, such as clauses 10.18 and 11.14, provide guidance for metallic armor and sheathing.

Section 111.05–9. One comment recommended incorporating the American Boat and Yacht Council (ABYC) Standard E4 on lightning protection.

The Coast Guard agrees that guidance is appropriate for lightning protection. The Coast Guard is incorporating the international standard IEC 92–401, Electrical Installations in Ships; Part 401: Installation and test of completed installation, section 10, Lightning Conductors.

Section 111.05–19. One comment recommended additions to the regulation for permitting high-impedance grounding schemes on all vessels with a distribution voltage greater than 1,000 volts a.c. as this method becomes an important tool for circuit protection, fault coordination, and the limitation of equipment damage.

While the value of this practice is realized and its use is not prohibited by these regulations, the Coast Guard will not include specific provisions or requirements on this subject in a final rule without allowing an opportunity for public comment. However, this final rule references this grounding method in §§ 111.05–19 and 111.05–27.

Section 111.05–23. (1) One comment suggested allowing either the ground detecting equipment or an alarm signal from the detecting equipment to be installed at the distribution switchboard via a control cable instead of bringing back a phase conductor to the main distribution switchboard. Also, the comment points out that allowing the detection equipment to remain near the transformer would also make it available for local troubleshooting.

While this is the intent of paragraph (d), a note has been added to the paragraph for clarification.

(2) One comment recommended that paragraph (d) should be revised to include only isolation devices greater than 10 kVA.

Paragraph (d) has been revised to specify ''feeder'' circuits, regardless of the load.

(3) One comment suggested that the increase in the required number of ground detector lights will have a great impact on the cost and space.

The revisions to paragraph (d) discussed previously should address the concern of this comment by reducing the number of circuits monitored and method of monitoring.

Section 111.05–27. One comment stated that the requirement to momentarily remove the indicating device is overly prescriptive and recommended a more performance-based requirement to permit new technology.

The section has been revised to clarify intent.

Section 111.05–33. (1) Several comments suggested revising this section to clarify safety grounds (bonding) versus system grounds so the language is technically accurate.

This section has been revised accordingly.

(2) Several comments noted that clarification is necessary in paragraph (b) to exclude ''system'' ground conductors which are required by Coast Guard policy to be equal in size to the current carrying conductors.

Paragraph (b) has been revised accordingly.

(3) One comment recommended revising the requirement to allow cable armor and Type MC cable sheath as a grounding conductor as long as the cable is third-party tested and listed (with its terminators) as approved for this application.

Coast Guard historically has prohibited the use of marine shipboard cable braided armor or metallic sheath as the grounding conductor. Type MC cable installation is required to be in accordance with the NEC as stated in § 111.60–23 of this chapter.

Section 111.10–1. One comment requested a definition for the term ''auxiliary propulsion'' since certain types of thrusters are designed for use as ''take-home'' propulsive devices and thrusters are specifically excluded from paragraph (a).

The term ''auxiliary propulsion'' is revised to read ''propulsion auxiliary'' to clarify that the intended machinery includes items such as fuel oil service pumps, lube oil service pumps, purifiers, engine sea water and fresh water cooling pumps, and air ejection equipment. Non-conventional systems must be reviewed on a case-by-case basis to consider such a thruster or ''take-home'' motor in a systems relationship with the power generating equipment capacity.

Section 111.10–9. One comment stated that propulsion and vessel control are the critical components of the specified loads. The comment noted that absent these systems, and given the ability of many safety systems to operate in the absence of distributed electric power, the additional redundancy and expense of two independent transformers is not justified.

Most vessels rely on distributed electric power for system operation. Plans for any non-conventional system which does not rely on power from the transformers may be submitted for review in accordance with § 110.20–1.

Section 111.12–1. (1) One comment suggested that the Coast Guard accept other major classification societies besides ABS to eliminate differential between domestic rules and international standards. According to the comment, ABS Rules create a burden on equipment manufacturers with additional ''type-testing.''

The Coast Guard has traditionally incorporated by reference various sections of ABS Rules into its electrical engineering regulations. This rule expands on the use of ABS Rules as an option or alternative to Coast Guard prescriptive requirements. However, the incorporation by reference of specific ABS rules does not preclude the use of other rules approved for specific applications under the equivalency provisions in § 110.20–1, whereby the Coast Guard can consider alternative ''type-testing.''

Since ABS is a member of IACS and has recently revised its electrical section 4/5 (section 4/3 of the ABS Rules for Building and Classing Mobile Offshore Drilling Units) to incorporate many IEC practices, the Coast Guard considers prime movers meeting these sections to be aligned with international standards.

(2) One comment noted that neither Coast Guard regulations nor ABS Rules provide for automatic shutdown of a diesel generator's prime mover upon failure of that engine's pressure lubrication system.

The requirement in paragraph (c) of this section is retained because, in addition to being sound engineering practice, table 4/11.10 of the 1996 ABS Rules for Building and Classing Steel Vessels provides for automatic shutdown of diesel, steam, and gas turbine prime movers upon low lube oil inlet pressure to that engine as well as to the bearings of the electrical generator.

Section 111.12–11. One comment recommended adding a new item to paragraph (c) which would require the circuit breaker for a generator to open upon the shutting down of the prime mover. This is a safety feature required by ABS Rules for Building and Classing Steel Vessels, 1996, section 4/5A5.3.1.

The inclusion of a low-voltage trip element, activated upon the shutting down of the prime mover, has always been a feature on generator circuit breakers and in the provisions of ABS Rules; however, this requirement has been absent from Coast Guard regulations.

It is now added in new paragraph (c)(1).

Section 111.15–2. (1) One comment noted that the requirements of this section will cause the U.S. marine industry to use specialized, more expensive batteries. Also, the addition of a special nameplate will increase costs.

The Coast Guard utilizes regulations, incorporating Classification Society Rules and standards, to ensure that equipment aboard certificated vessels is suitable for the environment and the purpose for which it is installed. This is particularly applicable to equipment used in cases of emergency. Labeling of the product by the manufacturer to attest to certain conditions is a cost effective method of presenting this information to shipowners, operators, crew, and inspectors.

(2) One comment recommended the use of a more performance-based standard instead of the specific requirements in paragraph (a). Performance standards would preclude the necessity for equivalency determinations for column stabilized units, surface effects vessels, etc.

The requirement of 40 degrees of inclination is consistent with IEC 92–101 and 92–305. Although a parameter for use of accumulator batteries in ships, a unit designed for the environmental conditions of marine installation should include this feature. The use of an accumulator battery that does not meet this parameter may be requested under the equivalency provision of § 110.20–1. Submissions under the equivalency provision will be considered at the time a specific system design is submitted to the Coast Guard for plan review and may be accepted as part of the system plan approval.

Section 111.15–3. One comment suggested the addition of a three pole disconnect switch located in the battery compartment of large battery installation with a nominal voltage of higher than 120 volts for use during servicing.

This comment applies mainly to a large amount of cells for use with uninterruptable power supply units and may be considered for inclusion into a subsequent rulemaking where the public will have an opportunity to comment.

Section 111.15–5. (1) One comment noted that, in paragraph (c), batteries are allowed in confined spaces if the batteries are sealed. The comment recommended that no batteries, sealed or otherwise, should be situated in confined areas because these units are only ''sealed'' if everything is normal and may vent as much as standard cells under abnormal conditions.

Paragraph (c) has been revised accordingly.

(2) One comment suggested that, in paragraph (e), it is sufficient for a battery to have indication of manufacturer and type number on the battery with documentation available to support the ampacity, construction, and specific gravity requirements.

Battery documentation is usually obscure and unavailable for service personnel and inspectors and labeling is considered necessary for maintenance and inspection.

Section 111.15–20. One comment recommended that, if the Coast Guard is going to specify ampacity considerations, then it should also specify a voltage drop in the criteria for cable sizing.

Paragraph (c) has been revised to include the words ''while maintaining the proper voltage at the load end.''

Section 111.15–30. One comment indicated that the purpose of this section is unclear and appears to be directed at a unique situation.

The purpose of this section is to ensure that, from a systems engineering perspective, battery installations and their chargers are compatible. It also cautions against the use of some portable battery chargers which may impose an unintentional ground of the vessel's power supply system. Section 111.15–30 is retained.

Section 111.20–1. (1) One comment suggested revising the requirement to allow only transformers rated at less than 500 VA to be installed in an enclosure as an alternative to the winding being inherently resistant to moisture, sea atmosphere, and oil vapor. It reasons that the long term integrity of enclosures for larger, permanently fixed transformers may not survive the life cycle of the vessel.

This section is retained because it offers alternatives for this equipment. Should the enclosure choice be selected, design, plan review, installation, and inspection must all show suitability for environmental conditions and applicability to the system in which it is used.

(2) One comment recommended revising the provision to allow an exception for inherently current limiting ferro-resonant transformers which are incorporated in a device meeting UL 1778.

The Coast Guard determined that this equipment is for specific use and uninterruptable power supplies. As stated previously, uninterruptable power supplies will be addressed in the next revision of the electrical engineering regulations. Until that time, use of uninterruptable power supply systems are not specifically prohibited by these regulations, and their usage is subject to the normal plan review and inspection process.

Section 111.30–5. (1) One comment noted that IEC 92–302 and 92–503 do not define low and medium voltages but refer to voltage ranges. Only IEEE defines the terms.

Paragraph (a) has been revised accordingly.

(2) One comment suggested moving paragraph (b) to § 111.01–9, Degrees of protection.

Paragraph (b) specifically addresses dripping and falling substances, whereas, § 111.01–9 addresses the universal enclosure requirements as outlined in the referenced standards.

Sections 111.30–9, 111.30–11, and 111.30–13. One comment recommended that the provisions of these sections be reinstated. The comment suggests that these operational safety standards should be set as clear Coast Guard standards. The comment expressed a concern that if a crew member were to remove an insulated floor matting or grating for cosmetic reasons, the potential threat to safety would not be in violation to any clear cut Coast Guard requirement; only a violation to an obscure reference in a secondary document which might not be aboard the vessel.

The features described in the previously removed §§ 111.30–9 (doors and non-conducting handrails) and 111.30–13 (grounding of switchboard instrumentation) are all construction features to be installed by the manufacturer in accordance with applicable standards. In reference to previously removed § 111.30–11 (mats or gratings), the Coast Guard agrees that this is an important operational safety concern and that specific guidance is warranted. The reinstated performance-based requirement reflects international standards.

Section 111.30–19. (1) One comment suggested adding punctuation to paragraph (b)(3) to clearly distinguish between switchboard wire and instrumentation wire.

Paragraph (b)(3) has been revised accordingly.

(2) Several comments indicated that paragraph (b)(6) and § 111.60–11, paragraph (d) cross-reference each other for switchboard wiring and leave the requirements for switchboard wiring undefined.

The requirements for switchboard wiring are found in paragraph (b) and its referenced standard. The cross-reference to § 111.60–11 was unnecessary and has been removed.

(3) One comment recommended changing the wire size in paragraph (b)(3) to #18 AWG to align with § 111.60–4.

The #14 AWG wire size requirement in this section is specific to switchboard wiring, whereas the #18 AWG allowance in § 111.60–4 is for general wiring such as lighting fixtures or other uses where appropriate.

Section 111.30–21. One comment recommended retaining this section with modifications to allow devices which operate at elevated temperatures, but are self-cooling and do not adversely affect surrounding components.

The Coast Guard determined that the requirements removed from the regulations are sufficiently addressed in the relevant construction standards.

Section 111.30–24. One comment requested clarification on the word ''floating.''

As discussed in the preamble to the interim rule, on page 28264, a comment to the NPRM requested that exclusion for a non-self propelled MODU be expanded to include other OCS facilities. Since subchapter J is not universally applicable to fixed platforms, the Coast Guard accepted the comment's suggestion to specify ''floating'' units which are subject to the provisions of this subchapter such as tension leg platforms (TLP) and semi-submersible production platforms.

Section 111.30–25. Two comments noted that this section, which was not addressed in the NPRM or the interim rule, is highly prescriptive and limits the use of newer technologies.

The Coast Guard has determined that any new equipment resulting from advances in technology that performs the same function as those devices listed in § 111.30–25 can be considered for approval under § 110.20–1. The list in § 111.30–25 is retained because the Coast Guard determined it to be representative of those functions necessary for the safe operation of a vessel.

Section 111.33–11. One comment recommended specifying that ''ABS Rules'' refers to the ABS Rules for Building and Classing Steel Vessels.

The Coast Guard agrees and has changed the reference from ''ABS Rules'' to ''ABS Rules for Building and Classing Steel Vessels.'' Additionally, the reference to ''ABS MODU Rules'' has been changed to ''ABS Rules for Building and Classing Mobile Offshore Drilling Units.''

Section 111.35–1. One comment requested a revision to this section that requires an alarm indicating the failure of system ventilation.

The Coast Guard may consider adding a requirement for an alarm indicating the failure of a ventilation system in a subsequent rulemaking where the public will have an opportunity to comment.

Section 111.40–1. One comment noted that the deletion of this section would result in the installation of panelboards never intended for the marine environment. The comment suggests incorporating IEEE Std 45 to provide guidance for the construction of panelboards.

The Coast Guard agrees and is adding the suggested reference because of its wide acceptance in the marine field.

Section 111.51–3. One comment pointed out that wording is missing from this section which would ensure proper protective device coordination in all cases and round out the coordination declaration made in § 111.51–1.

The Coast Guard agrees and the section is revised accordingly by the addition of new paragraph (a).

Section 111.53. One comment suggested adding specific wording that prohibits the use of any fuse holder constructed of porcelain or ceramic materials or any fuse that is of the screw-in type.

The Coast Guard is reviewing the safety implications of screw-in type fuses and may consider prohibiting those fuses in a subsequent rulemaking where the public will have an opportunity to comment.

Section 111.54–1. One comment suggested referencing IEC 56 for circuit breakers above 1000 volts in place of the reference in paragraph (c)(3)(ii) to IEC 947–2 for medium voltage circuit breakers.

The Coast Guard agrees that the appropriate standard for circuit breakers above 1000 volts is IEC 56. Paragraph (c)(3)(ii) is revised accordingly.

Section111.60–1. (1) One comment noted that in paragraph (a) the word ''cooper'' should be changed to the word ''copper.''

Paragraph (a) has been revised accordingly.

(2) Several comments requested reinstatement of MIL–C–915F cable pointing out that this is a current Navy standard and another comment suggested further the addition of ''amendment 2'' to the MIL specification.

The Naval Sea Systems Command (NAVSEA) electrical office has informed the Coast Guard that MIL–C–915 cable is not being installed in new construction or major modifications. Additionally, its supply of MIL–C–915 cable has been cut-up and sold for scrap.

(3) One comment suggested that marine shipboard cable listed by a Nationally Recognized Testing Laboratory (NRTL) accepted by the Commandant is acceptable for use.

The term ''NRTL'' is most commonly used by Occupational Safety and Health Administration (OSHA) for safety-type testing, whereas cable testing includes physical testing as well as fire testing. The Coast Guard maintains a list of independent testing laboratories accepted by the Commandant for this purpose. Present Coast Guard policy is consistent with the suggestion.

(4) One comment suggested deleting the terms ''construction'' and ''identification'' from paragraph (a) and recommended that all cable must meet the performance requirements in IEEE Std 45.

As stated in paragraph (d), all electrical cable must now meet the performance requirements of section 18 of IEEE Std 45.

(5) One comment recommended for inclusion in paragraph

(f) Type TC and Type ITC cables for industrial applications.

Section 111.107–1 contains the regulations for industrial systems and cables. Special purpose or ship-specific equipment can be accepted as equivalent under § 110.20–1 during plan review.

(6) One comment recommended that incorporating IEC 92–3, removing the words ''and identification'' from paragraph (a), and removing the words ''and marking'' from paragraph (d) would result in economical cables for shipbuilders. If this is not an option, the comment suggests that the Coast Guard accept the minimum markings instead of requiring the more extensive markings of IEEE Std 45.

The Coast Guard has determined that the minimum marking requirements are those in IEEE Std 45. The IEEE Std 45 markings constitute the five basic pieces of information necessary for minimum identification.

(7) One comment suggested deleting paragraph (d) because it unnecessarily adds additional performance requirements to material and finished products which have met its particular standard.

Paragraph (d) is retained because it ensures IEEE Std 45 performance standards are met and guarantees that minimum safety criteria are upheld.

(8) One comment suggested an editorial change in paragraph (f) to correctly reference the IADC standard as an application standard.

Paragraph (f) has been revised accordingly.

(9) One comment recommended that in paragraph (e) the regulation should specify a standard for high-voltage cable that is acceptable to the Coast Guard.

Presently, IEEE Std 45 and IEC 92–3 as well as several MIL specifications and UL 1072 form the acceptable standards. The Coast Guard may consider IEC 92–354 and IEC 502 in a subsequent rulemaking where the public will have an opportunity to comment.

Section 111.60–2. (1) One comment suggested deleting the reference to ANSI/UL 1581 test VW–1 because it does not guarantee a degree of flame propagation resistance such as the other specifications mentioned in this section. It recommended replacing it with an alternate test CSA FT–4.

The flammability tests in this section are retained. The Coast Guard may consider test CSA FT–4 in a subsequent rulemaking where the public will have an opportunity to comment.

(2) One comment suggested that it is not necessary to physically separate specialty cable from other cable in all installations.

Paragraph (a) requires physical separation only if the flammability tests in the introductory text of this section cannot be met.

(3) One comment recommended paragraph (b) be applied only to cable runs installed in enclosed locations.

Cable that cannot meet minimum flammability requirements must comply with both paragraphs (a) and (b) to reduce the risk of flame spreading among cable runs and throughout the vessel.

Section 111.60–3. Several comments suggested revising paragraph (d) to encompass special applications referred to throughout section 19 of IEEE Std 45 and not limiting the focus on the particular application in 19.6.5 of the standard.

Paragraph (d) has been revised accordingly.

Section 111.60–4. One comment noted that the listed metric conversions of AWG sizes do not correspond to standard metric wire sizes. The comment suggests listing standard metric wire sizes that are acceptable in lieu of the AWG sizes.

The metric sizes that accompany AWG numbers are provided as approximate metric dimensions and are ''soft'' conversions from the AWG circular mil equivalents. Actual metric nominal size is found to differ between such standards as JIS and European. Also, other wire gauge systems exist such as British Standard and Birmingham whose nominal sizes and actual dimensions differ from AWG and metrics. Electrical plans are reviewed and approved by the Coast Guard usually with an AWG size listed and annotated with ''or equivalent.'' It is up to the designer to choose a cable with conductors capable of equal or greater ampacity which will pass final inspection upon installation.

§ 111.60–11. (1) One comment suggested modifying the section title to read ''Wire (other than ground conductors).''

The Coast Guard determined that this change is unnecessary because this

section is self-explanatory and grounding conductors are covered elsewhere.

(2) One comment recommended qualifying the word ''enclosure'' as ''equipment enclosure.''

The Coast Guard determined that the suggested clarification is unnecessary because wire is allowed in junction boxes, controllers, and switchboards as well as equipment enclosures, for example, lighting fixtures and motors.

(3) One comment suggested revising paragraph (c) to reference the appropriate standards for wire relative to IEEE Std 45.

Paragraph (c) has been revised accordingly.

§ 111.60–17. (1) One comment suggested including specific requirements for crimped ferrules or pin terminals to prevent loose strands of wire causing shorts when used with compression type terminals.

The Coast Guard determined that this is an installation quality control issue addressed under the general requirements in § 111.10–1 for electrical installations.

(2) Several comments recommended prohibiting twist-on type connectors, recommended including a referenced standard or method of securing them to prevent loosening, or recommended eliminating paragraph (b).

The Coast Guard determined that this, again, is an installation quality control issue addressed under the general requirements in § 111.10–1 for electrical installations. Twist-on connectors must be installed in accordance with this entire section; safety is maintained with proper installation. Industry has requested, and Executive Order 12866 demands, that government agencies include more performance-based requirements rather than prescriptive regulation. Section 111.60–17 is an example of the inclusion of a performance-based standard and presents an allowance for other methods or new technology which meet the same criteria.

§ 111.60–19. One comment recommended revising paragraph (a) to allow temporary splices within an enclosure in hazardous locations for repair operations necessitated by damaged cable, where replacement of such damaged cable would shut down vessel operations. The spliced cable run could then be replaced at a later date while the vessel is in a shipyard.

The Coast Guard takes into consideration the economic conditions and mission of the vessels it regulates, but its primary concern is the safety of these vessels and their crews.

It is the responsibility of certain persons in charge of a vessel to notify the Coast Guard in the event of a marine casualty, accident, or serious marine incident. The cognizant OCMI will determine the course of action to be taken, notwithstanding temporary repairs of an emergency nature which might be deemed necessary by the master.

§ 111.60–23. (1) Several comments applauded the proposal to allow limited use of Type MC cable. One comment noted that Type MC cable had been used in the marine environment for more than 20 years. It states that Type MC cable meeting the standards as proposed provides an acceptable alternative while maintaining safety.

(2) One comment expressed concern that a disproportionate number of comments support the prohibition or restriction of Type MC cable in marine locations.

The Coast Guard determines regulatory policy based on the substance of comments, rather than the number of comments, on a subject.

(3) Several comments recommended that instrument tray cable (ITC) (300 volt insulation) with similar Type MC cable construction be allowed where allowed by NEC standards.

Article 90–2(b) of the NEC states that the code does not generally cover installations on vessels. NEC standards do not apply to Coast Guard certificated vessels, unless specifically incorporated by reference in this subchapter.

Alignment with NEC standards is not necessarily an objective of this rulemaking. ITC cable has not been evaluated for use aboard vessels.

(4) One comment noted that § 111.60–23(a) refers to ''vessels'' whereas paragraphs (c)(2) and (g) refer to ''offshore floating drilling and production facilities.''

The term ''vessel'' is broadly defined in section 3 of title 1 of the U.S. Code to include floating production units, mobile offshore drilling units, and ships. Paragraphs (c)(2) and (g) apply only to offshore floating, drilling and production facilities.

(5) Several comments suggested that the word ''welded'' as used in the term ''continuously welded corrugated metal-clad (CWCMC) cable'' be removed throughout § 111.60–23 to conform with commercial terminology. This will provide a continuous impervious corrugated metal sheath manufactured by either the extrusion or welded process.

The term ''continuously welded corrugated metal-clad (CWCMC) cable'' in paragraph (a) has been changed to ''continuous corrugated metal-clad cable'' and paragraph b(1) and paragraph (h) have been changed accordingly.

(6) One comment questioned why only corrugated as opposed to non-corrugated Type MC cable is allowed.

Non-corrugated Type MC cable does not have the flexibility necessary for use on vessels or floating facilities. Corrugated cable would be less susceptible to cracking under these conditions.

(7) Several comments recommended that the requirement for the UBVZ listing on Type MC cable be removed. One comment stated that the UBVZ listing does not affect construction of the cable or its suitability for use on vessels, but does affect cable pricing and availability.

The Coast Guard agrees. The UBVZ listing has been removed from paragraph (b). This removal is also consistent with the Coast Guard's position that metal-clad cable is a code product and not a marine shipboard cable.

(8) One comment recommended that the term ''impervious'' in reference to the sheath of the cable be changed to ''gas/vaportight'' because ''gas/vaportight'' is an NEC term.

The terms ''gas-tight'' and ''vapor-tight'' have been added for clarity.

(9) One comment suggested that the term ''close-fitting'' be removed as undefined.

The words ''close-fitting around the conductors and fillers'' have been added for clarity.

(10) One comment stated that paragraph (b) was unclear as to what an independent laboratory was to certify or list.

Paragraphs (b)(2) and (b)(3) have been combined to correct this discrepancy.

(11) Two comments recommended that the restrictions for

Type MC cable in paragraph (c)(1) should be moved to § 111.60–3 because they are applicable to all cables.

Type MC cable must be treated separately because it is not suitable for applications such as elevators. Marine shipboard cable, described in § 111.60–1, must be used for all the services in paragraph (c).

(12) Two comments suggested that Type MC cable should be allowed in drilling function areas as it is recognized by API RP 14F for use on fixed production facilities.

API RP 14F applies only to fixed facilities. This subchapter does not apply to fixed facilities.

(13) Several comments recommended removing paragraphs (c)(2) and (g). They contend that these paragraphs are prescriptive and are already covered

under the performance standard in paragraph (c)(1).

Paragraphs (c)(1) and (c)(2) have been combined for clarity and paragraph (g) is retained. The Coast Guard does not allow the use of Type MC cable in areas that are inherently subject to high vibration or the other conditions specified in paragraph (c).

(14) Several comments suggested that installation of Type MC cable not be limited to article 334 because other articles within the NEC are also applicable.

The other applicable articles are already referenced in article 334.

(15) Two comments recommended the acceptance of table A6 of IEEE Std 45 as well as the ampacity tables given in the NEC since both are based on the same method of calculation.

Type MC cable is a code product, to be installed in accordance with article 334 of the NEC and, therefore, the NEC's ampacity tables are to be used.

(16) Several comments suggested that the metallic sheath of Type MC cable be allowed for use as a grounding conductor.

The Coast Guard determined that there is insufficient historical data on the use of Type MC cable on vessels to allow the metallic sheath to be used as a grounding conductor. Even on shipboard cable, the Coast Guard has never allowed braided armor to be used as a grounding conductor. The Coast Guard maintains this policy with Type MC cable.

(17) Many comments suggested removing the prohibition of the use of Type MC cable as interconnection between drilling and production modules.

The Coast Guard has revised paragraph (g) to allow Type MC cable to be used as interconnection between drilling and production modules on the same platform. Type MC cable is still prohibited as interconnection between temporary drilling packages and platform production modules.

(18) The Coast Guard is aware of the recently published UL 2225, Metal-Clad Cables and Cable-Sealing Fittings For Use in Hazardous (Classified) Locations, and may consider it as a reference in paragraph (h) in a subsequent rulemaking where the public will have an opportunity to comment.

(19) One comment recommended that paragraph (h) be revised to avoid confusion between terminations and fittings for Type MC cable and those for similar cable, such as TECK.

Paragraph (h) has been revised to assure that fittings and terminations used must be compatible with the particular Type MC cable used.

Section 111.70–1. One comment stated that it is unsafe to allow one phase to remain connected in ungrounded three-phase alternating current systems.

Paragraph (b) of this section refers to the controller/motor overload relay and not the main disconnect device to isolate the controller/motor from the power source. Paragraph (a) includes a reference to ABS Rules for Building and Classing Steel Vessels addressing the main disconnect and its relationship to the motor-running protective devices. Additionally, language has been added to paragraph (b) to clarify that the opening of two phases refers to the controller/motor overload devices.

Section 111.70–3. (1) One comment suggested a revision to paragraph (d)(1), by replacing ''and'' with ''or'' to clarify that when both a controller and motor control center exist the identification information should only be required at one of the two.

Motor control centers group individual controllers into a central location instead of installing each controller locally near its motor. Normally, the use of one precludes the use of the other for a particular motor.

(2) One comment suggested eliminating items (v) and (vii) in paragraph (d)(1) and listing information sufficient to identify the motor controlled, its load, voltage and phase.

The requirements in paragraph (d)(1) are consistent with IEEE Std 45 and in keeping with standard engineering practice to provide important information necessary for the safe operation of the electrical system.

Section 111.70–7. One comment recommended an editorial change in paragraph (d)(2) concerning the requirements of the disconnect device.

Paragraph (d)(2) has been revised accordingly.

Section 111.75–5. One comment recommended that in paragraph (b) the term ''lamp sizes'' be changed to ''fixture ratings'', and retain the minimum 50 watt requirement for convenience receptacles or IEEE Std 45, paragraph 21.6 be referenced.

Paragraph (b) has been revised accordingly.

Section 111.75–15. One comment indicated that the text of paragraph (c) is vague, providing no firm guidance. The comment suggests incorporating IES RP 12, Recommended Practice for Marine Lighting.

The Coast Guard may consider IES RP 12 in a subsequent rulemaking where the public will have an opportunity to comment.

Section 111.75–17. (1) One comment suggested that the term ''range light'' in paragraphs (b) and (c) either needs to be defined or replaced with the term ''masthead light.''

The Coast Guard agrees and is removing the term ''range light'' which is now referred to in the Convention on International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) as ''a second masthead light.''

(2) One comment recommended the inclusion of specific photometric requirements for battery powered navigation lights.

The Navigation Safety Advisory Committee (NAVSAC) reviewed the adequacy of lighting on barges, which is generally powered by battery, and concluded that no lighting requirement changes were necessary.

Section 111.75–20. (1) One comment recommended revising paragraph (a) so that it is clear that the paragraph does not apply to lighting fixtures in hazardous locations.

The Coast Guard is revising paragraph (a) accordingly.

(2) Two comments suggested replacing the term ''meet'' with the term(s) ''listed/certified'' to provide a means of verifying compliance with any industry standard and requiring lighting fixtures to be tested by an independent third party.

It is Coast Guard policy that when a referenced standard requires testing then the procedure is part of the regulation. Since the Coast Guard maintains a process of independent laboratory acceptance by the Commandant for items such as fire detection systems, cable, and marine lighting fixtures, it is also part of our policy that such testing be certified at these laboratories. The Coast Guard may consider third party testing in a subsequent rulemaking where the public will have an opportunity to comment.

Section 111.85–1. One comment recommended that each oil immersion heater be tested by an independent third party testing institution.

An added requirement for compliance with a specific standard and subsequent testing by a third party cannot be placed in this final rule without opportunity for public comment. Recognizing the safety implications of the equipment, the Coast Guard may consider the inclusion of applicable safety standards and testing arrangements for a subsequent rulemaking where the public will have an opportunity to comment. Presently, guidance is afforded to both manufacturer and user in subpart 111.01 of this chapter which establishes general criteria for all electrical equipment so that it is appropriate for the

environment and purpose for which it is installed.

Section 111.87–3. One comment suggested that in paragraph (a) deleting the word ''meet'' and substituting the words ''listed/certified.''

It is Coast Guard policy that when a referenced standard requires testing then the procedure is part of the regulation. Since the Coast Guard maintains a process of independent laboratory acceptance by the Commandant for items such as fire detection systems, cable, and marine lighting fixtures, it is also part of our policy that such testing be certified at these laboratories. The Coast Guard may consider third party testing in a subsequent rulemaking where the public will have an opportunity to comment.

Section 111.105. Several comments indicated that the obsolete MI Type cable, referenced in § 111.105–17, paragraph (a), has been eliminated by the proposed IEEE Std 45 and should also be removed from these regulations. Additionally, with new technologies in cable jacket chemistry, these comments suggested that the armor requirements for hazardous location cables also be removed, as they have been for non-hazardous areas.

The Coast Guard agrees and subpart 111.105 has been revised accordingly.

Section 111.105–3. Several comments recommended revising this section as it allows unarmored cable in hazardous locations.

As indicated above in the discussion of comments for subpart 111.105, the general requirement for armored cable in all hazardous locations has been removed.

Section 111.105–5. One comment supports the inclusion of API RP 505 as a criteria for system integrity, while another comment stated that it would be imprudent to consider the adoption of any API RP's because they are superseded by IEC documents addressing both MODU's and fixed platforms in a single comprehensive document.

The API RP 505 is in draft form and as such is unavailable to the Coast Guard for review or to the public for purchase. When the document is published, the Coast Guard may consider API RP 505 for a subsequent rulemaking where the public will have an opportunity to comment.

The IEC, in which the U.S. participates, is in the final draft stages of IEC Publication 1892 (IEC 1892), ''Mobile and Fixed Offshore Units—Electrical Installations.'' IEC 1892, part 3 addresses hazardous locations. This document reflects international consensus and will be considered for inclusion in these regulations in a subsequent rulemaking.

Section 111.105–11. (1) One comment pointed out that the two standards referenced in paragraph (a) are not compatible because IEC 79–11 defines two types of IS systems (Ia and Ib), whereas UL 913 defines only one.

The Coast Guard accepts the UL 913 definition or IEC 79–11 (Ia) only. Paragraph (a) has been revised accordingly.

(2) Several comments recommended removing the option for shielded cable in paragraph (b)(1) because most shielding may be very thin and not suitable for safely providing sufficient isolation from non-IS circuits. Another comment recommended in paragraph (b)(1) removing the option for metallic armored cable since armoring is for mechanical protection and not to be substituted for an electromagnetic interference (EMI) shield.

The purpose of paragraph (b)(1) is to offer options to protect intrinsically safe circuit cables from induced voltages generated by magnetic fields of non-intrinsically safe circuit cables. The Coast Guard agrees that an armored covering is not meant to function as an EMI shield. However, properly installed and grounded braided armor does afford some degree of protection depending on intercircuit parameters. Additionally, if a shielded cable is installed for protection, it is assumed that its dimensions have passed plan review and that it is suitable for the service intended. Both options are retained.

Section 111.105–17. (1) One comment suggested clarifying the first sentence in paragraph (a) so that not all hazardous locations are required to have through runs of cable.

The intention of paragraph (a) is that all hazardous areas be fitted with through runs of cable, therefore the requirement remains.

(2) Several comments suggested that paragraph (a) be revised to require that cable in all hazardous locations be armored.

As indicated above in the discussion of comments for subpart 111.105, the general requirement for armored cable in all hazardous locations has been removed but the installation of armored cable remains as an option.

Section 111.105–31. One comment suggested adding a new paragraph (f)(5) harmonizing Coast Guard and ABS requirements for pump room ventilation and monitoring.

The Coast Guard recognizes the need for direction on this subject. However, new material must be presented to the public for comment before a final rule. The Coast Guard may consider these provisions for a subsequent rulemaking where the public will have an opportunity to comment.

Section 111.107–1. One comment recommended removing the word ''and'' in paragraph (c)(1)(i) and adding the word ''or'' since either standard will provide a comparable level of safety.

This section has been revised accordingly.

Section 112.05–5. One comment recommended modifying paragraph (d) to allow equipment that supports the emergency power source (e.g., fans and CO_2 bottles).

Paragraph (d) has been revised accordingly.

Section 112.50–1. (1) One comment suggested adding a new paragraph (l) that requires the generator circuit breaker open upon the shutting down of the prime mover as required in ABS Rules for Building and Classing Steel Vessels section 4/5.119.1.

A similar comment was directed towards § 111.12–11, Generator protection, of this chapter. The requirement established in § 111.12–11 is applicable to all generators. The equipment described in § 112.50–1 are special features for emergency generators only. Therefore the restating of this requirement is unnecessary.

(2) One comment indicated that in paragraph (d) the 45 second response time is longer than the 30 second response of the standby ship service generator required for unattended machinery plants in 46 CFR 62.50–30(k)(2).

The 45 second requirement in this section is for emergency generator sets and is aligned with SOLAS 74, Regulation II–1/42.3.1.2 requirements. The 30 second requirement in 46 CFR part 62 is for a standby ship service generator in an unattended machinery space. If the standby ship service generator does not come on line within its allotted time, the emergency source would power its circuits shortly thereafter.

Section 112.50–7. One comment indicated that paragraph (c)(3) appears to have been deleted.

The five asterisks after paragraph (c)(2) indicates that the remainder of this section is retained. However, paragraph (d) is removed by the amendatory language of item 169 in the interim rule.

Part 113. One comment pointed out that the title of several sections of this part use the words ''alarm system'' as a general term for the ''general emergency alarms and fire alarms.'' It suggested not using this terminology because it

typically describes ''machinery alarm systems.''

In this part, the terminology is used with consideration of the context of each subpart. Wherever in this part the regulations reference the general emergency alarm system, the words ''general emergency alarm system'' are used. The more generic term of ''alarm system'' is used in reference to machinery alarm systems and other specialized alarms such as engineers' assistance needed, steering failure, and refrigerated spaces where appropriate.

Section 113.05–7. (1) One comment noted that in paragraph (b) the reference to IEC 553 is a misprint and should read IEC 533 (entitled Electromagnetic Compatibility of Electrical and Electronic Installations in Ships) as stated in § 110.10–1, Incorporation by reference.

Paragraph (b) has been revised accordingly.

(2) One comment stated that the environmental test requirements of this section are burdensome if applied to each new piece of equipment due to advances in technology and the continual development of new components. The comment suggested creating a self-certification requirement similar to 46 CFR 62.20–5, Self-certification.

The Coast Guard does not deem self-certification as sufficient for this equipment. Testing of original and redesigned equipment required by subchapter Q to be Coast Guard ''approved'' is performed by independent laboratories accepted by the Commandant. The testing protocols and their results are strictly reviewed by the Coast Guard or designated third parties before an approval certificate is issued. Alarms that are allowed in 46 CFR part 62 to be self-certified must be designed to meet the environmental standards of 46 CFR 62.25–30, Environmental design standards, which reference ABS Rules for Building and Classing Steel Vessels. Subchapter J also references ABS (ABS Rules for Building and Classing Steel Vessels, table 4/11.1) for environmental testing requirements.

Section 113.10–7. One comment suggested that the requirement for connection boxes to meet IEC IP 67 is unnecessarily severe.

In all subparts where the interim rule required connection boxes to be NEMA 250 Type 6 or 6P or IEC IP 67, the requirement has changed to NEMA 250 Type 4 or 4X or IEC IP 56 to align the requirement with the definition of ''watertight.''

Section 113.25–10. One comment suggested that red flashing lights be used only in conjunction with the general emergency alarm signal and for no other purpose. This is preferable to the IMO Code on Alarms and Indicators, which allows the color red to also be used when indicating the release of fire-extinguishing medium. A standardized color would allow quick identification and response by personnel.

While the value of this practice is realized, the Coast Guard will not include specific provisions or requirements on this subject in this rule without allowing an opportunity for public comment. The term ''flashing red lights'' has been changed to include rotating beacons as well.

Section 113.25–11. One comment suggested revising the introductory sentence in § 113.25–11 to read as follows, ''Each contact maker, where installed, must—''

The Coast Guard determined that the requirements listed in this section apply to all contact makers, conventional or electronic type integrated in the public address system, and the addition of the words ''where installed'' does not add to the clarity of the sentence.

Section 113.25–12. One comment recommended in paragraph (a) the use of air operated alarm signals which may be actuated by a solenoid valve located outside the hazardous area.

This section does not preclude air operated alarm signals or other types compatible with the environment in which they are used. Any new or non-conventional alarm signal will be considered in the plan review process.

Section 113.30–3. One comment requested clarification of the phrase ''must be independent of the ship's electrical system.'' The ship's electrical system may be interpreted to mean the ship's AC electrical system or the ship's DC system with a battery power source.

The power for the emergency means of communication required by this subpart must not be reliant upon the vessel's normal source or emergency source of AC or DC power. Acceptable methods of power include sound-powered phone, telephone systems which are powered by hand cranked generators which charge capacitor circuits, and individually battery powered devices.

Section 113.30–5. (1) One comment suggested that in paragraph (a) a cross-reference to 46 CFR 62.50–20(f)(2) be added.

The cross-reference to 46 CFR 62.50–20 has been added.

(2) One comment recommended editorial revision to paragraph (h)(1) for clarity.

Paragraph (h)(1) has been revised accordingly.

Section 113.30–25. (1) One comment indicated in paragraph (i) that cables for safety related circuits should only be permitted to be routed through high fire risk areas if it is technically impractical to route them otherwise or if they serve circuits within the high risk area. In either case, cables should be of the fire resistant type. The comment stated that decisions in these areas should not be affected by commercial considerations.

The Coast Guard develops its regulations with the primary consideration being safety. Any commercial consideration would be secondary and related to cost savings to the industry through harmonizing with domestic and international industry standards resulting in additional options.

Section 111.60–1 requires that accepted marine shipboard cable must meet the respective flammability tests contained in the referenced or companion standards. These tests are a validation that the cable is ''flame retardant''; i.e., that the flame is not propagated. IEC 331, however, measures the ''fire-resisting'' characteristics as noted in the scope ''as one which will continue to function normally during and after a prolonged fire.''

As published in the interim rule, paragraph (i) states that cable runs through high fire risk areas, which includes servicing equipment within these areas, must meet IEC 331. It is the intent that such cables not only prevent the proliferation of flame but also maintain service to the equipment as well.

(2) One comment suggested modifying the last line of paragraph (e) to read ''an emergency power source'' instead of ''the vessel's electric system.''

The paragraph has been revised to clarify which vessel's electric source is intended.

Section 113.43–3. The reference to §§ 58.25–45 and 111.93–9 is out-of-date and has been corrected.

Section 113.50–15. One comment noted that, as written, this section appears to require explosionproof speakers in hazardous locations, for example, a cargo pump room on a tanker. The comment requests review of this requirement to determine whether it is excessive.

All systems and enclosures for hazardous locations must be certified for the particular Class and Division (Zone) in which they are installed. In the example given, if the speaker system were to be found intrinsically safe during plan review, then explosionproof speakers would not be required. Alternatively, if a study did not prove that the speakers were necessary in that

location, they would be disallowed under § 111.105–31(f) or, if proven necessary, they must be explosionproof.

Section 113.50–20. One comment suggested adding additional requirements applicable to public rooms, alleyways, and stairways to align the regulations with the IMO Code of Alarms and Indicators.

The Coast Guard may consider additional requirements to align § 113.50–20 with the IMO Code on Alarms and Indicators in a subsequent rulemaking where the public will have an opportunity to comment.

Section 113.70. One comment recommended adding a new subpart that addresses the installation and operation of gas detection systems. The comment suggests these systems meet the general requirements of the International Society for Measurement and Control (ISA) SP12.13 parts I and II.

The Coast Guard may consider additional requirements for gas detection systems in a subsequent rulemaking where the public will have an opportunity to comment.

Section 161.002–1. Components for automatic fire detection systems, EN54 parts 1 through 11, published by the European Committee for Standardization (CEN) remain absent from this section because several of the documents obtained by the Coast Guard were in draft form. The Coast Guard may consider the finalized documents for a subsequent rulemaking where the public will have an opportunity to comment.

Incorporation by Reference

The Director of the Federal Register has approved the material in §§ 110.10–1 and 161.002–1 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the source listed in those sections.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). A Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES.** A summary of the Evaluation follows:

Most of the changes to the regulations are either editorial or update technical specifications to reflect the latest practices. Although some of these changes will cause minor cost increases for shipbuilders, others will result in substantial savings. The cost increases resulting from these rules will be more than offset by the cost savings, due to relaxations in the rules. The Coast Guard estimates that the cost of complying with the rule over the next 10 years will total $33,753,392 (in present value); but, this cost will be more than offset by the estimated net benefits of $73,538,213. This is a cost-benefit ratio of $1.00 of costs to $2.18 of benefits.

Many of the changes causing cost increases are already current marine industry practices, such as an increase in the protection of cable from bilge water.

There are several intangible benefits. Due to the increased use of national and international standards, certain items will now be more readily available ''off the shelf'' for marine use. A significant economic savings will result from the ability of equipment manufacturers, in many cases, to meet the new performance specifications instead of the old, prescriptive design standards. Also, the cost of submitting detailed plans and specifications to the Coast Guard for approval of certain equipment, such as sound powered telephones, emergency loudspeaker systems, and navigation lights, will be eliminated.

No comments were received to the Regulatory Evaluation or its summary in the preamble to the interim rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will affect entities that come under Standard Industrial Code (SIC) categories of 4412 through 4489 (Water Transportation) and 1311 and 1381 (Oil and Gas Extraction), both groups of which are considered small entities if they have 500 or less employees, and under SIC category 3731 (Shipbuilding and Repair), which are considered small entities if they have 1,000 or less employees.

The Coast Guard has taken measures to accommodate the interests of small entities during the development of this rule. The rule is limited to vessels that are constructed or undergo major modifications after September 30, 1996, thereby exempting the existing fleet from having to conform to these requirements. Furthermore, it is limited to Coast Guard-inspected commercial vessels, such as oil and chemical tankers, container ships, large passenger vessels, mobile offshore drilling units, research vessels, and school ships, which tend to be larger vessels. It does not apply to uninspected passenger vessels, commercial fishing vessels, or the overwhelming majority of inspected, small-passenger vessels.

To reduce the burden on small entities, this rule purges obsolete and out-of-date regulations and eliminates requirements that create an unwarranted differential between Coast Guard's regulations and industry standards. It enhances the flexibility of vessel owners, operators, manufacturers, and shipbuilders by incorporating, wherever possible, more options for compliance or by replacing prescriptive requirements with performance standards.

This rule reduces costs by increasing choices available during the new construction or major modification of a vessel. As discussed under the Regulatory Evaluation section in this preamble, this rule will reduce costs of shipbuilding for all entities, whether large or small. The Coast Guard estimates that the cost of complying with the rule over the next 10 years will total $33,753,392 (in present value); but, this cost will be more than offset by the estimated net benefits of $73,538,213. This is a cost-benefit ratio of $1.00 of costs to $2.18 of benefits.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding this rule so that they can better evaluate its effects on them. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Ms. Laura Hamman, Office of Design and Engineering Standards, 202–267–2206.

Collection of Information

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

I. The following particulars apply to subpart 110.25:

DOT No.: 2115.

OMB Control No.: 2115–0115.

Administration: U.S. Coast Guard.

Title: Electrical Engineering Requirements for Merchant Vessels.

Need for information: Subpart 110.25 requires industry to complete electrical engineering plans to meet performance requirements on newly built vessels and modifications of current vessels.

Proposed Use of Information

This information is necessary to determine compliance with the electrical regulations before vessel construction or modification begins.

Frequency of Response: The information must be submitted when a vessel is built or modified.

Burden Estimate: 478 hours.

Respondents: 175 owners or operators.

Average Burden Hours per Respondent: 1 hour per submission.

II. The following particulars apply to subpart 161.002:

DOT No.: 2115.

OMB Control No.: 2115–0121.

Administration: U.S. Coast Guard.

Title: Electrical Engineering Requirements for Merchant Vessels.

Need for Information: Subpart 161.002 concerns application for type approval of fire protection systems.

Proposed use of Information: This information is necessary to ensure compliance with the electrical regulations.

Frequency of Response: A response is due each time initial approval is sought and each time a revision is requested.

Burden Estimate: 60 hours.

Respondents: 6 manufacturers.

Average Burden Hours per Respondent: 10 hours per respondent.

As required by 5 U.S.C. 3507(d), the Coast Guard submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection. The subpart numbers are 110.25 of subchapter J and 161.002 of subchapter Q. The corresponding OMB approval numbers are OMB Control Number 2115–0115 for subpart 110.25, which expires on August 3, 1999, and OMB Control Number 2115–0121 for subpart 161.002, which expires September 30, 1999.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e(34)(d) and (e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns only system arrangement and equipment approval. The approved system arrangement and equipment required by this rule should contribute to the enhancement of vessel safety and, thereby, help to minimize impacts on the marine environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 110

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Parts 111 and 112

Incorporation by reference, Vessels.

46 CFR Part 113

Communications equipment, Fire prevention, Incorporation by reference, Vessels.

46 CFR Part 161

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 46 CFR parts 108, 110, 111, 112, 113, and 161, which was published at 61 FR 28260 on June 4, 1996, is adopted as a final rule with the following changes and amendments:

PART 110—GENERAL PROVISIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 110.01–2 also issued under 44 U.S.C. 3507.

2. Revise § 110.01–3(b) and (c) to read as follows:

§ 110.01–3 Repairs and alterations.

* * * * *

(b) Alterations and modifications, such as re-engining, re-powering, upgrading of the main propulsion control system, or replacing extensive amounts of cabling, must comply with the regulations in this subchapter.

(c) Conversions specified in 46 U.S.C. 2101(14a), such as the addition of a midbody or a change in the service of the vessel, are handled on a case-by-case basis by the Commanding Officer, Marine Safety Center.

3. In § 110.10–1(b)—

a. In the entry for ABS Rules for Building and Classing Steel Vessels, remove ''1995'' and add, in its place, ''1996'' and add ''111.01–9;'', in numerical order, to the list of sections affected;

b. In the entry for IEEE Std 45–1983, add ''111.40–1;'' and ''111.75–5(b);'', in numerical order, to the list of sections affected;

c. In the entry for the International Electrotechnical Commission, remove ''1, Rue de Varembe,'' and add, in its place, ''3, rue de Varembe,'' and add, in numerical order, new entries for IEC 56 and IEC 92–401 to read as follows;

d. In the entry for IEC 947–2, remove ''111.54–1(c)'' from the list of sections affected;

e. In the entry for NFPA 70, add ''111.50–7;'', in numerical order, to the list of sections affected;

f. Before the entry for Underwriters Laboratories Inc., add a new entry ''*NEC, see NFPA 70.*''; and

g. In the entry for UL 489, add ''111.01–15(c).'', in numerical order, to the list of sections affected:

§ 110.10–1 Incorporation by reference.

* * * * *

(b) * * *

* * * * *

IEC 56, High-voltage alternating-current circuit-breakers, 1987, (Including Amendment 1, 1992, Amendment 2, 1995, and Amendment 3, 1996 .....111.54–1

* * * * *

IEC 92–401, Electrical Installations in Ships, Part 401: Installation and test of completed installation, 1987 .....111.05–9

* * * * *

4. In § 110.15–1, revise the definitions of ''dripproof,'' ''nonsparking fan,'' ''waterproof,'' and ''watertight'' to read as follows:

§ 110.15–1 Definitions.

* * * * *

Dripproof means enclosed so that equipment meets at least a NEMA 250 Type 1 with dripshield, NEMA 250 Type 2, EMA 250 Type 12, or IEC IP 22 rating.

* * * * *

Nonsparking fan means nonsparking fan as defined in ABS Rules for Building and Classing Steel Vessels, section 4/5B7.7.

* * * * *

Waterproof means watertight; except that, moisture within or leakage into the enclosure is allowed if it does not interfere with the operation of the equipment enclosed. In the case of a generator or motor enclosure, *waterproof* means watertight; except that, leakage around the shaft may occur if the leakage is prevented from entering the oil reservoir and the enclosure provides for automatic drainage.

Watertight means enclosed so that equipment meets at least a NEMA 250 Type 4 or 4X or an IEC IP 56 rating.

5. Revise § 110.25–1(i)(6) to read as follows:

§ 110.25–1 Plans and information required for new construction.

* * * * *

(i) * * *

(6) A certificate of testing, and listing or certification, by an independent laboratory, where required by the respective standard.

* * * * *

PART 111—ELECTRICAL SYSTEMS—GENERAL PROVISIONS

6. The authority citation for part 111 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

7. In § 111.01–1, redesignate the introductory text and paragraphs (a), (b), and (c) as paragraphs (a), (a)(1), (a)(2), and (a)(3), respectively; in newly redesignated paragraph (a)(1), remove the words ''conditions; and'' and add, in their place, the word ''conditions.''; and add paragraph (b) to read as follows:

§ 111.01–1 General.

* * * * *

(b) Combustible material should be avoided in the construction of electrical equipment.

8. In § 111.01–9, in paragraphs (a) and (c), remove ''32'' and add, in its place, ''22'' and revise paragraph (b) and the note to this section to read as follows:

§ 111.01–9 Degrees of protection.

* * * * *

(b) Electrical equipment in locations requiring exceptional degrees of protection as defined in § 110.15–1 of this chapter must be enclosed to meet at least the minimum degrees of protection in ABS Rules for Building and Classing Steel Vessels, table 4/5B.1, or appropriate NEMA 250 Type for the service intended. Each enclosure must be designed in such a way that the total rated temperature of the equipment inside the enclosure is not exceeded.

* * * * *

Note to § 111.01–9: The degrees of protection specified in this section are described in NEMA Standards Publication No. 250 and IEC IP Code 529 and designated in ABS Rules for Building and Classing Steel Vessels, table 4/5B.1.

9. Revise § 111.01–15(c) to read as follows:

§ 111.01–15 Temperature ratings.

* * * * *

(c) A 45°C ambient temperature is assumed for cable and all other non-rotating electrical equipment in boiler rooms, in engine rooms, in auxiliary machinery rooms, and on weather decks. For installations using UL 489 SA marine type circuit breakers the ambient temperature for that component is assumed to be 40°C. For installations using Navy type circuit breakers the ambient temperature for that component is assumed to be 50°C.

* * * * *

10. In § 111.01–19, revise the introductory text of paragraph (a) to read as follows:

§ 111.01–19 Inclination of the vessel.

(a) All electrical equipment must be designed and installed to operate for the particular location and environment in which it is to be used. Additionally, electrical equipment necessary for the maneuvering, navigation, and safety of the vessel or its personnel must be designed and installed to operate under any combination of the following conditions:

* * * * *

11. Revise § 111.05–9 to read as follows:

§ 111.05–9 Masts.

Each nonmetallic mast and topmast must have a lightning ground conductor in accordance with section 10 of IEC 92–401.

12. Revise § 111.05–19(b) to read as follows:

§ 111.05–19 Tank vessels; grounded distribution systems.

* * * * *

(b) If the voltage of a distribution system on a tank vessel is 1,000 volts or greater, line to line, and the distribution system is grounded (including high-impedance grounding), any resulting current must not flow through a hazardous (classified) location.

13. In § 111.05–23, in paragraph (d), remove the word ''branch'' and add, in its place, the word ''feeder'' and add a note to paragraph (d) to read as follows:

§ 111.05–23 Location of ground detection indicators.

* * * * *

Note to paragraph (d): An alarm contact or indicating device returned to the main switchboard via a control cable, that allows the detecting equipment to remain near the transformer or other isolating device for local troubleshooting, is allowed.

14. Revise § 111.05–27 to read as follows:

§ 111.05–27 Grounded neutral alternating current systems.

Grounded neutral and high-impedance grounded neutral alternating current systems must have a suitably sensitive ground detection system which indicates current in the ground connection, is able to withstand the maximum available fault current without damage, and provides continuous indication of circuit status to ground. A provision must be included to compare indications under fault conditions with those under normal conditions.

15. In § 111.05–33, revise the section heading and paragraph (b) to read as follows:

§ 111.05–33 Equipment safety grounding (bonding) conductors.

* * * * *

(b) Each equipment grounding conductor (other than a system grounding conductor) of a cable must be permanently identified as a grounding conductor in accordance with the requirements of article 310–12(b) of the NEC.

§ 111.10–1 [Amended]

16. In § 111.10–1(a), remove the words ''auxiliary propulsion'' and add, in their place, ''propulsion auxiliary''.

§ 111.12–1 [Amended]

17. In § 111.12–1(a), remove the words ''section 4/5.21 of the ABS Rules'' and add, in their place, the words ''sections 4/5C2.15 and 4/5C2.17 of the ABS Rules for Building and Classing Steel Vessels''; and remove the words ''ABS MODU Rules'' and add, in their place, ''ABS Rules for Building and Classing Mobile Offshore Drilling Units''.

§ 111.12–3 [Amended]

18. In § 111.12–3, remove the words ''section 4/5.23 of the ABS Rules'' and add, in their place, the words ''sections 4/5C2.19.1, 4/5D2.5.1, 4/5D2.5.2, and 4/5D2.17.6 of the ABS Rules for Building and Classing Steel Vessels''; and remove the words ''ABS MODU Rules'' and add, in their place, the words ''ABS Rules for Building and Classing Mobile Offshore Drilling Units''.

§ 111.12–5 [Amended]

19. In § 111.12–5, remove the words ''ABS Rules'' and add, in their place, the words ''ABS Rules for Building and Classing Steel Vessels''; and remove the words ''ABS MODU Rules'' and add, in their place, the words ''ABS Rules for Building and Classing Mobile Offshore Drilling Units''.

§ 111.12–7 [Amended]

20. In § 111.12–7, remove the words ''sections 4/5.31 and 4/5.33 of the ABS Rules'' and add, in their place, the words ''sections 4/5C2.19.2, 4/5C2.19.3, 4/5C2.21.2, and 4/5C2.21.3 of the ABS Rules for Building and Classing Steel Vessels''; and remove the words ''ABS MODU Rules'' and add, in their place, the words ''ABS Rules for Building and Classing Mobile Offshore Drilling Units''.

21. In § 111.12–11, redesignate paragraphs (c)(1) and (c)(2) as paragraphs (c)(2) and (c)(3), respectively, and add new paragraph (c)(1) to read as follows:

§ 111.12–11 Generator protection.

* * * * *

(c) * * *

(1) Open upon the shutting down of the prime mover;

* * * * *

22. Revise § 111.15–5(c) to read as follows:

§ 111.15–5 Battery installation.

* * * * *

(c) *Small batteries.* Small size battery installations must not be located in poorly-ventilated spaces, such as closets, or in living spaces, such as staterooms.

* * * * *

23. Revise § 111.15–20(c) to read as follows:

§ 111.15–20 Conductors.

* * * * *

(c) Each connecting cable must have sufficient capacity to carry the maximum charging current or maximum discharge current, whichever is greater, while maintaining the proper voltage at the load end.

§ 111.25–1 [Amended]

24. In § 111.25–1, remove ''(a) and (b)''.

25. In § 111.30–5(a), revise the introductory text to read as follows:

§ 111.30–5 Construction.

(a) All low voltage and medium voltage switchboards (as low and medium are determined within the standard used) must meet—

* * * * *

26. Add § 111.30–11 to read as follows:

§ 111.30–11 Deck coverings.

Non-conducting deck coverings, such as non-conducting mats or gratings, suitable for the specific switchboard voltage must be installed for personnel protection at the front and rear of the switchboard and must extend the entire length of, and be of sufficient width to suit, the operating space.

27. In § 111.30–19, revise paragraphs (b)(3), (b)(4), and (b)(5) to read as follows and remove paragraph (b)(6):

§ 111.30–19 Buses and wiring.

* * * * *

(b) * * *

(3) No. 14 AWG (2.10 mm^2) or larger or must be ribbon cable or similar conductor size cable recommended for use in low-power instrumentation, monitoring, or control circuits by the equipment manufacturer;

(4) Flame retardant meeting ANSI/UL 1581 test VW–1 or IEC 332–1; and

(5) Extra flexible, if used on a hinged panel.

§ 111.33–11 [Amended]

28. In § 111.33–11, remove the words ''section 4/5.84 of ABS Rules'' and add, in their place, the words ''sections 4/5D2.17.9 and 4/5D2.17.10 of ABS Rules for Building and Classing Steel Vessels''; remove the words ''ABS MODU Rules'' and add, in their place, the words ''ABS Rules for Building and Classing Mobile Offshore Drilling Units''.

§ 111.35–1 [Amended]

29. In § 111.35–1, remove the words ''sections 4/5.79, 4/5.81, 4/5.83, and 4/5.84 ABS Rules'' and add, in their place, the words ''sections 4/5D2.5, 4/5D2.11, 4/5D2.13, 4/5D2.17.8e, 4/5D2.17.9, and 4/5D2.17.10 of ABS Rules for Building and Classing Steel Vessels''; and remove the words ''ABS MODU Rules'' and add, in their place, the words ''ABS Rules for Building and Classing Steel Vessels''.

30. Add § 111.40–1 to read as follows:

§ 111.40–1 Panelboard standard.

Each panelboard must meet section 23.1 of IEEE Std 45.

31. In § 111.51–3, redesignate the introductory text and paragraphs (a) and (b) as paragraphs (b), (b)(1), and (b)(2), respectively, and add paragraph (a) to read as follows:

§ 111.51–3 Protection of vital equipment.

(a) The coordination of overcurrent protective devices must be demonstrated for all potential plant configurations.

* * * * *

§ 111.54–1 [Amended]

32. In § 111.54–1(c)(3)(ii), remove ''IEC 947–2, Part 2'' and add, in its place, ''IEC 56''.

33. In § 111.60–1, in paragraph (a), remove the words ''Each cable'' and add, in their place, the words ''Each marine shipboard cable'' and remove the word ''cooper'' and add, in its place, the word ''copper''; and revise paragraph (f) to read as follows:

§ 111.60–1 Cable construction and testing.

* * * * *

(f) Direct current electric cable, for industrial applications only, may be applied in accordance with IADC–DCCS–1/1991.

34. Revise § 111.60–3(d) to read as follows:

§ 111.60–3 Cable Application.

* * * * *

(d) Cables for special applications defined in section 19 of IEEE Std 45 must meet the provisions of that section.

35. Revise § 111.60–11(c) to read as follows:

§ 111.60–11 Wire.

* * * * *

(c) Wire, other than in switchboards, must meet the requirements in sections 19.6.4 and 19.8 of IEEE Std 45; IL–W–76D; MIL–W–16878F; UL 44; UL 83; or equivalent standard.

* * * * *

36. Revise § 111.60–23 to read as follows:

§ 111.60–23 Metal-clad (Type MC) cable.

(a) Metal-clad (Type MC) cable permitted on board a vessel must be continuous corrugated metal-clad cable.

(b) The cable must—

(1) Have a corrugated gas-tight, vapor-tight, and watertight sheath of aluminum or other suitable metal that is close-fitting around the conductors and fillers and that has an overall jacket of an impervious PVC or thermoset material; and

(2) Be certified or listed by an independent laboratory as meeting the requirements of UL 1569.

(c) The cable is not allowed in areas or applications exposed to high

vibration, festooning, repeated flexing, excessive movement, or twisting, such as in engine rooms, on elevators, or in the area of drill floors, draw works, shakers, and mud pits.

(d) The cable must be installed in accordance with article 334 of the NEC. The ampacity values found in table A6 of IEEE Std 45 may not be used.

(e) The side wall pressure on the cable must not exceed 1,000 pounds per foot of radius.

(f) Equipment grounding conductors in the cable must be sized in accordance with article 250–95 of the NEC. System grounding conductors must be of a cross-sectional area not less than that of the normal current carrying conductors of the cable. The metal sheath must be grounded but must not be used as a required grounding conductor.

(g) On an offshore floating drilling and production facility, the cable may be used as interconnect cable between production modules and between fixed distribution panels within the production modules, except that interconnection between production and temporary drilling packages is prohibited. Also, the cable may be used within columns, provided that the columns are not subject to the conditions described in paragraph (c) of this section.

(h) When the cable is used within a hazardous (classified) location, terminations or fittings must be listed, and must be appropriate, for the particular Type MC cable used and for the environment in which they are installed.

37. In § 111.70–1, revise paragraph (a) introductory text, and paragraph (b) to read as follows:

§ 111.70–1 General.

(a) Each motor circuit, controller, and protection must meet the requirements of ABS Rules for Building and Classing Steel Vessels, sections 4/5A5.13, 4/5B2.13, 4/5B2.15, and 4/5C4; ABS Rules for Building and Classing Mobile Offshore Drilling Units, sections 4/3.87 through 4/3.94 and 4/3.115.6; or IEC 92–301, as appropriate, except the following circuits:

* * * * *

(b) In ungrounded three-phase alternating current systems, only two motor-running protective devices (overload coil or heater type relay within the motor and controller) need be used in any two ungrounded conductors, except when a wye-delta or a delta-wye transformer is used.

* * * * *

§ 111.70–7 [Amended]

38. In § 111.70–7(d)(2), remove the words ''not have any'' and add, in their place, the words ''have no''.

39. Revise § 111.75–5(b) to read as follows:

§ 111.75–5 Lighting branch circuits.

* * * * *

(b) *Connected load*. The connected load on a lighting branch circuit must not be more than 80 percent of the rating of the overcurrent protective device, computed on the basis of the fixture ratings and in accordance with IEEE Std 45, section 21.6.

* * * * *

§ 111.75–17 [Amended]

40. In § 111.75–17 (b) and (c), remove the words ''stern, and range lights'' and add, in their place, the words ''and stern lights''.

§ 111.75–20 [Amended]

41. In § 111.75–20(a), after the words ''lighting fixture'', add the words ''for a non-hazardous location''.

§ 111.105–11 [Amended]

42. In § 111.105–11(a), after ''IEC 79–11'', add ''(I_a)''.

43. Revise § 111.105–17(a) to read as follows:

§ 111.105–17 Wiring methods for hazardous locations.

(a) Through runs of marine shipboard cable meeting subpart 111.60 of this part are required for all hazardous locations. Armored cable may be used to enhance ground detection capabilities. Additionally, Type MC cable may be used subject to the restrictions in § 111.60–23.

* * * * *

44. In § 111.105–31, revise paragraphs (f)(4), (i)(1), (j), (k), (l) introductory text, and (n) to read as follows:

§ 111.105–31 Flammable or combustible cargo with a flashpoint below 60 degrees C (140 degrees F), liquid sulfur and inorganic acid carriers.

* * * * *

(f) * * *

(4) Marine shipboard cables that supply explosionproof lighting fixtures that are in the cargo handling room.

* * * * *

(i) * * *

(1) Through runs of marine shipboard cable; and

* * * * *

(j) *Cargo hose stowage space*. A cargo hose stowage space must not have any electrical equipment except explosionproof lighting fixtures and through runs of marine shipboard cable.

(k) *Cargo piping in a space*. A space that has cargo piping must not have any electrical equipment except explosionproof lighting fixtures and through runs of marine shipboard cable.

(l) *Weather locations*. The following locations in the weather are Class I, Division 1 (Zone 1) locations (except the open deck area on an inorganic acid carrier which is considered a non-hazardous location) and may have only approved intrinsically safe, explosionproof, or purged and pressurized electrical equipment, and through runs of marine shipboard cable if the location is—

* * * * *

(n) *Duct keel ventilation or lighting.* (1) The lighting and ventilation system for each pipe tunnel, double bottom, or duct keel must meet ABS Rules for Building and Classing Steel Vessels, section 4/5E1.15.

(2) If a fixed gas detection system is installed, it must meet the requirements of SOLAS 74 and ABS Rules for Building and Classing Steel Vessels, section 4/5.

45. Revise § 111.105–32(f)(1), (g)(1), (i)(2), and (j)(2) to read as follows:

§ 111.105–32 Bulk liquefied flammable gas and ammonia carriers.

* * * * *

(f) * * *

(1) Through runs of marine shipboard cable;

* * * * *

(g) * * *

(1) Through runs of marine shipboard cable;

* * * * *

(i) * * *

(2) Through runs of marine shipboard cable.

* * * * *

(j) * * *

(2) Through runs of marine shipboard cable.

* * * * *

§ 111.105–39 [Amended]

46. In § 111.105–39, in the introductory text and paragraph (a), remove ''ABS Rule 4/5.157'' and add, in its place, ''ABS Rules for Building and Classing Steel Vessels, section 4/5E3''.

§ 111.105–40 [Amended]

47. In § 111.105–40 (a) and (c) remove ''ABS Rule 4/5.160'' and add, in its place, ''ABS Rules for Building and Classing Steel Vessels, section 4/5E4''.

§ 111.105–43 [Amended]

48. In § 111.105–43(c), remove the words ''armored or MI type'' and add, in their place, ''marine shipboard''.

49. Revise § 111.107–1(c)(1) to read as follows:

§ 111.107–1 Industrial systems.

* * * * *

(c) * * *

(1) Be installed in accordance with § 111.60–5 and meet the flammability test requirements of IEEE Std 1202, section 18.13.5 of IEEE Std 45, or IEC 332–3, Category A; or

* * * * *

PART 112—EMERGENCY POWER AND LIGHTING SYSTEMS

50. The authority citation for part 112 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

51. Revise § 112.05–5(d) to read as follows:

§ 112.05–5 Emergency power source.

* * * * *

(d) The emergency power source, its associated transforming equipment, and the emergency switchboard must be located aft of the collision bulkhead, outside of the machinery casing, and above the uppermost continuous deck. Each compartment containing this equipment must be readily accessible from the open deck and must not contain machinery not associated with, or equipment not in support of, the normal operation of the emergency power source. Equipment in support of the normal operation of the emergency power source includes, but is not limited to, ventilation fans, CO_2 bottles, space heaters, and internal communication devices, such as sound powered phones.

* * * * *

PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

52. The authority citation for part 113 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

§ 113.05–7 [Amended]

53. In § 113.05–7, in paragraph (a), remove the words ''ABS Rules'' and add, in their place, the words ''ABS Rules for Building and Classing Steel Vessels''; and, in paragraph (b), remove the number ''553'' and add, in its place, the number ''533''.

§ 113.10–7 [Amended]

54. In § 113.10–7, remove ''Type 6 or 6P or IEC IP 67'' and add, in its place, ''Type 4 or 4X or IEC IP 56''.

§ 113.20–3 [Amended]

55. In § 113.20–3, remove ''Type 6 or 6P or IEC IP 67'' and add, in its place, ''Type 4 or 4X or IEC IP 56''.

§ 113.25–10 [Amended]

56. In § 113.25–10—

a. Revise the section heading to read ''Emergency red-flashing lights'';

b. In paragraph (a) introductory text, add the word ''general'' before the word ''emergency'', wherever it appears, and remove the words ''flashing red light'' and add, in their place, ''red-flashing light or rotating beacon''; and

c. In paragraph (b), remove the words ''flashing red light'' and add, in their place, the words ''red-flashing light or rotating beacon''.

§ 113.25–11 [Amended]

57. In § 113.25–11(a), remove ''Type 6 or 6P or IEC IP 67'' and add, in its place, ''Type 4 or 4X or IEC IP 56''.

58. In § 113.30–5, add paragraph (a)(7) and revise paragraph (h)(1) to read as follows:

§ 113.30–5 Requirements.

(a) * * *

(7) The engineering officers' accommodations, if the vessel is an automated, self-propelled vessel under § 62.50–20(f) of this chapter.

* * * * *

(h) * * *

(1) Be on a circuit separate from any other station required by this section; and

* * * * *

59. In § 113.30–25—

a. In paragraph (c), remove ''IEC IP 32'' and add, in its place, ''IEC IP 22'';

b. In paragraph (e), remove the words ''vessel's electric system'' and add, in their place, the words ''final emergency bus'';

c. In paragraph (h), remove ''Type 6 or 6P or IEC IP 67'' and add, in its place, ''Type 4 or 4X or IEC IP 56''; and

d. Revise paragraph (i) to read as follows:

§ 113.30–25 Detailed requirements.

* * * * *

(i) Voice communication cables must run as close to the fore and aft centerline of the vessel as practicable. The cable must not run through high fire-risk spaces, such as machinery rooms and galleys, unless it is technically impractical to route them otherwise or they are required to serve circuits in the high-risk area. Cable running through or into these high-risk areas must meet the requirements of EC 331.

§ 113.40–10 [Amended]

60. In § 113.40–10(b), remove ''Type 6 or 6P or IEC IP 67'' and add, in its place, ''Type 4 or 4X or IEC IP 56''.

§ 113.43–3 [Amended]

61. In § 113.43–3, remove ''§§ 58.25–45 and 111.93–9'', and add, in its place, ''part 58, subpart 58.25,''.

§ 113.50–5 [Amended]

62. In § 113.50–5(g), remove ''Type 6 or 6P or IEC IP 67'' and add, in its place, ''Type 4 or 4X or IEC IP 56''.

PART 161—ELECTRICAL EQUIPMENT

63. The authority citation for part 161 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 161.002–1 [Amended]

64. In § 161.002–1(b), in the entry for ABS Rules for Building and Classing Steel Vessels, remove ''1995'' and add, in its place, ''1996''.

§ 161.002–4 [Amended]

65. In § 161.002–4 (b)(3) and (b)(4), remove the words ''ABS Rules'' and add, in their place, the words ''ABS Rules for Building and Classing Steel Vessels''.

Dated: April 22, 1997.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–11230 Filed 4–30–97; 8:45 am]

BILLING CODE 4910–14–P

Federal Register

Thursday
May 1, 1997

Part IV

Department of Housing and Urban Development

Funding Availability (NOFA) for Family Self-Sufficiency (FSS) Program Coordinators for the Section 8 Rental Certificate and Rental Voucher Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4195–N–01]

Notice of Funding Availability (NOFA) for Family Self-Sufficiency (FSS) Program Coordinators for the Section 8 Rental Certificate and Rental Voucher Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year (FY) 1997 for Section 8 Family Self-Sufficiency Program Coordinators.

SUMMARY: This NOFA announces the availability of up to $15 million in Fiscal Year (FY) 1997 to fund Section 8 Family Self-Sufficiency (FSS) program coordinators. Public housing agencies and Indian housing authorities (HAs) eligible to receive funding are only those which administer FSS programs of at least 25 mandatory FSS slots. HAs with FSS programs of fewer than 25 slots also may receive funding under this NOFA, if they previously applied jointly and were awarded FSS coordinator funding with other eligible HAs, so that between or among the HAs they administer at least 25 FSS slots. Due to limited funding, HUD has decided to award funds available in FY 1997 only to HAs that previously received Federal FY 1995 or FY 1996 funding for an FSS program coordinator, to allow them to continue paying an FSS coordinator, in amounts not to exceed $44,000 per HA. In order to receive funding under this NOFA, an eligible HA must certify to the HUD State or Area Office or to the HUD Office of Native American Programs (hereinafter ''HUD Office''), that the HA has hired an FSS program coordinator with funding previously awarded for that purpose and has made progress in implementing the FSS program.

DATES: The HA certification required for FY 1997 funding is due in the HUD Office no later than 3 local time on June 2, 1997. This certification deadline is firm as to date and hour.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4220, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech impaired individuals may call HUD's TTY number (202) 708–4594. (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0198. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Toward this end, the Department in recent years has developed the Consolidated Planning process designed to help communities undertake such approaches.

In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have recently been published or are expected to be published in the near future. By reviewing these NOFAs with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to the recent and upcoming NOFAs and to the community's Consolidated Plan.

The other NOFA published with respect to welfare-to-work initiatives was the Moving to Work Demonstration NOFA published in the **Federal Register** on December 18, 1996 (61 FR 66856).

To foster comprehensive, coordinated approaches by communities, the Department intends for the remainder of FY 1997 to continue to alert applicants to upcoming and recent NOFAs as each NOFA is published. In addition, a complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html. Additional steps on NOFA coordination may be considered for FY 1998.

For help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal government.

I. Purpose and Substantive Description

In recent years, HUD provided funding for FSS program coordinators to HAs with Section 8 programs of fewer than 1,000 units. The FY 1994 and FY 1995 funds were awarded to these HAs based on a request for funding and all complete applications were funded. The FY 1996 funds were awarded based on a competitive NOFA. In FY 1996, state and regional HAs that administer more than 1,000 rental vouchers and certificates, but fewer than 1,000 mandatory FSS slots, were also eligible to apply and some received funding. HUD is allocating FY 1997 funds for FSS program coordinators to allow HAs that were previously funded to continue paying an FSS coordinator. Since funding for FSS program coordinators is limited, applications from HAs that were not previously funded will not be accepted.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. No. 104-204) allows funding for program coordinators under the Section 8 FSS program. As a result, HUD determined to make a sufficient amount available under this NOFA to enable the previously funded smaller HAs (i.e., those with programs of fewer than 1,000 total rental vouchers and certificates) with FSS programs of at least 25 mandatory FSS slots, and previously funded state and regional HAs, to hire up to one FSS program coordinator for one year at a reasonable cost, as determined by the HA and HUD, based on salaries for similar positions in the locality. Each eligible HA is limited to an award of $44,000 under this NOFA.

HUD is allocating funds as follows:

1. All HAs funded in FY 1996 that have made progress in the FSS program will receive a 3 percent increase in FY 1996 funding;

2. All HAs funded in FY 1995 that did not receive additional funding in FY 1996 that have made progress in the FSS program will receive a 6 percent increase in the amount funded in FY 1995.

These funds will be awarded contingent upon the HUD Office receipt of an HA certification, subject to HUD verification, that the HA has hired an FSS program coordinator with funding previously awarded for that purpose and that the HA has made progress in implementing the FSS program.

(1) Eligible Activity

Funds are available under this NOFA to employ or otherwise retain the services of up to one FSS program coordinator for one year. A part-time FSS program coordinator may be retained where appropriate. Under the FSS program, HAs are required to use Section 8 rental assistance together with public and private resources to provide supportive services to enable participating families to achieve economic independence and self-sufficiency. Effective delivery of supportive services is a critical element in a successful program.

(a) Program Coordinator Role

HAs administering the FSS program use program coordinating committees (PCCs) to assist them to secure resources for and implement the FSS program. The PCC is made up of representatives of local government, job training and employment agencies, local welfare agencies, educational institutions, child care providers, nonprofit service providers, and businesses.

An FSS program coordinator works with the PCC, and with local service providers to assure that program participants are linked to the supportive services they need to achieve self-sufficiency. The FSS program coordinator may ensure, through case management, that the services included in participants' contracts of participation are provided on a regular, ongoing and satisfactory basis, and that participants are fulfilling their responsibilities under the contracts.

(b) Staffing Guidelines

Under normal circumstances, a full-time FSS program coordinator should be able to serve approximately 50 FSS participants, depending on the coordinator's case management functions.

(c) Eligibility of HAs

All HAs that received FY 1995 and FY 1996 funding for FSS program coordinators will be funded in FY 1997, provided the HA certifies, subject to HUD verification, that it has hired an FSS program coordinator with funding previously awarded for that purpose and has made progress in implementing the FSS program. The HAs funded in FY 1996 will receive a 3 percent increase in funding. The HAs funded in FY 1995 but not funded in FY 1996 will receive a 6 percent increase in funding. The HUD Office may not provide FY 1997 funding to any HA that has not used its prior allocation of FSS program coordinator funding to hire an FSS coordinator, or that has failed to make progress in its FSS program.

(2) HUD Corrections to Rating and Ranking of FY 1996 Applications

Seventeen HA applications submitted under the FY 1996 NOFA were not funded due to a HUD Headquarters error in failing to fund the approvable applications processed in the HUD Colorado State Office. HUD believes that this error must be corrected; therefore, HUD will, prior to funding any FY 1997 applications, fund those eligible FY 1996 applications that were rated high enough to be funded in FY 1996. Of the available $15 million, $557,290 will be used for this purpose.

(3) Eligible HAs With HUD Approved Exceptions to Mandatory Minimum Size

If HUD has approved either a full or partial exception to implementing an FSS program of the mandatory minimum size for an eligible HA, solely because of a lack of funds for reasonable administrative costs, the approval of the exception is hereby rescinded after funding for an FSS program coordinator is awarded under this NOFA.

II. Allocation Amounts

For FY 1997, $15 million is available for HA administrative fees for Section 8 FSS program coordinators. This is the fourth fiscal year of funding for FSS program coordinators.

III. Required Certification

All HAs that received funding for FSS program coordinators under the FY 1995 and FY 1996 NOFAs and that wish to receive funding under this NOFA, must complete a certification in the format shown below and submit it to the HUD Office by the due date. Funding under this NOFA will be automatic for FY 1996 funded HAs and for FY 1995 HAs that did not receive FSS program coordinator funding in FY 1996, provided the HA certifies as follows and the HUD Office determines that the HA has made progress in implementation of the FSS program:

Required Certification Format for FSS Program Coordinator Funds Dear Director, Office of Public Housing (or Administrator, Office of Native American Programs):

In connection with the FY 1997 NOFA for FSS program coordinators, I hereby certify for the _____ (*enter name*) HA that:

(1) The HA has hired an FSS program coordinator using HUD funds provided for that purpose on _____ (*enter the ACC effective dates of all previous FSS program coordinator funding increments*), and

(2) The HA has (*check all that apply*):

(a) Formed and convened an FSS program coordinating committee _____,

(b) Developed an FSS action plan and submitted it to HUD for approval _____,

(c) Executed contracts of participation with FSS participants _____.

(3) The HA has an FSS minimum program size of _____ (*enter number*) mandatory FSS slots. The HA has _____ (*enter number*) Section 8 families currently enrolled in the FSS program.

Sincerely,

Executive Director

IV. Other Matters

(a) Environmental Impact

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 USC 4321).

(b) Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have ''federalism implications'' within the meaning of the Order. The NOFA makes funds available for HAs to employ or otherwise retain the services of up to one FSS program coordinator for one year. As such, there are no direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

(c) Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

(d) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 USC 1352) (the ''Byrd Amendment'') and the implementing regulations at 24 CFR part

87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Dated: April 23, 1997.

Kevin E. Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–11274 Filed 4–30–97; 8:45 am]

BILLING CODE 4210–33–P

federal register

Thursday
May 1, 1997

Part V

Department of Housing and Urban Development

Funding Availability of HUD-Approved Housing Counseling Agencies, Fiscal Year 1997; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4172–N–01]

Fiscal Year 1997 Notice of Funding Availability HUD-Approved Housing Counseling Agencies

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: *Purpose*. This notice announces the availability of Fiscal Year (FY) 1997 funding from the U.S. Department of Housing and Urban Development (HUD) for HUD-approved housing counseling agencies to provide housing counseling to homebuyers, homeowners, and renters.

Available Funds. Up to $13,125,000.

Eligible Applicants. All housing counseling agencies approved by HUD as of the publication date of this NOFA may apply for FY 1997 funding. This includes: (1) Multi-State, regional, or national intermediary organizations, and (2) local housing counseling agencies that do not elect to affiliate with a HUD-approved intermediary organization.

This NOFA contains additional information on the purpose and background of the NOFA and funding levels available to local counseling agencies and intermediary organizations respectively; eligible activities and funding criteria; and application requirements and procedures.

DEADLINE FOR RECEIPT OF APPLICATIONS: Completed applications must be submitted no later than 4:00 p.m. local time on June 2, 1997. As further described below, any completed application must be physically received by this deadline date and hour at the appropriate local HUD office (for local applicants) or at the Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9166, Washington D.C. 20410 (for national, regional or multi-State applicants). In the interest of fairness to all applicants, late applications will be treated as ineligible for consideration. Applicants should take this requirement into account and make early submission of their applications to avoid loss of eligibility brought about by any unanticipated delays or other delivery-related problems. It is not sufficient for an application to be postmarked within the deadline. Applications sent by facsimile (FAX) will not be accepted. HUD will not waive this submission deadline for any reason.

ADDRESSES: For local housing counseling agency applicants: An original and three copies of the completed application must be submitted to the local HUD office having jurisdiction over the locality or area in which the proposed program is located. These copies should be sent to the attention of the Single Family Division Director, and the envelope should be clearly marked, ''FY 1997 Counseling Application''. A list of Single Family Division Directors and local HUD Offices appears at the end of this NOFA. Failure to submit an application to the correct office in accordance with the above procedures will result in disqualification of the application.

For national, regional and multi-State housing counseling agencies: An original and three copies of the completed application must be submitted to the person listed below in HUD Headquarters. The envelope should be clearly marked, ''FY 1997 Counseling Application.''

FOR FURTHER INFORMATION CONTACT: Monica Schuster, Director, Marketing and Outreach Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9166, Washington DC 20410; telephone (202) 708–0317 (voice); and the hearing and speech impaired persons may access this number by calling the Federal Information Relay Operator at 1–800–877–8339 (TTY number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1995 (44 USC 3501–3520), and assigned OMB control number 2502–0261. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Toward this end, HUD in recent years has developed the Consolidated Planning process designed to help communities undertake such approaches.

In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have recently been published or are expected to be published in the near future. By reviewing these NOFAs with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to the recent and upcoming NOFAs and to the community's Consolidated Plan.

With respect to homeownership, the Department expects to publish in the **Federal Register** in the next few weeks the Homeownership Zones NOFA.

To foster comprehensive, coordinated approaches by communities, HUD intends for the remainder of FY 1997 to continue to alert applicants to upcoming and recent NOFAs as each NOFA is published. In addition, a complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html. Additional steps on NOFA coordination may be considered for FY 1998.

For help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal government.

I. Purpose and Substantive Description

A. Authority and Purpose

HUD's housing counseling program is authorized under Section 106 of the Housing and Urban Development Act of 1968 (12 USC 1701x). The purpose of the program is to promote and protect the interests of housing consumers participating in HUD and other housing programs, as well as to help protect the interests of HUD and mortgage lenders. The Housing Counseling program is generally governed by HUD Handbook 7610.1, REV–4, dated August 9, 1995.

Section 106 authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management, and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. In addition, HUD-approved counseling agencies are permitted and encouraged by HUD to conduct community outreach activities

and provide counseling to individuals, such as minorities and persons with disabilities with the objective of increasing awareness of homeownership opportunities and improving access of low and moderate income households to sources of mortgage credit. HUD believes that this activity is key to the revitalization and stabilization of low income neighborhoods.

Under the housing counseling program, HUD contracts with qualified public or private nonprofit organizations to provide the services authorized by the statute. When Congress appropriates funds for this purpose, HUD announces the availability of such funds, and invites applications from eligible agencies, through a notice published in the **Federal Register**. Currently there are 746 HUD-approved local housing counseling agencies with 335 Branch Offices and 9 HUD-approved intermediary organizations. Annually, all HUD-approved agencies are eligible to apply for housing counseling grants. However, an agency that is approved by HUD does not automatically receive HUD funding, and HUD expects that all counseling agencies will continually work to develop other funding resources. In FY '96, 183 HUD-approved local housing counseling agencies and 4 HUD-approved national/regional/multi-state housing counseling agencies received funding from HUD.

B. Allocation Amounts

Fifteen million dollars ($15 million) has been appropriated from the 1997 Appropriations Act, P. L. 104–204, approved October 7, 1996 for this program. Of this amount, $13,125,000 is being made available under this NOFA for lump-sum, performance-based grants, as defined at 24 CFR part 84, subpart E. Approximately $5 million is being set aside to fund national, regional and multi-State organizations that apply for funding under this NOFA. No national/regional/multi-State agency may receive more than $1 million. Approximately $8,125,000 has been made available for grants to local HUD approved housing counseling agencies, and it has been allocated to each of the HUD Field Offices by a formula that gives equal weight to the percentage of HUD insured single family mortgage defaults within each Field Office jurisdiction as of August 31, 1996, compared to the nationwide total and the percentage of first-time homebuyers that were approved for FHA-insured mortgages within the Field Office jurisdiction during FY 1996 compared to the nationwide total for that period. This formula reflects the increased emphasis that HUD is placing on the expansion of homeownership opportunities for first-time homebuyers and its intent to ensure appropriate geographical distribution of program funds. For FY 1997, no individual local housing counseling agency may be awarded more than $100,000.

Allocations for use in local agency programs, by HUD Field Office, are estimated as follows:

HUD field office	No. of defaults	Default data		First time homebuyer data			Total allocation
		% of nat'l de-faults	Allocation amount	No. of 1st timers	% of nat'l 1st timers	Allocation amount	
New England							
Boston	812	0.48	19,554.75	5,232	1.09	44,348.05	63,903
Hartford	1,726	1.02	41,565.89	6,745	1.41	57,172.70	98,739
Manchester*	401	0.24	9,656.97	3,085	0.64	26,149.41	35,806
*(NH, ME, VT).							
Providence	266	0.16	6,405.87	1,719	0.36	14,570.78	20,977
New York/Jersey							
Albany	2,190	1.30	52,740.04	6,032	1.26	51,129.10	103,869
Buffalo	2,578	1.53	62,083.93	5,522	1.15	46,806.18	108,890
Camden	4,076	2.42	98,159.08	5,841	1.22	49,510.12	147,669
New York	3,518	2.09	84,721.21	7,992	1.67	67,742.66	152,464
Newark	2,121	1.26	51,078.36	4,466	0.93	37,855.20	88,934
Mid Atlantic							
Baltimore	3,957	2.35	95,293.30	12,961	2.70	109,861.44	205,155
Charleston	93	0.06	2,239.65	894	0.19	7,577.82	9,817
Philadelphia*	5,952	3.53	143,337.31	12,678	2.65	107,462.65	250,800
(* DE)	.....	.....	.....	.....	.....	.....	.....
Pittsburgh	1,241	0.74	29,886.02	3,923	0.82	33,252.56	63,139
Richmond	4,343	2.57	104,589.03	12,102	2.53	102,580.29	207,169
Washington DC	4,681	2.77	112,728.82	12,141	2.53	102,910.87	215,640
Southeast/Caribbean							
Atlanta	7,267	4.31	175,005.41	13,627	2.84	115,506.66	290,512
Birmingham	2,478	1.47	59,675.71	5,987	1.25	50,747.66	110,423
Caribbean	3,944	2.34	94,980.23	6,710	1.40	56,876.03	151,856
Coral Gables	6,048	3.59	145,649.20	12,183	2.54	103,266.87	248,916
Columbia	2,098	1.24	50,524.47	3,852	0.80	32,650.74	83,175
Greensboro	3,251	1.93	78,291.26	9,140	1.91	77,473.47	155,765
Jackson	1,997	1.18	48,092.17	3,775	0.79	31,998.07	80,090
Jacksonville	1,733	1.03	41,734.47	4,666	0.97	39,550.46	81,285
Louisville	861	0.51	20,734.78	5,083	1.06	43,085.08	63,820
Knoxville	993	0.59	23,913.63	3,086	0.64	26,157.89	50,072
Memphis	4,616	2.74	111,163.47	6,462	1.35	54,773.91	165,937
Nashville	1,526	0.90	36,749.45	4,612	0.96	39,092.74	75,842
Orlando	3,052	1.81	73,498.90	6,451	1.35	54,680.67	128,180
Tampa	2,686	1.59	64,684.81	6,803	1.42	57,664.33	122,349
Midwest							
Chicago and Spring.	8,012	4.75	192,946.65	21,878	4.56	185,444.69	378,391

HUD field office	Default data			First time homebuyer data			Total allocation
	No. of defaults	% of nat'l de-faults	Allocation amount	No. of 1st timers	% of nat'l 1st timers	Allocation amount	
Cincinnati	1,147	0.68	27,622.29	4,843	1.01	41,050.77	68,673
Cleveland	3,058	1.81	73,643.39	5,135	1.07	43,525.85	117,169
Columbus	1,612	0.96	38,820.52	4,665	0.97	39,541.98	78,363
Detroit	3,065	1.82	73,811.97	10,318	2.15	87,458.56	161,271
Grand Rapids	882	0.52	21,240.51	5,040	1.05	42,720.60	63,961
Indianapolis	2,902	1.72	69,886.57	10,810	2.26	91,628.90	161,515
Milwaukee	649	0.38	15,629.35	2,257	0.47	19,131.03	34,760
Flint	429	0.25	10,331.27	1,849	0.39	15,672.70	26,004
Minneapolis	3,194	1.89	76,918.57	14,239	2.97	120,694.17	197,613
Southwest							
Albuquerque	552	0.33	13,293.38	2,841	0.59	24,081.19	37,375
Ft Worth and Dallas	7,096	4.21	170,887.35	14,357	3.00	121,694.37	292,582
Houston	3,388	2.01	81,590.52	5,984	1.25	50,722.23	132,313
Little Rock	1,627	0.96	39,181.75	5,500	1.15	46,619.70	85,801
Lubbock	1,403	0.83	33,787.34	3,742	0.78	31,718.35	65,506
New Orleans	1,707	1.01	41,108.33	4,957	1.03	42,017.06	83,125
Oklahoma City	1,247	0.74	30,030.51	3,999	0.83	33,896.76	63,927
San Antonio	2,548	1.51	61,361.47	9,285	1.94	78,702.53	140,064
Shreveport	785	0.47	18,904.53	1,510	0.32	12,799.23	31,704
Tulsa	914	0.54	22,011.14	2,371	0.49	20,097.33	42,108
Great Plains							
Des Moines	429	0.25	10,331.27	2,114	0.44	17,918.92	28,250
Kansas Cty/Topeka	1,905	1.13	45,876.61	8,198	1.71	69,488.78	115,365
Omaha	607	0.36	14,617.90	3,583	0.75	30,370.62	44,989
St Louis	1,704	1.01	41,036.08	5,757	1.20	48,798.11	89,834
Rocky Mountains							
Denver*	2,554	1.51	61,505.96	18,181	3.79	154,107.78	215,614
*(WY, ND, SD)	.....	.....	.....	.....	.....	.....	.....
Helena	369	0.22	8,886.33	1,546	0.32	13,104.37	21,991
Salt Lake City	926	0.55	22,300.13	8,372	1.75	70,963.66	93,264
Pacific/Hawaii							
Fresno	3,109	1.84	74,871.59	10,157	2.12	86,093.87	160,965
Honolulu	343	0.20	8,260.20	786	0.16	6,662.38	14,923
Los Angeles	5,976	3.54	143,915.28	18,831	3.93	159,617.38	303,533
Phoenix	3,483	2.06	83,878.33	11,602	2.42	98,342.14	182,220
Reno (See below)	.....	0.00	0.00	.....	0.00	0.00	0
Sacramento	1,983	1.18	47,755.02	7,511	1.57	63,665.56	111,421
San Diego	883	0.52	21,264.59	3,746	0.78	31,752.25	53,017
San Francisco	1,273	0.75	30,656.65	4,076	0.85	34,549.44	65,206
Santa Anna	1,205	6.64	269,841.15	20,908	4.36	177,222.67	447,064
Las Vegas and Reno	1,685	1.00	40,578.52	6,626	1.38	56,164.02	96,743
Tucson	525	0.31	12,643.16	1,480	0.31	12,544.94	25,188
Northwest/Alaska							
Anchorage	139	0.08	3,347.43	1,242	0.26	10,527.58	13,875
Boise	532	0.32	12,811.73	2,177	0.45	18,452.92	31,265
Portland	610	0.36	14,690.15	5,013	1.05	42,491.74	57,182
Seattle and Spokane	1,731	1.03	41,686.30	8,021	1.67	67,988.48	109,675
TOTAL	168,693	.....	4,062,500	479,277	.....	4,062,500	8,125,000

An allocation of $1,875,000 in program funding has been set aside for Housing Counseling support which may include: Continuation of the Housing Counseling Clearinghouse, 800 service to provide information to the public regarding local HUD-approved housing counseling agencies, and/or other HUD counseling initiatives.

If funds remain after HUD has funded all approvable grant applications in a HUD Field Office jurisdiction, or if any funds become available due to deobligation, that amount shall be reallocated and used in keeping with the statute and in a manner that will improve the delivery of housing counseling service nationwide. Left over and recaptured funds will be reallocated and used consistent with the terms of this NOFA. Consideration will be given to the field offices with the greatest need. The criteria will include the number of defaults and first-time home buyers, and if there is at least one housing counseling grantee servicing the locality.

C. Eligible Applicants

1. General

There are two types of HUD-approved organizations that are eligible to submit applications pursuant to this NOFA: (1) National, regional, or multi-State housing counseling organizations (also known as ''intermediaries'' or ''umbrella groups''); and (2) local housing counseling agencies.

National, regional, and multi-State nonprofit, intermediary organizations must identify all their proposed

affiliates in their application. These intermediaries must assure that their proposed affiliates are unique to their team and will not undertake a separate application for funds either as an affiliate of another intermediary or directly as a HUD-approved local counseling agency. Should any duplication occur, both the intermediary organization and the local agency involved will automatically be ineligible for further consideration to receive FY 1997 housing counseling funds. In addition, an intermediary-applicant must also assure that it has executed a sub-agreement with its affiliates that clearly delineates their mutual responsibilities for program management, incorporating appropriate timeframes for reporting results to HUD.

Once funded, the national, regional, and multi-State intermediaries will be given broad discretion in implementing their housing counseling programs. On behalf of HUD, the intermediaries will act as managers in the housing counseling process and, as such, may determine funding levels and counseling activity for each of their affiliates, except that no single affiliate may receive more than $100,000. HUD will hold the intermediary organization accountable for the performance of its affiliates.

Local counseling agencies may apply either directly to HUD for funding, or as a part of an affiliated intermediary network. Since continuation of funding for housing counseling activities as a separate and discrete program for FY 1997 and thereafter is not guaranteed, HUD encourages local agencies to consider affiliating with a larger entity as one avenue of possible future funding and support for local programs. Local housing counseling agencies that are not currently HUD-approved may receive FY 1997 funding only as an affiliate of a HUD-approved national, regional, or multi-State intermediary's application for FY 1997 funds. In this instance, the intermediary organization must certify that the quality of services provided will meet, or exceed, standards for local HUD-approved agencies.

2. Civil Rights Prerequisites

Applicants that fall into any one of the following categories will be ineligible for funding under this NOFA:

a. The Department of Justice has brought a civil rights suit against the applicant and the suit is pending;

b. There has been an adjudication of a civil rights violation in a civil action brought against the applicant by a private individual, unless the applicant is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;

c. There are outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance; or

d. HUD has deferred application processing by HUD under one of the following authorities:

i. Title VI of the Civil Rights Act of 1964 and the implementing guidelines of the Attorney General (28 CFR 50.3) and the HUD regulations (24 CFR 1.8);

ii. Section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (24 CFR 8.57);

iii. Executive Order 11063, as amended by Executive Order 12892 and HUD regulations (24 CFR Part 107);

iv. Title II of the Americans with Disabilities Act of 1990 and applicable regulations (28 CFR Part 36); or

v. The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations (24 CFR Part 146).

3. Requirements to Affirmatively Further Fair Housing

Three Civil Rights acts and their implementing regulations form the basis for HUD's evaluation of proposals for the extent to which they will affirmatively further fair housing:

a. Section 808(e)(5) of the Fair Housing Act requires HUD to administer all its programs in a manner which affirmatively furthers fair housing on the bases of race, color, national origin, religion, sex, disability, and familial status.

b. HUD's regulation at 24 CFR 1.4(b)(6) which implements Title VI of the Civil Rights Act requires recipients of HUD funds to take affirmative action to overcome the effects of conditions which resulted from limiting participation of persons by race, color, or national origin even in the absence of prior discrimination by the organization.

c. Section 504 of the Rehabilitation Act of 1973 requires recipients of HUD funds to provide housing opportunities for persons with disabilities which are comparable to those for non-disabled persons and to ensure accessibility in all programs so funded.

All applications must address these requirements by discussing how the recipient plans to affirmatively further fair housing. This may be done in a variety of ways, as appropriate to the community. Making counseling offices and services accessible to persons with a wide range of disabilities and helping such persons to locate suitable housing in locations throughout the metropolitan or community area is suggested for both national, regional, or multi-state housing counseling organization, as well as for local counseling agencies. However, programs should be developed to meet the needs of all individuals regardless of race, national origin, or disability. The following are additional suggestions:

National, Regional, or Multi-State Housing Counseling Organizations

—Implement affirmative marketing strategies to attract all segments of the population listed as prohibited bases in the Fair Housing Act who are least likely to apply for Housing Counseling to purchase or retain their homes.

—Take actions to reduce concentrations of poverty and/or minority populations. This could include working with, or adopting the counseling practices of, agencies which conduct opportunity counseling to encourage low-income and minority persons to move to low-concentration areas and helping to locate suitable housing in such areas. It could also include working with local lenders to develop alternative lending criteria: For instance, the counseling agency may make referrals to the lenders of clients with good credit and payment histories, but who do not fit the standard profiles for lending practices or of clients with financial patterns which reflect cultural differences (such as family savings pools common among some Asian populations). Such activity should also focus on finding appropriate housing, free from environmental hazards, for all segments of the population in neighborhoods with good transportation, schools, employment opportunities, and other services. Such housing would include accessible housing to accommodate persons with a variety of disabilities, i.e., mobility, hearing, visual, and persons with multiple chemical sensitivities (MCS), etc.

Local Housing Counseling Agencies

—Participate in local fair housing strategies with major emphasis on remedying the effects of past discrimination and limitations in the community. This could include: working with CPD Entitlement Jurisdictions to help to identify impediments to fair housing choice

which have been identified in the process of working with clients; becoming familiar with the jurisdiction's identified impediments and adjusting its counseling activities to help overcome these impediments; and/or working with other public and private resources to develop fair housing strategies applicable to the counseling activities, on a community-wide or metropolitan-wide basis. Counseling agencies could also work with local disability rights organizations and housing providers to identify and list by address and type, accessible housing which is available to accommodate persons with a variety of disabilities, i.e. mobility, hearing, visual, and MCS, etc.

4. Requirements Applicable to Religious Organizations

Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate a housing counseling program, the organization must undertake its responsibilities under the counseling program in accordance with the following principles:

a. It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

b. It will not discriminate against any person applying for counseling under the program on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion; and

c. It will provide no religious instruction or religious counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the housing counseling program.

D. Eligible Activities

Eligible activities will vary depending upon whether the applicant is a HUD-approved local counseling agency or a HUD-approved national, regional, or multi-State housing counseling intermediary. Lease, rehabilitation, or acquisition of facilities is not an eligible activity.

1. Local Housing Counseling Agencies

Local housing counseling agencies funded under this NOFA may use HUD funds to deliver comprehensive housing counseling or to specialize in the delivery of particular housing counseling services according to the housing needs they identified for their target area in the plan that was previously approved by HUD. HUD recognizes that local housing counseling agencies may offer a wide range of services, including:

a. Renter assistance, including information about rent subsidy programs, rights and responsibilities of tenants, lease and rental agreements, etc.;

b. Outreach initiatives, including providing general information about housing opportunities within the community and providing appropriate information to persons with disabilities;

c. Pre-purchase homeownership counseling, covering such issues as purchase procedures, mortgage financing, downpayment/closing cost fund accumulation, accessibility requirements of the property—if appropriate, credit improvement, debt consolidation, etc.;

d. Post-purchase counseling, including such issues as property maintenance, personal money management, home equity conversion mortgages, etc.; or

e. Mortgage delinquency and default resolution, including restructuring debt, arrangement of reinstatement plans, loan forbearance, loss mitigation, etc.

HUD-funded local counseling agencies may elect to offer their services to a wide range of clients or may elect to serve a more limited audience, so long as limitations are not based on any of the prohibited bases of the Fair Housing Act. Potential clients include: renters; potential homebuyers including those homebuyers that have been underserved such as minority and persons with disabilities; homeowners eligible for and applying for HUD-related, VA, FmHA (or its successor agency), State, local, or conventionally financed housing or housing assistance; or persons who occupy such housing and seek the assistance of a HUD-approved housing counseling agency to resolve a housing need (including the need of a person with a disability for accessible housing) or problem. Local housing counseling agencies may elect to offer this assistance in conjunction with any HUD housing program but must be familiar with FHA's single family and multifamily housing programs.

2. National, Regional, or Multi-State Counseling Intermediaries

The primary activity of national, regional, or multi-State nonprofit housing counseling intermediaries will be to manage the use of HUD housing counseling funds, including the distribution of counseling funding to affiliated local housing counseling organizations. Local affiliates of the selected national, regional, or multi-State counseling intermediaries are eligible to undertake any or all of the housing counseling activities outlined above for the HUD-approved local housing counseling agencies. The local affiliates receiving funding through intermediaries do not need to be HUD-approved in order to receive these funds from the intermediary. However, the national, regional, or multi-State intermediary organization must be HUD-approved as of the NOFA publication date.

E. Selection Process

1. Housing Counseling Agencies

All applications meeting the requirements of this NOFA will be selected for funding within their competitive category, if sufficient funds are available: (1) In the set aside for National, Regional, or multi-State organizations, or (2) within the HUD Field Office allocation for local housing counseling agency applicants.

a. *Criteria/Ranking Factors:* All applications from Intermediary agencies will be rated and ranked by staff in the HUD Headquarters Office. All applications from local counseling agencies will be rated and ranked by staff in the appropriate local HUD Field Office and by the Secretary's Representative in the appropriate State office. The Secretary's Representative and the local HUD Office staff will use the same criteria and ranking factors, as follows:

i. Capability of the applicant as determined by HUD, including competent delivery of counseling services and timely drawdown of any HUD funds awarded in the prior Fiscal Year—up to 45 points (up to 40 points assigned by HUD's Housing staff; up to 5 points assigned by the Secretary's Representative). Rating factors will include but not be limited to the following: first-time home buyer education and counseling; default, loss mitigation and foreclosure prevention counseling; information on the availability and financing of housing; counseling on rehabilitating and refinancing of housing; information on the purchase of housing from HUD and other government agencies; providing HECM counseling;

ii. Adequacy of the activities proposed by the applicant in response to housing needs identified in the applicant's housing counseling plan as previously approved by HUD—up to 20

points (up to 15 points assigned by HUD's Housing staff; up to 5 points assigned by the Secretary's Representative);

iii. Evidence of private funding sources contributing to the applicant's operating budget over the past calendar year—up to 15 points assigned by HUD's Housing staff; and

iv. Evidence of current funding support from units of government located within the target area which the applicant intends to serve—up to 10 points assigned by HUD's Housing staff.

v. Extent to which proposal provides methods for affirmatively furthering fair housing—up to 10 points assigned by HUD's FHEO staff. Special consideration will be given to particularly innovative strategies and those designed to remedy the effects of past discrimination as described in paragraph C.3, Requirements to Affirmatively Further Fair Housing.

b. Selection Procedure: National, regional, and multi-State applications will be rated and ranked in Headquarters and selected for funding, in rank order, until all funds for such agencies are depleted. Local agency applications will be rated and ranked by the Field Office and selected for funding, in rank order, until all funds for such agencies are depleted.

i. Breaking a Tie

If two or more applications receive the same number of points and sufficient funds are not available to fund all such applications, first the application or applications requesting the smallest grants will be selected, if a sufficient amount remains to fund them. If two or more tied applications request the same amount and sufficient funds are not available to fund all such applications, the following system will be used to break the ties:

A. If the tied applications are for programs to be carried out in different jurisdictions, applications with the highest number of points for the rating criterion a.ii. (adequacy of activities) stated above will be selected, if sufficient funds remain.

B. If the tied applications are to be carried out in the same jurisdiction, applications with the highest number of points for the rating criterion a.i. (capability) stated above will be selected, if sufficient funds remain.

ii. Reallocations

Funds remaining after applying the procedures described in paragraph E.1.b. will be reallocated to Headquarters for distribution in accordance with the statute.

iii. Procedural Errors

Procedural errors by HUD discovered after initial ratings, but before notification to Congress of selected applicants, will be corrected and rankings will be revised.

iv. Reductions

HUD will approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines that:

A. The amount requested for one or more eligible activities is unreasonable, unnecessary, or unjustified;

B. An activity proposed for funding does not qualify as an eligible activity;

C. The applicant is not able to carry out all the activities requested; or

D. Insufficient amounts remain in that funding round to fund the full amount requested in the application.

v. Limitation of Geographic Scope

HUD may reduce the geographic scope of the proposed program if it determines that:

A. Two or more fundable applications substantially overlap; or

B. The proposed geographic scope is overly large given the capacity of the organization.

2. National, Regional, and Multi-State Counseling Organizations

If more applications are submitted to HUD Headquarters from national, regional, and multi-State organizations that meet all the requirements of this NOFA than can be funded with the amount allocated for this purpose, they will be rated by staff in HUD Headquarters using the above ranking criteria stated in paragraph 1.a., and the top-rated applicants will be selected. Paragraphs 1. b.iii., b.iv., and b.v., above also apply to the selection of national, regional, and multi-State counseling organizations.

3. Notification of Approval or Disapproval

After completion of the selection process, but no later than six months after the deadline date for submission of the applications, as stated in this NOFA, HUD will notify, in writing, the applicants that have been selected and the applicants that have not been selected.

F. Funding Levels

Funding levels will be based on the amount authorized by the Congress, geographical distribution as described above, the performance record of each counseling agency as determined by HUD's analysis of prior year counseling workload and results of the most recent biennial performance review, competent delivery of counseling services and timely drawdown of funds awarded, and the agency's needs, as specified in the application according to its housing counseling plan previously approved by HUD. In addition, applicants that can demonstrate successful efforts to obtain non-HUD funding in their applications will receive extra consideration in HUD's rating and ranking process. HUD funding provided *must* be less than the total actual cost of the agency's housing counseling program.

1. Local Housing Counseling Agencies

HUD will fund local agencies according to the budget submitted with the application, in an amount not to exceed $100,000. Amounts requested by local housing counseling agencies should reflect anticipated operating needs for housing counseling activities, based upon counseling experience during the last year and existing agency capacity. To the maximum extent possible, local counseling agencies also must seek other private and public sources of funding to supplement HUD funding. HUD never intends for its counseling grant funds to cover all costs incurred by an agency participating in the program.

Local housing counseling agencies may use the HUD grant to undertake any of the eligible counseling activities described in this NOFA and included in their HUD-approved plan. FY 1997 housing counseling grant funds also may be used for ''capacity building'' which permits up to $4,000 of the grant amount be used to: purchase computer equipment that meets, or exceeds, HUD specifications; enhance existing telephone service, such as purchasing a telecommunications equipment for the hearing-impaired (TTY) to serve persons with hearing impairments (as an alternative to using the TTY relay service); and install FAX machines. The Department will require that all grantees funded in 1997 which do not currently have adequate computer systems (and were not funded by HUD under the FY 1995 or FY 1996 NOFA) use all or a portion of their $4,000 capacity building portion of the grant to purchase computer hardware according to HUD specifications. Computer training for one staff person also may be paid from the $4,000 set-aside, as may training on how to use a TTY. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E. Agencies funded under the FY 1995 and/or FY 1996 NOFA already received an allocation of capacity

building funds and may not request additional capacity building funds in 1997.

2. National, Regional, or Multi-State Counseling Intermediaries

The intermediary organization will distribute the majority of funds awarded to their proposed local housing counseling affiliates. Intermediaries should budget an amount which reflects their best estimate of cost to oversee and fund these counseling efforts, as well as the funding needs of their affiliates. Note that HUD housing counseling funding is not intended to fully fund either the intermediary's housing counseling program or the housing counseling programs of the local affiliates. To the maximum extent possible, intermediaries and their local affiliates are expected to seek other private and public sources of funding for housing counseling to supplement HUD funding.

An intermediary may use up to $5,000 of its total grant amount for capacity building expenses such as: purchasing computer equipment; enhancing telephone service, such as purchasing a telecommunications equipment for the hearing-impaired (TTY) to serve persons with hearing impairments (as an alternative to using TTY relay service); installing FAX machines; and preparing or publishing counseling materials. If the intermediary does not have an adequate computer system and was not funded under the FY 1995 or FY 1996 NOFA, the Department will require that the $5,000 capacity building portion of the grant be used to purchase necessary equipment meeting HUD specifications. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E. Intermediaries funded under the FY 1995 and/or FY 1996 NOFA *may not* request additional capacity building funds in FY 1997.

HUD will give the selected nonprofit intermediaries wide discretion to implement the housing counseling program with their affiliates. The intermediary may decide how to allocate funding among its affiliates and may determine funding levels at or below $100,000 for individual affiliates with the understanding that a written record will be kept of how this determination is made. This record shall be made available to the agencies affiliated with the intermediary.

III. Checklist of Application Submission Requirements

A. General

Contents of an application will differ somewhat for local housing counseling agencies and for national, regional, or multi-State intermediaries; however, all applicants are expected to submit:

1. Standard Form 424, Application for Federal Assistance.
2. Standard Form 424B, Assurances—Non-construction Programs.
3. Drug-Free Workplace Requirements Certification.
4. Applicant/Recipient Disclosure/Update Report, Form HUD–2880.
5. Certification and Disclosure of Lobbying Activities, Standard Form LLL, for National Intermediaries only, if applicable.
6. Certification Regarding Civil Rights.
7. Form HUD–9902, Housing Counseling Agency Fiscal Year Activity Report for fiscal year October 1, 1995 through September 30, 1996. Where an applicant did not participate in HUD's Housing Counseling Program during FY 1996, this report should be completed to reflect the agency's counseling workload during that period in any case. This form must be fully completed and submitted by every applicant for FY 1997 HUD funding. HUD will reject any application that does not include this form.
8. Computer Equipment Inventory (if applicable).
9. Budget Worksheet. A realistic, proposed budget for use of HUD funds, if awarded. This should be broken down into two categories: Direct counseling costs and capacity building costs. Note that the budget submitted by a local agency may not exceed a total of $100,000, including capacity building costs which may not exceed $4,000. National, regional and multi-State organizations may submit a proposed budget up to $1 million, including capacity building costs which may not exceed $5,000.
10. Exhibits for National, regional, multi-State or local housing counseling agencies (as described below in B1-B3 and in the application kit).
11. Evidence of Housing Counseling Funding Sources (required by all applicants).
12. Current Housing Counseling Plan.
13. A description of counseling activities to be performed.
14. A description of FHEO activities.
15. A description of organization capability.
16. Direct-labor and Hourly-labor rate and Counseling Time Per Client.
17. Congressional District Information.

B. National, Regional, and Multi-State Intermediaries

National, regional, and multi-State intermediaries must submit an application which covers both their network organization and their affiliated agencies. This application must include:

1. Description of affiliated agencies. For each, list the following information:

a. Organization name
b. Address
c. Director and contact person (if different)
d. Phone/FAX numbers (including TTY, if appropriate)
e. Federal tax identification number
f. ZIP code service areas
g. Number of staff providing counseling
h. Type of services offered (defined by renter assistance, outreach initiatives, pre-purchase counseling, post-purchase counseling, and mortgage default and delinquency counseling)
i. Number of Years of Housing Counseling Experience

2. Relationship with affiliates. Briefly describe the intermediary's relationship with affiliates (i.e. membership organization, field or branch offices, subsidiary organizations, etc.).
3. Oversight system. Describe the process that will be used for determining affiliate funding levels, distributing funds, and monitoring affiliate performance.

IV. Corrections to Deficient Applications

After the submission deadline, applicants may cure only non-substantial, technical deficiencies that surface during HUD screening of their application. Applicants will have a ''cure period'' to correct such deficiencies that are not integral to HUD's review of the application. Applicants have 14 calendar days from the date HUD notifies them of any problem to submit the appropriate information to HUD. Notification of a technical deficiency may be in writing or by telephone. If the HUD notification is by telephone, a written confirmation will be transmitted by HUD to the applicant. Where HUD determines that an application as initially submitted is fundamentally incomplete, or would require substantial revisions, it will not consider the application further. Note: HUD will not inform applicants regarding application deficiencies other than as described in this section.

V. Other Matters

Environmental Impact

This NOFA does not direct, provide for assistance or loan and mortgage

insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have ''federalism implications'' because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This NOFA only affects nonprofit or public organizations who seek funding for their housing counseling activities.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA has potential significant impact on family formation, maintenance, and general well-being only to the extent that the entities who qualify for participation in HUD's housing counseling program under this notice will provide families with the counseling and advice they need to avoid rent delinquencies or mortgage defaults, and to develop competence and responsibility in meeting their housing needs. Since the potential impact on the family is considered beneficial, no further review under the Order is necessary.

Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than persons authorized to receive such information) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division (202) 708–3815 (voice), (202) 708–1112 (TTY). (These are not toll-free numbers.) For HUD employees who have specific program questions, the employee should contact the appropriate Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the HUD implementing regulations at 24 CFR Part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR Part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. *Required Reporting.* A certification is required at the time application for funds is made that Federally appropriated funds are not being or have not been used in violation of section 319 and the *disclosure* will be made of payments for lobbying with other than federally appropriated funds. The standard disclosure form, SF-LLL, ''Disclosure Form to Report Lobbying'', and the certification form must be use to disclose lobbying with other than Federally appropriated funds at the time of the application.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number is 14.169.

Dated: April 23, 1997.

Stephanie A. Smith,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The title of all those listed is: Director, Single Family Division, U.S. Department of Housing and Urban Development. Telephone numbers are not toll-free.

HUD—New England Area

Connecticut State Office

Mr. Gary T. Le Vine, First Floor, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4569

Massachusetts State Office

Mr. Edward T. Bernard, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5335

New Hampshire State Office

Mr. Loren Cole, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7755

Rhode Island State Office

Mr. Michael Dziok, Sixth Floor, 10 Weybosset Street, Providence, RI 02903–2808, (401) 528–5365

HUD—New York, New Jersey Area

New Jersey State Office

Ms. Theresa Arce, Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (201) 622–7900 X3500

New York State Office

Mr. Juan Baustista, 26 Federal Plaza, New York, NY 10278–0068, (212) 264–0777 X3746

Albany Area Office

Mr. Robert S. Scofield, Jr., 52 Corporate Circle, Albany, NY 12203–5121, (518) 464–4200 EXT. 4204

Buffalo Area Office

Mr. Glenn Ruggles, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 846–5752

Camden Area Office

Mr. Philip Caulfield, Second Floor, Hudson Building, 800 Hudson Square, Camden, NJ 08102–1156, (609) 757–5083

HUD—Midatlantic Area

District of Columbia Office

Ms. Carole Catineau, 820 First Street, NE, Washington, D.C. 20002–4502, (202) 275–7543 X3055

Maryland State Office

Ms. Candace Simms, Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (410) 962–2520 X3094

Pennsylvania State Office

Mr. Mike Perretta, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, (215) 656–0507

Virginia State Office

Ms. Rheba G. Gwaltney, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230—0331, (804) 278–4506 X3003

West Virginia State Office

Mr. Peter Minter, Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7064 X 7000

Pittsburgh Area Office

Mr. Al Curotola, 339 Sixth Ave., Sixth Floor, Pittsburgh, PA 15222–2515, (412) 644–2737

HUD—Southeast/Caribbean Area

Alabama State Office

Ms. Martha Andrus, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, (205) 290–7360 X1027

Caribbean Office

Ms. Margarita Delgado, New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, (787) 766–5256

Georgia State Office

Ms. Janice Cooper, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, (404) 331–4801 X2145

Kentucky State Office

Mr. David A. Powell, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–6163 X610

Mississippi State Office

Mr. Jerry F. Perkins, Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1016, (601) 965–4930

North Carolina State Office

Mr. Robert Dennis, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (910) 547–4053 X4121

South Carolina State Office

Mr. David L. Ball, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, (803) 253–3208

Coral Gables Area Office

Ms. Sara D. Warren, Gables 1 Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2911, (305) 662–4526

Jacksonville Area Office

Ms. Ann Whaley, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–3627

Knoxville Area Office

Mr. William Pavelchik, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (423) 545–4377

Memphis Area Office

Mr. Benjamin Davis, Suite 1200, One Memphis, Place, 200 Jefferson Avenue, Memphis, TN 38103–2335, (901) 544–3367

Tennessee State Office

Mr. Ed M. Phillips, Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228–1803, (615) 736–5365

Orlando Area Office

Mr. Robert K. Osterman, Suite 270, Langley Building, 3751 Maguire Boulevard, Orlando, FL 32803–3032, (407) 648–6441

Tampa Area Office

Ms. Nikki A. Spitzer, Suite 700, Timberlake Federal Building Annex, 501 East Polk Street, Tampa, FL 33602–3945, (813) 228–2504

HUD—Midwest Area

Illinois State Office

Ms. Debra F. Robinson, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–6236 X2204

Indiana State Office

Mr. William Fattic, 151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–7034

Michigan State Office

Mr. John Frelich, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–4899

Minnesota State Office

Mr. John E. Buenger, 220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3053

Ohio State Office

Mr. Verlon Shannon, 200 North High Street, Columbus, OH 43215–2499, (614) 469–5536

Wisconsin State Office

Mr. Joe Bates, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3156

Cincinnati Area Office

Ms. Louistine Tuck, 525 Vine St Suite 700, Cincinnati, OH 45202–3253, (513) 684–2833

Cleveland Area Office

Mr. Kendel King, Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, OH 44115–1815, (216) 522–2784

Flint Area Office

Mr. John Frelich, Room 200, 605 North Saginaw Street, Flint, MI 48502–1953, (810) 766–5107

Grand Rapids Area Office

Ms. Shirley Bryant, 50 Louis St, N.W., Grand Rapids, MI 49503–2648, (616) 456–2146

HUD—Southwest Area

Arkansas State Office

Ms. Susan E. Finister, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5961

Louisiana State Office

Mr. Byron D. Duplantier, 9th Floor, Hale Boggs Federal Building, 501 Magazine St., New Orleans, LA 70130–3099, (504) 589–6570

New Mexico State Office

Ms. Carol G. Johnson, 625 Truman Street, NE, Albuquerque, NM 87110–6443, (505) 262–6269 X238

Texas State Office

Mr. Louis Ybarra, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–6259 X3001

Houston Area Office

Mr. Henry Hadnot, Suite 200, Norfolk Tower 2211 Norfolk, Houston, TX 77098–4096, (713) 313–2274 EXT. 7019

Lubbock Area Office

Mr. Miguel Rincon, Federal Office Building 1205 Texas Avenue, Lubbock, TX 79401–4093, (806) 743–7291

Oklahoma State Office

Mr. Ken Beck, 500 West Main St., Suite 400, Oklahoma City, OK 73102–2233, (405) 553–7444

San Antonio Area Office

Mr. Antonio C. Cabral, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 472–6898

Shreveport Area Office

Ms. Martha Sakre, Suite 1510, 401 Edwards Street, Shreveport, LA 71101–3107, (318) 676–3440

Tulsa Area Office

Mr. Ken Beck, 50 East 15th Street, Suite 110, Tulsa, OK 74119–4032, (918) 581–7168 X3027

HUD—Great Plains

Iowa State Office

Mr. Patrick Liao, Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4435

Kansas/Missouri State Office

Mr. Deryl Sellmeyer, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–6820

Nebraska State Office

Ms. Nancy Sheets, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3135

Saint Louis Area Field Office

Mr. Dennis Martin, Third Floor, Robert A. Young Federal Building 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6388

HUD—Rocky Mountains Area

Colorado State Office

Mr. Ron Bailey (Acting), First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, (303) 672–5343

Montana State Office

Mr. Gerard Boone, Room 340, Federal Office Building, Drawer 10095, 301 S. Park, Helena, MT 59626–0095, (406) 441–1300

Utah State Office

Mr. Richard P. Bell, Suite 550, 257 Tower, 257 East, 200 South, Salt Lake City, UT 84111–2048, (801) 524–5237

HUD—Pacific/Hawaii Area

Arizona State Office

Ms. Bernice Campbell, Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–6704

California State Office

Mr. James McClanahan, Philip Burton Federal Building and U.S. Courthouse 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 436–6518

Hawaii State Office

Ms. Jill B. Hurt, 7 Waterfront Plaza (Suite 500), 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8190 X251

Nevada State Office and Reno

Ms. Sharon Atwell, Suite 700, Atrium Building, 333 No. Rancho Drive, Las Vegas, NV 89106–3714, (702) 388–6500 X1802

Fresno Area Office

Ms. Yvielle Edwards-Lee, Suite 138, 1630 E. Shaw Avenue, Fresno, CA 93710–8193, (209) 487–5032

Los Angeles Area Office

Mr. Malcolm Findley, 1615 West Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 251–7220

Reno Area Office—see Nevada

Sacramento Area Office

Mr. Ron M. Johnson, Suite 200, 777 12th Avenue, Sacramento, CA 95814–1997, (916) 498–5220 X282

San Diego Area Office

Mr. Danny E. Mendez, Mission City Corporate Center, 2365 Northside Drive (Suite 300), San Diego, CA 92108–2712, (619) 557–2610 X227

Santa Ana Area Office

Mr. David A. Westerfield, Suite 500, 3 Hutton Centre, Santa Ana, CA 92707–5764, (714) 957–3745

Tucson Area Office

Ms. Bernice Campbell, Suite 700, Security Pacific Bank Plaza, 33 North Stone Avenue, Tucson, AZ 85701–1467, (520) 670–6000

HUD—Northwest/Alaska Area

Alaska State Office

Mr. Paul O. Johnson, Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, AK 99508–4399, (907) 271–4610

Idaho State Office

Mr. Gary L. Gillespie, Suite 220, Plaza IV, 800 Park Boulevard, Boise, ID 83712–7743, (208) 334–1991

Oregon State Office

Ms. Pamela D. West, 400 S.W. Sixth Ave., Suite 700, Portland, OR 97204, (503) 326–2684

Washington State Office

Mr. David L. Rodgers, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104–1000, (206) 220–5200 X3252

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federal register

Thursday
May 1, 1997

Part VI

Department of Housing and Urban Development

Funding Availability (NOFA) for Fiscal Year 1997 for the Comprehensive Improvement Assistance Program (CIAP); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4186–N–01]

Notice of Funding Availability (NOFA) for Fiscal Year 1997 for the Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year (FY) 1997.

SUMMARY: This notice informs Public Housing Agencies and Indian Housing Authorities (herein referred to as HAs) that own or operate fewer than 250 public housing units and, therefore, are eligible to apply and compete for CIAP funds, of the requirements and application deadline date for FY 1997 CIAP funding and the availability of CIAP funds. HAs with 250 or more public housing units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP) and are not eligible to apply for CIAP funds. Entities other than HAs are not eligible to apply for CIAP funds.

DATES: The CIAP Application is due on or before 3 pm local time on June 30, 1997 at the HUD Field Office with jurisdiction over the HA, Attention: Director, Office of Public Housing (OPH), or Administrator, Office of Native American Programs (ONAP). The term ''Field Office'' includes both the OPH and the ONAP.

FOR FURTHER INFORMATION, CONTACT: William J. Flood, Director, Office of Capital Improvements, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4134, Washington, D.C. 20410. Telephone (202) 708–1640. (This is not a toll free number.)

IHAs may contact Deborah M. LaLancette, Director, Housing Management Division, Office of Native American Programs (ONAP), Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202. Telephone (303) 675–1600. (This is not a toll free number.)

Hearing or speech impaired individuals may call HUD's TTY number (202) 708–4595. (This is not a toll-free number.)

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 USC 3501–3520) and have been assigned OMB control number 2577–0044. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Toward this end, the Department in recent years has developed the Consolidated Planning process designed to help communities undertake such approaches.

In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have recently been published or are expected to be published in the near future. By reviewing these NOFAs with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to the recent and upcoming NOFAs and to the community's Consolidated Plan.

A NOFA related to housing revitalization that the Department has published is the NOFA for Revitalization of Severely Distressed Public Housing (HOPE VI). This NOFA was published on April 14, 1997 (61 FR 18242). Other NOFAs related to housing revitalization that the Department expects to publish in the **Federal Register** within the next few weeks include: the Lead-based Paint Hazard Reduction NOFA; the Public Housing Demolition NOFA; and the NOFA for the Section 8 Rental Certificate and Voucher Programs.

To foster comprehensive, coordinated approaches by communities, the Department intends for the remainder of FY 1997 to continue to alert applicants to upcoming and recent NOFAs as each NOFA is published. In addition, a complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html. Additional steps on NOFA coordination may be considered for FY 1998.

For help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal government.

SUPPLEMENTARY INFORMATION:

I. Allocation Amounts

(a) In FY 1997, $2,427,314,900 is available for the Modernization Program (CIAP and CGP).

(1) Modernization funds are allocated between CIAP and CGP agencies based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%), as determined by the field inspections conducted for the HUD-funded ABT study of modernization needs. This allocation results in CIAP agencies receiving approximately 12.15% or $305,361,070 and CGP agencies receiving approximately 87.85% or $2,121,953,830 of the total funds available.

(i) *Backlog needs* are needed repairs and replacements of existing physical systems, items that must be added to meet the HUD modernization and energy conservation standards and State or local/tribal codes, and items that are necessary for the long-term viability of a specific housing development.

(ii) *Accrual needs* are needs that arise over time and include needed repairs and replacements of existing physical systems and items that must be added to meet the HUD modernization and energy conservation standards and State or local/tribal codes.

(2) The modernization funds available to CIAP agencies are allocated between Public Housing at approximately 91.8505% or $280,475,670 and Indian Housing at approximately 8.1495% or $24,885,400. This allocation also is based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%).

(b) *Assignment of Funds to Field Offices of Public Housing* (*OPH*). In past years, the distribution of Public Housing CIAP funds for each Field OPH has been based solely on the relative shares of backlog and accrual needs for CIAP PHAs. In order to obtain a more equitable distribution of available funds relative to historical demand within each FO jurisdiction, Headquarters has determined that the FY 1997 distribution of Public Housing CIAP funds for each Field OPH will be based on the relative shares of backlog and accrual needs for CIAP PHAs (weighted at 50%) and the relative demand for CIAP funds, as evidenced by the CIAP funds requested in FY 1996 (weighted at 50%). However, to ensure that the relative demand side of the allocation

formula does not give undue weight to FOs that were able to fund a higher percentage of funds requested in a prior year, each Field OPH will be capped by Headquarters, before FY 1997 funds are assigned, to an allocation amount which will fund no more than 30% of funds requested in FY 1996.

(1) The Field OPH Director shall have authority to make Joint Review selections and CIAP funding decisions. However, the Secretary's Representative is responsible for scoring the technical review factor related to the degree of local/tribal government support for the proposed modernization (see section IV(c)(5) of this NOFA). The Field Office of Fair Housing and Equal Opportunity (FHEO) is responsible for scoring the technical review factor related to affirmatively furthering fair housing, which applies only to Public Housing.

(2) If additional funds for Public Housing CIAP become available, Headquarters will allocate the funds to each Field OPH based on the table below.

(3) If a Field OPH does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more Field OPHs that have the highest unfunded demand, as evidenced by approvable applications.

The following table shows the percentage distribution of CIAP funds for PHAs, excluding IHAs, assigned by Headquarters to each Field OPH. The percentage distributions for the Texas State and Houston Area Offices have been further broken down to indicate what percentage of their distribution will be allocated to HAs involved in the East Texas civil rights case (i.e., *Young* v. *Cuomo*) to meet the requirements of the settlement agreement, which is subject to judicial oversight, along with other modernization needs.

Office of Public Housing (OPH)	Percent of Public Housing funds
New England:	
Massachusetts State Office	2.4560
Connecticut State Office	.8107
New Hampshire State Office ..	1.5676
Rhode Island State Office	.4361
New York/New Jersey:	
Buffalo Area Office	2.0783
New Jersey State Office	2.3160
New York State Office	1.4892
Mid-Atlantic:	
Maryland State Office	.4214
West Virginia State Office	1.3081
Pennsylvania State Office	.6837
Pittsburgh Area Office	.9155
Virginia State Office	.4234
District of Columbia Office	.1672
Southeast:	
Georgia State Office	8.2709
Alabama State Office	5.0915
South Carolina State Office	1.2749
North Carolina State Office	2.9244
Mississippi State Office	1.6542
Jacksonville Area Office	2.5183
Knoxville Area Office	1.0628
Kentucky State Office	4.7477
Tennessee State Office	2.7438
Florida State Office	1.0793
Midwest:	
Illinois State Office	3.9655
Cincinnati Area Office	.4645
Cleveland Area Office	.5422
Ohio State Office	1.1608
Michigan State Office	1.8521
Grand Rapids Area Office	2.6617
Indiana State Office	1.1643
Wisconsin State Office	2.5429
Minnesota State Office	3.7183
Southwest:	
New Mexico State Office	1.3046
Texas State Office	7.2209
East Texas HAs	(1)
Non-East Texas HAs	(2)
Houston Area Office	1.7024
East Texas HAs	(3)
Non-East Texas HAs	(4)
Arkansas State Office	2.1839
Louisiana State Office	3.9607
Oklahoma State Office	2.3203
San Antonio Area Office	3.1643
Great Plains:	
Iowa State Office	.5858
Kansas/Missouri State Office ..	2.7413
Nebraska State Office	1.0943
St. Louis Area Office	1.0715
Rocky Mountain:	
Colorado State Office	3.1227
Pacific/Hawaii:	
Los Angeles Area Office	.2670
Arizona State Office	.9903
Sacramento Area Office	.0808
California State Office	1.7445
Northwest/Alaska:	
Oregon State Office	.6706
Washington State Office	1.2608
Total	100.0000

[1] (0.361045 or 5% of 7.2209)
[2] (6.859855 or 95% of 7.2209)
[3] (0.817152 or 48% of 1.7024)
[4] (0.885248 or 52% of 1.7024)

(c) *Assignment of Funds to Offices of Native American Programs (ONAP).* Headquarters has determined the distribution of Indian Housing CIAP funds for each ONAP, based on the relative shares of backlog and accrual needs for CIAP IHAs, adjusted as necessary. The fund assignment will cover Indian Housing and any Public Housing owned and operated by IHAs.

(1) The ONAP Administrator shall have authority to make Joint Review selections and CIAP funding decisions. However, the Secretary's Representative for the geographic area in which the IHA is located is responsible for scoring the technical review factor related to the degree of local/tribal government support for the proposed modernization (see section IV(c)(5) of this NOFA).

(2) If additional funds for Indian Housing CIAP become available, Headquarters will allocate the funds to each ONAP based on the table below.

(3) If an ONAP does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more ONAPs that have the highest unfunded demand, as evidenced by approvable applications.

The following table shows the percentage distribution of CIAP funds for IHAs, assigned by Headquarters to each ONAP:

Office of Native American Programs (ONAP)	Percent of Indian Housing funds
Eastern/Woodlands	14.8444
Southern Plains	12.3324
Northern Plains	13.3174
Southwest	29.9263
Northwest	24.4868
Alaska	5.0927
Total	100.0000

II. Purpose and Substantive Description

(a) *Authority.* Section 14, United States Housing Act of 1937 (42 U.S.C. 14371); Section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). The CIAP regulation, 24 CFR part 968, subparts A and B, for PHAs and 24 CFR part 950, subpart I, for IHAs.

(b) *Program Highlights.*

(1) *Departmental Priority.* Improving Public and Indian Housing is one of the Department's major priorities. Accordingly, a review has been made of the entire Public and Indian Housing Program. Specifically, the Department is very concerned about several aspects of the Modernization Program, as follows:

(i) *Design.* When identifying physical improvement needs to meet the modernization standards, HAs are encouraged to consider design which supports the integration of public housing into the broader community. Although high priority needs, such as those related to health and safety, vacant, substandard units, structural or system integrity, and compliance with statutory, regulatory or court-ordered deadlines, will receive funding priority, HAs should plan their modernization in a way which promotes good design, but maintains the modest nature of public housing. The HA should pay particular attention to design, which is sensitive to traditional cultural values, and be

receptive to creative, but cost-effective approaches suggested by architects, residents, HA staff, and other local entities. Such approaches may complement the planning for basic rehabilitation needs. It should be noted that there will be no increase in operating subsidy as a result of any modernization activities.

(ii) *Physical Accessibility and Visitability.* In addition to the design considerations set forth in paragraph (b)(i) of this section, HAs must comply with accessibility requirements and are encouraged to provide units that are ''visitable'' by persons with mobility impairments. Visitability gets the person into the home, but does not require that all features be made accessible throughout the home.

(A) *Accessibility.* An accessible home means that the home is located on an accessible route (36″ clear passage) and, when designed, constructed, altered or adapted, can be approached, entered, and used by an individual with physical disabilities.

(B) *Visitability.* Visitability restricts itself to two areas of a home; i.e., at least one entrance is at grade (no-step); and all doors inside provide a 32″ clear passage. A visitable home serves not only persons with disabilities, but also persons without disabilities. (For example, a mother pushing a stroller; person delivering large appliances; person using a walker, etc.). One difference between ''visitability'' and ''accessibility'' is that accessibility requires that *all* features of a dwelling unit be made accessible for mobility impaired persons. A visitable home provides less accessibility than an accessible home. Examples of actions that HAs may take to support visitability include:

(1) When conducting a ''needs assessment,'' the HA may identify 25 single family scattered site homes and make those units visitable.

(2) When undertaking substantial alterations as defined in 24 CFR 8.23(a), the HA may identify 50 units in an elderly development not subject to the new construction requirements of 24 CFR 8.22 and make those units visitable.

(3) The HA may target the first floor of an existing 3-story family apartment complex and make those units visitable.

(C) *Requirements.* In carrying out modernization work, HAs are required to comply with the requirements of 24 CFR 8.23(a) regarding substantial alterations and 24 CFR 8.23(b) regarding other alterations, as well as with Title II of the Americans with Disabilities Act and 28 CFR part 35. Title II is applicable to HAs established under State law. Also, the HA shall comply with the requirements of 24 CFR 8.22 and 24 CFR 100.205 (the Fair Housing Act) regarding new construction.

(iii) *Provision of Community Space for Welfare-to-Work Initiatives.* HAs are encouraged to provide community space for Welfare-to-Work initiatives, which include, but are not limited to services coordination/case management, training, child care, health care, transportation, and economic development. Where community space is not otherwise available, CIAP funds may be used to convert existing dwelling space, renovate existing nondwelling space, or construct or acquire nondwelling space for this purpose. Where CIAP funds will be used to provide community space, HAs are required to submit written evidence from a qualified local agency or provider that the agency or provider agrees to furnish, equip, operate and maintain the community space, as well as provide insurance coverage. Where HAs themselves intend to operate the community space, they must submit written evidence of the continuing funding sources to furnish, equip, operate, maintain and insure the community space.

(iv) *Resident Involvement and Economic Uplift.* HAs are required to explore and implement through all feasible means the involvement of residents, including duly-elected resident councils, regardless of race, color, religion, sex, national origin, disability, and familial status, in every aspect of the CIAP, from planning through implementation. HAs shall use the provisions of Section 3 of the Housing and Urban Development Act of 1968 to the maximum feasible extent. HAs are encouraged to seek ways to employ Section 3 residents in all aspects of the CIAP's operation and to develop means to promote contracting opportunities for businesses in Section 3 areas. Refer to 24 CFR 85.36(e) regarding the provision of such opportunities.

(v) *Elimination of Vacant Units.* HAs are encouraged to apply for CIAP funds to address vacant units where the work does not involve routine maintenance, but will result in reoccupancy.

(vi) *Expediting the Program.* HAs are reminded that they are expected to obligate all funds within two years and to expend all funds within three years of program approval (Annual Contributions Contract (ACC) Amendment execution) unless a longer implementation schedule (Part III of the CIAP Budget) is approved by the Field Office due to the size or complexity of the program. Failure to obligate funds in a timely manner may result in the termination of the program and recapture of the funds.

(2) *Relationship to Technical Review Factors.* The Departmental goal of improving Public and Indian Housing is reflected in the technical review factors, set forth in section IV(c)(5) of this NOFA, on which the Field Office scores each HA's CIAP Application. Based on the HA's total score, the Field Office then ranks each HA to determine selection for Joint Review. The technical review factors emphasize the following Departmental initiatives to improve Public and Indian Housing:

(i) Restoration of vacant units to occupancy;

(ii) Resident capacity-building and resident involvement in HA operations, including opportunities for resident management and homeownership;

(iii) Job training and employment opportunities for residents, including Step-Up employment and training programs, and contracting opportunities for Section 3 businesses;

(iv) Drug elimination initiatives;

(v) Partnership with local government; and

(vi) Provision of appropriate replacement housing, as described in paragraph (c) below.

(c) *Expansion of Eligible Activities.* The FY 1997 Appropriations Act continued the expanded eligible activities that, with prior HUD approval, may be funded from FY 1997 and prior FY CIAP or CGP funds. These activities include: new construction or acquisition of additional public housing units, including replacement units (refer to Notice PIH 96–56 (HA), dated July 29, 1996); modernization activities related to the public housing portion of housing developments held in partnership or cooperation with non-public housing entities; other activities related to public housing, including activities eligible under the Urban Revitalization Demonstration (HOPE VI), such as community services; and operating subsidy purposes (not to exceed 10 percent of the grant amount).

III. Application Preparation and Submission by HA.

(a) *Planning.* In preparing its CIAP Application, the HA is encouraged to assess all its physical and management improvement needs. Physical improvement needs should be reviewed against the modernization standards as set forth in HUD Handbook 7485.2, as revised, physical accessibility requirements as set forth in 24 CFR part 8, and 28 CFR part 35, and any cost-effective energy conservation measures, identified in updated energy audits. The modernization standards include

development specific work to ensure the long-term viability of the developments, such as amenities and design changes to promote the integration of low-income housing into the broader community. See section II(b)(1)(i) of this NOFA. In addition, the HA is strongly encouraged to contact the Field Office to discuss its modernization needs and obtain information.

(b) *Resident Involvement and Local/Tribal Official Consultation Requirements.*

(1) *Residents/Homebuyers.* The CIAP regulations at §§ 968.215 or 950.632 require the HA to establish a Partnership Process to ensure full resident participation in the planning, implementation and monitoring of the modernization program, as follows:

(i) Before submission of the CIAP Application, consultation with the residents, resident organization, and resident management corporation (herein referred to as residents) of the development(s) being proposed for modernization regarding its intent to submit an application and to solicit resident comments;

(ii) Reasonable opportunity for residents to present their views on the proposed modernization and alternatives to it, and full and serious consideration of resident recommendations;

(iii) Written response to residents indicating acceptance or rejection of resident recommendations, consistent with HUD requirements and the HA's own determination of efficiency, economy and need, with a copy to the Field Office at Joint Review. If the Joint Review is conducted off-site, a copy is mailed to the Field Office;

(iv) After HUD funding decisions, notification to residents of the approval or disapproval and, where requested, provision to residents of a copy of the HUD-approved CIAP Budget; and

(v) During implementation, periodic notification to residents of work status and progress and maximum feasible employment of residents in the modernization effort.

(2) *Local/Tribal Officials.* Before submission of the CIAP Application, consultation with appropriate local/tribal officials regarding how the proposed modernization may be coordinated with any local plans for neighborhood revitalization, economic development, drug elimination and expenditure of local funds, such as Community Development Block Grant funds.

(c) *Contents of CIAP Application.* Within the established deadline date, the HA shall submit the CIAP Application to the Field Office, with a copy to appropriate local/tribal officials. The HA may obtain the necessary forms from the Field Office. The CIAP Application is comprised of the following documents:

(1) *Form HUD–52822, CIAP Application,* in an original and two copies, which includes:

(i) A general description of HA development(s), in priority order, (including the current physical condition, for each development for which the HA is requesting funds, or for all developments in the HA's inventory) and physical and management improvement needs to meet the Secretary's standards in § 968.115 or § 950.610; description of work items required to correct identified deficiencies, including accessibility work; and the estimated cost. Where the HA has not included some of its developments in the CIAP Application, the Field Office may not consider funding any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. Therefore, to provide maximum flexibility, the HA may wish to include all of its developments in the CIAP Application, even though there are no known current needs. Following is an example of the general description:

Development 1–1: 50 units of low-rent; 25 years old; physical needs are: new roofs; storm windows and doors; and electrical upgrading at estimated cost of $150,000.

Development 1–2: 40 units of low-rent; 20 years old; physical needs are: physical accessibility for kitchens, bathrooms and doors in 2 units and common laundry room; visitability in 4 ground floor units; kitchen floors; shower/bathtub surrounds; fencing; and exterior lighting at estimated cost of $130,000.

Development 1–3: 35 units of Turnkey III; 15 years old; physical needs are: physical accessibility in 3 units; and roof insulation at estimated cost of $50,000.

Development 1–4: 20 units of low-rent; 5 years old; no physical needs; no funding requested.

(ii) Where funding is being requested for management improvements, an identification of the deficiency, a description of the work required for correction, and estimated cost. Examples of management improvements include, but are not limited to the following areas:

(A) The management, financial, and accounting control systems of the HA;

(B) The adequacy and qualifications of personnel employed by the HA in the management and operation of its developments by category of employment; and

(C) The adequacy and efficacy of resident programs and services, resident and development security, resident selection and eviction, occupancy and vacant unit turnaround, rent collection, routine and preventive maintenance, equal opportunity, and other HA policies and procedures.

(iii) A certification that the HA has met the requirements for consultation with local/tribal officials and residents/homebuyers and that all developments included in the application have long-term physical and social viability, including prospects for full occupancy. If the HA cannot make this certification with respect to long-term viability, the HA shall attach a narrative, explaining its viability concerns.

(2) *A narrative statement,* in an original and two copies, addressing each of the technical review factors in section IV(c)(5) of this NOFA and, where applicable, the bonus points in section IV(c)(6) of this NOFA. The affirmatively furthering fair housing technical review factor in section IV(c)(5) of this NOFA applies only to Public Housing; therefore, IHAs are not required to address this factor. In addressing the affirmatively furthering fair housing technical review factor, actions that the PHA has taken, or plans to take, to accomplish this objective may include, but are not limited to the following:

(i) Actions that contribute toward the reduction of concentration of low-income-persons who are protected under the Fair Housing Act. Such actions may include housing programs/activities that provide information regarding housing opportunities outside of minority concentrated areas within the PHA's jurisdictional boundaries, or efforts that encourage landlords/owners to make available housing opportunities outside of minority concentrated areas. For example, the PHA may refer applicants to other available housing as part of an established housing counseling service or assist applicants in getting on other waiting lists.

(ii) Actions that overcome the consequences of prior discriminatory practices or usage which may have tended to exclude persons of a particular race, color or national origin; or that overcome the effects of past discrimination against persons with disabilities. Such actions may include those actions taken without any kind of legally binding order, but which have changed previous discriminatory management, tenant selection and assignment or maintenance practices.

(3) *Form HUD–50071, Certification for Contracts, Grants, Loans and*

Cooperative Agreements, in an original only, required of HAs established under State law, applying for grants exceeding $100,000.

(4) *SF–LLL, Disclosure of Lobbying Activities,* in an original only, required of HAs established under State law, only where any funds, other than federally appropriated funds, will be or have been used to influence Federal workers, Members of Congress and their staff regarding specific grants or contracts. The HA determines if the submission of the SF–LLL form is applicable.

(5) *Form HUD–2880, Applicant/Recipient Update/Disclosure Report,* in an original only, required of HAs established under State law.

(6) *At the option of the HA,* photographs or video cassettes showing the physical condition of the developments.

IV. Application Processing by Field Office

(a) *Completeness Review (Corrections to Deficient Applications).* To be eligible for processing, the CIAP Application must be physically received by the Field Office by the time and date specified in this NOFA. A facsimile application will not be accepted. The Field Office shall immediately perform a completeness review to determine whether an application is complete, responsive to the NOFA, and acceptable for technical processing.

(1) If either Form HUD–52822, CIAP Application, *or* the narrative statement on the technical review factors ismissing, the HA's application will be considered substantially incomplete and, therefore, ineligible for further processing. The Field Office shall immediately notify the HA in writing.

(2) If Form HUD–50071, Certification for Contracts, Grants, Loans, and Cooperative Agreements, or SF–LLL, Disclosure of Lobbying Activities, are required, but missing, *or* Form HUD–2880, Applicant/Recipient Update/ Disclosure Form, is missing, *or* there is a technical mistake, such as no signature or no original signature on a submitted form or the HA failed to address all of the technical review factors, the Field Office shall immediately notify the HA in writing to submit or correct the deficiency within 14 calendar days from the date of HUD's written notification. This is not additional time to substantially revise the application. Deficiencies which may be corrected at this time are inadvertently omitted documents, as specified in this subparagraph, or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application.

(3) If the HA fails to submit or correct the items within the required time period, the HA's application will be ineligible for further processing. The Field Office shall immediately notify the HA in writing after this occurs.

(4) The HA may submit a CIAP Application for Emergency Modernization whenever needed. See section IV(j) of this NOFA.

(b) *Eligibility Review.* After the HA's CIAP Application is determined to be complete and accepted for review, the Field Office eligibility review shall determine if the application is eligible for full processing or processing on a reduced scope.

(1) *Eligibility for Full Processing.* To be eligible for full processing:

(i) Each eligible development for which work is proposed has reached the Date of Full Availability (DOFA) and is under ACC at the time of CIAP Application submission; and

(ii) Where funded under Major Reconstruction of Obsolete Projects (MROP) after FY 1988, the development/building has reached DOFA or, where funded during FYs 1986–1988, all MROP funds for the development/building have been expended.

(2) *Eligibility for Processing on Reduced Scope.* When the following conditions exist, the HA's application will be reviewed on a reduced scope:

(i) *Section 504 Compliance.* Where the HA has not completed all required structural changes to meet the need for accessible units and nondwelling facilities, as identified in the HA's Section 504 needs assessment, the HA is eligible for processing only for Emergency Modernization or physical work needed to meet the requirements of section 504 of the Rehabilitation Act of 1973.

(ii) *Lead-Based Paint (LBP) Testing Compliance.* Where the HA has not complied with the statutory requirement to complete LBP testing on all pre-1978 family units, the HA is eligible for processing only for Emergency Modernization or work needed to complete the testing.

(iii) *Fair Housing and Equal Opportunity (FHEO) Compliance.* Where the HA has not complied with FHEO requirements as evidenced by an enforcement action, finding or determination, the HA is eligible for processing only for Emergency Modernization or work needed to remedy civil rights deficiencies—unless the HA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance. The enforcement actions, findings or determinations that trigger limited eligibility are described in paragraphs (A) through (E) below:

(A) A pending proceeding against the HA based upon a Charge of Discrimination issued under the Fair Housing Act. A Charge of Discrimination is a charge under section 810(g)(2) of the Fair Housing Act, issued by the Department's Assistant Secretary for FHEO or legally authorized designee;

(B) A pending civil rights suit against the HA, referred by the Department's Assistant Secretary for FHEO and instituted by the Department of Justice;

(C) Outstanding HUD findings of HA noncompliance with civil rights statutes and executive orders under 24 CFR part 5 and 24 CFR 968.110 or 24 CFR 950.115, or implementing regulations, as a result of formal administrative proceedings;

(D) A deferral of the processing of applications from the HA imposed by HUD under Title VI of the Civil Rights Act of 1964 and HUD implementing regulations (24 CFR 1.8), the Attorney General's Guidelines (28 CFR 50.3), and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the authorities specified in 24 CFR part 5 and 24 CFR 968.110 or 24 CFR 950.115 in a civil action filed against the HA by a private individual.

(c) *Selection Criteria and Ranking Factors.* After all CIAP Applications are reviewed for eligibility, the Field Office shall categorize the eligible HAs and their developments into two processing groups, as defined in subparagraph (1) of this paragraph: Group 1 for Emergency Modernization; and Group 2 for Other Modernization. HA developments may be included in both groups and the same development may be in each group. However, the HA is only required to submit one CIAP Application.

(1) *Grouping Modernization Types.*

(i) *Group 1, Emergency Modernization.* This is a type of modernization program for a development that is limited to physical work items of an emergency nature to correct conditions that pose an immediate threat to the health or safety of residents or are related to fire safety, and that must be corrected within one year of CIAP funding approval. Funding may not be used for management improvements. Emergency Modernization includes all LBP testing and abatement of units housing children under six years old with elevated blood

lead levels (EBLs) and all LBP testing and abatement of HA-owned day care facilities used by children under six years old with EBLs. Group 1 developments are not subject to the technical review rating and ranking in subparagraphs (5), (6) and (7) of this paragraph and the long-term viability and reasonable cost determinations in section V(a) of this NOFA.

(ii) *Group 2, Other Modernization.* This is a type of modernization program for a development that includes one or more physical work items, where the Field Office determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or HA-wide management work items (including planning costs), and/or LBP testing, professional risk assessment, interim containment, and abatement. Therefore, eligibility of work under Other Modernization ranges from a single work item to the complete rehabilitation of a development. Refer to section II(b)(1)(i) of this NOFA regarding modest amenities and improved design. Group 2 developments are subject to the technical review rating and ranking in subparagraphs (5), (6) and (7) of this paragraph and the long-term viability and reasonable cost determinations in section V(a) of this NOFA.

(2) *Assessment of HA's Management Capability.* As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's management capability. Particular attention shall be given to the adequacy of the HA's maintenance in determining the HA's management capability. This assessment shall be based on the compliance aspects of on-site monitoring, such as audits, reviews or surveys which are currently available within the Field Office, and on performance reviews, as follows:

(i) *Public Housing.* A PHA has management capability if it is (A) not designated as Troubled under 24 CFR part 901, Public Housing Management Assessment Program (PHMAP), or (B) designated as Troubled, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under 24 CFR 901.140 or has obtained alternative oversight of its management functions.

(ii) *Indian Housing.* An IHA has management capability if it is (A) not designated as High Risk under 24 CFR 950.135 or (B) designated as High Risk, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support. A High Risk IHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its management improvement plan under 24 CFR 950.135 or has obtained alternative oversight of its management functions.

(3) *Assessment of HA's Modernization Capability.* As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's modernization capability, including the progress of previously approved modernization and the status of any outstanding findings from CIAP monitoring visits, as follows:

(i) *Public Housing.* A PHA has modernization capability if it is (A) not designated as Modernization Troubled under 24 CFR part 901, PHMAP, or (B) designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. A Modernization Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under 24 CFR 901.140 or has obtained alternative oversight of its modernization functions. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(ii) *Indian Housing.* An IHA has modernization capability if it is (A) not designated as High Risk under 24 CFR 950.135, or (B) designated as High Risk, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. An IHA that has been classified High Risk with regard to modernization is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its management improvement plan under 24 CFR 950.135(f)(2) or has obtained alternative oversight of its modernization functions. Where an IHA does not have a funded modernization program in progress, the ONAP shall determine whether the IHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(4) *Technical Processing.* After categorizing the eligible HAs and their developments into Group 1 and Group 2, the Field Office shall forward a list of all HAs in Group 2 to the Secretary's Representative for scoring the technical review factor related to local/tribal government support of the proposed modernization, within an established time frame; the Field Office shall provide the Secretary's Representative with the portion of each HA's narrative statement, included in the CIAP Application, related to the technical review factor on local/tribal government support. In addition, the Field OPH shall forward a list of all PHAs in Group 2 to the Field Office of FHEO for scoring the technical review factor related to affirmatively furthering fair housing, within an established time frame; the Field OPH shall provide the Office of FHEO with the portion of each PHA's narrative statement, included in the CIAP Application, related to the technical review factor on affirmatively furthering fair housing. The Field OPH shall review and rate each Group 2 HA on each of the remaining technical review factors in subparagraph (5) of this paragraph. With the exception of the technical review factor of ''extent and urgency of need,'' a Group 2 HA is rated on its overall HA application and not on each development. For the technical review factor of ''extent and urgency of need,'' each development for which funding is requested in the CIAP Application by a Group 2 HA is scored; the development with the highest priority needs is scored the highest number of points, which are then used for the overall HA score on that factor.

(5) *Technical Review Factors.* The technical review factors for assistance are:

Technical review factors	Maximum points
Extent and urgency of need, based on high priority needs (non-emergency health and safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines), need to complete previously funded modernization work, or need to provide appropriate replacement housing for HUD-approved demolition/disposition	40
HA's modernization capability based on, for Public Housing, its PHMAP score on the Modernization Indicator, and for Indian Housing, its assessment under 24 CFR 950.135	15
HA's management capability based on, for Public Housing, its overall PHMAP score, and for Indian Housing, its assessment under 24 CFR 950.135	15
Extent of vacancies based on the HA-wide vacancy rate, where the vacancies are not due to insufficient demand	5
Degree of resident involvement in HA operations based on FO file evidence	2
Degree of HA activity in coordinating/providing resident services related to Welfare-to-Work initiatives in community facilities at or near HA developments based on FO file evidence. Such services include, but are not limited to services coordination/case management, training, child care, health care, transportation, and economic development	4
Degree of HA activity in resident initiatives, including resident management, economic development, homeownership, and drug elimination efforts or other resident initiatives for non-elderly based on FO file evidence, including, for Public Housing, its PHMAP score on the Resident Initiatives Indicator	2
Degree of non-elderly resident employment through direct hiring or contracting/subcontracting or job training initiatives based on FO file evidence	2
Local/tribal government support for proposed modernization, through either funding or in-kind contributions, over and above what is required under the Cooperation Agreement for municipal services, such as police and fire protection and refuse collection, within the last 12 months, that will directly benefit the Public/Indian housing or the neighborhood surrounding the Public/Indian housing	5
Extent of actions that HA has taken, or plans to take to Affirmatively Further Fair Housing (only applicable to Public Housing)	10
Total Maximum Score for Public Housing	100
Total Maximum Score for Indian Housing	90

(6) *Bonus points.* The Field Office shall provide up to 5 bonus points for any HA that can demonstrate that it has, over the past 12 months, displayed creative approaches for providing ''visitability'' throughout its housing inventory.

(7) *Rating and Ranking.* After rating all Group 2 HAs/developments on each of the technical review factors and providing any bonus points as set forth in subparagraph (6) of this paragraph, the Field Office shall then rank each Group 2 HA based on its total score, list Group 2 HAs in descending order, subject to confirmation of need and cost at Joint Review, and identify for Joint Review selection the highest ranking applications in Group 2 and other Group 2 HAs with lower ranking applications, but with high priority needs. *High priority needs* are non-emergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines. All Group 1 applications are automatically selected for Joint Review. The Field Office shall consult with Headquarters regarding any identified FHEO noncompliance.

(d) *Joint Review.* The purpose of the Joint Review is for the Field Office to discuss with the HA the proposed modernization program, as set forth in the CIAP Application, review long-term viability and cost reasonableness determinations, and determine the size of the grant, if any, to be awarded.

(1) The Field Office shall select HAs, including all Group 1 HAs, for Joint Review so that the total dollar value of all proposed modernization recommended for funding exceeds the Field Office's estimated funding amount by at least 15 percent. This preserves the Field Office's ability to adjust cost estimates and work items as a result of Joint Review.

(2) The Field Office shall notify each HA whose application has been selected for further processing as to whether Joint Review will be conducted on-site or off-site (*e.g.*, by telephone or in-office meeting).

(3) The HA shall prepare for Joint Review by preparing a draft CIAP Budget and reviewing the other items to be covered during Joint Review, as prescribed by HUD, such as the need for professional services, method of accomplishment of physical work (contract or force account labor), HA compliance with various Federal statutes and regulations, etc. If conducted on-site, Joint Review will include an inspection of the proposed physical work.

(4) The Field Office shall advise in writing each HA not selected for Joint Review of the reasons for non-selection.

(e) *Funding Decisions.* After all Joint Reviews are completed, the Field Office shall adjust the HAs, developments, and work items to be funded and the amounts to be awarded, on the basis of information obtained from Joint Reviews, FHEO review, and environmental reviews (refer to paragraph (h) of this section) and make the funding decisions. Such adjustments are necessary where the Field Office determines that actual Group 1 emergencies and Group 2 high priority needs, HA priorities, or cost estimates vary from the HA's application. Such adjustments may preclude the Field Office from funding all of the applications selected for Joint Review in order to accommodate the funding of high priority needs. However, where the information obtained from Joint Reviews, FHEO review, and environmental reviews confirms the information used to establish the rankings before Joint Review, the Field Office shall make funding decisions in accordance with its rankings. Even if the information obtained from Joint Reviews, FHEO review, and environmental reviews does not confirm the information used to establish the rankings before Joint Review, only the funding awarded will be adjusted accordingly; the scores will not be affected. An HA will not be selected for Joint Review if there is a duplication of funding (refer to section V(c) of this NOFA). After Congressional notifications, the Field Office shall notify the HAs of their funding approval, subject to submission of the CIAP Budget, including an implementation schedule, and other required documents.

(f) *HA Submission of Additional Documents*

After Field Office funding decisions, the HA shall submit the following documents within the time frame prescribed by the Field Office:

(1) *Form HUD–52825, CIAP Budget/Progress Report,* which includes the

implementation schedule(s), in an original and two copies.

(2) *Form HUD–50070, Certification for a Drug-Free Workplace,* in an original only.

(3) *Form HUD–52820, HA Board Resolution Approving CIAP Budget,* in an original only.

(g) *ACC Amendment*

After HUD approval of the CIAP Budget, the Field Office and the HA shall enter into an ACC amendment in order for the HA to draw down modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The HA Executive Director, where authorized by the Board of Commissioners and permitted by State/tribal law, may sign the ACC amendment on behalf of the HA. HUD has the authority to condition an ACC amendment (e.g., to require an HA to hire a modernization coordinator or contract administrator to administer its modernization program).

(h) *Environmental review*

Under 24 CFR part 58, the responsible entity, as defined in § 58.2(a)(7), must assume the environmental responsibilities for projects being funded under the CIAP. If the HA objects to the responsible entity conducting the environmental review, on the basis of performance, timing or compatibility of objectives, the Field OPH Director/ONAP Administrator will review the facts to determine who will perform the environmental review. At any time, the Field OPH Director/ONAP Administrator may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with § 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if the Field OPH Director/ONAP Administrator determines that the responsible entity should not perform the environmental review, the Field OPH Director/ONAP Administrator may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. After selection by the Field Office for Joint Review, the HA shall provide any documentation to the responsible entity (or Field Office, where applicable) that is needed to perform the environmental review.

(1) Where the environmental review is completed before Field Office approval of the CIAP budget and the HA has submitted its request for release of funds (RROF), the budget approval letter shall state any conditions, modifications, prohibitions, etc. as a result of the environmental review.

(2) Where the environmental review is not completed and/or the HA has not submitted the RROF before Field Office approval of the CIAP budget, the budget approval letter shall instruct the HA to refrain from undertaking, or obligating or expending funds on, physical activities or other choice-limiting actions, until the Field PH Director/ ONAP Administrator approves the HA's RROF and the related certification of the responsible entity (or the Field Office has completed the environmental review). The budget approval letter also shall advise the HA that the approved budget may be modified on the basis of the results of the environmental review.

(i) *Declaration of Trust*

Where the Field Office determines that a Declaration of Trust is not in place or is not current, the HA shall execute and file for record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the HA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. HUD has determined that its interest in Mutual Help units is sufficiently protected without the further requirement of a Declaration of Trust; therefore, a Declaration of Trust is not required for Mutual Help units.

(j) *''Fast Tracking'' Emergency Applications.* Emergency applications do not have to be processed within the normal processing time allowed for other applications. Where an immediate hazard must be addressed, HA emergency applications may be submitted and processed at any time during the year when funds are available. The Field Office shall ''fast track'' the processing of these emergency applications so that fund reservation may occur as soon as possible. An emergency application is comprised of the following documents:

(1) *Form HUD–52825, CIAP Budget/ Progress Report,* which includes the implementation schedule(s), in an original and two copies.

(2) *Form HUD–52820, HA Board Resolution Approving CIAP Budget,* in an original only.

(3) *Form HUD–50070, Certification for a Drug-Free Workplace,* in an original only.

(4) *Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements,* in an original only.

(5) *SF–LLL, Disclosure of Lobbying Activities,* in an original only, where determined by the HA to be applicable.

(6) *Form HUD–2880, Applicant/ Recipient Update/Disclosure Report,* in an original only.

(7) *At the option of the HA,* photographs or video cassettes showing the physical condition of the developments.

V. Other Program Items

(a) *Long-Term Viability and Reasonable Cost.* On Form HUD–52822, CIAP Application, the HA certifies whether the developments proposed for modernization have long-term physical and social viability, including prospects for full occupancy. During Joint Review, the Field Office will review with the HA the determination of reasonable cost for the proposed modernization to ensure that unfunded hard costs do not exceed 90 percent of the computed total development cost (TDC) for a new development with the same structure type and number and size of units in the market area. The Field Office shall make a final viability determination. Where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development, no further computation of the TDC limit is required.

(1) If the Field Office determines that completion of the improvements and replacements will not reasonably ensure the long-term physical and social viability of the development at a reasonable cost, the Field Office shall only approve Emergency Modernization or non-emergency funding for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

(2) Where the Field Office wishes to fund a development with hard costs exceeding 90 percent of computed TDC, the Field Office shall submit written justification to Headquarters for final decision. Such justification shall include:

(i) Any special or unusual conditions have been adequately explained, all work has been justified as necessary to meet the modernization and energy conservation standards, including development specific work necessary to provide a modest, non-luxury development; and

(ii) Reasonable cost estimates have been provided, and every effort has been made to reduce costs; and

(iii) Rehabilitation of the existing development is more cost-effective in the long-term than construction or acquisition of replacement housing; or

(iv) There are no practical alternatives for replacement housing.

(b) *Use of Dwelling Units for Economic Self-Sufficiency Services and/or Drug Elimination Activities.* CIAP funds may be used to convert dwelling units for purposes related to economic self-sufficiency services and/or drug elimination activities. Regarding the eligibility for funding under the Performance Funding System of dwelling units used for these purposes, refer to § 990.108(b)(2) or § 950.720(b)(2).

(c) *Duplication of Funding.* The HA shall not receive duplicate funding for the same work item or activity under any circumstance and shall establish controls to assure that an activity, program, or project that is funded under any other HUD program shall not be funded by CIAP.

VI. Application Deadline Date and Summary of FY 1997 CIAP Processing Steps

The deadline date for submission of the FY 1997 CIAP Application is [insert 60 calendar days after date of publication]. Dates for other processing steps will be established by each Field Office to reflect local workload issues.

Summary of Processing Steps

1. HA submits CIAP Application.
2. Field Office conducts completeness review and requests corrections to deficient applications or notifies HAs of ineligible applications.
3. HA submits corrections to deficient applications within 14 calendar days of notification from Field Office.
4. Field Office conducts eligibility review and technical review (rating and ranking) and makes Joint Review selections.
5. Field Office completes Joint Reviews and FHEO review; Field Office or responsible entity completes environmental reviews.
6. Field Office makes funding decisions and forwards Congressional notifications to Headquarters.
7. Congressional notification is completed and Field Office notifies HA of funding decisions.
8. HA submits additional documents as required in section IV(f) of this NOFA.
9. Field Office completes fund reservations and forwards ACC amendment to HA for signature and return.
10. Field Office executes ACC amendment and HA begins implementation.

VII. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 USC 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 pm weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410.

(b) *Federalism Impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the NOFA is not subject to review under the Order.

(c) *Impact on the Family.* The General Counsel, as the Designated Official for Executive Order 12606, *The Family,* has determined that this NOFA does not have the potential for significant impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the order. No significant change in existing HUD policies or programs would result from promulgation of this rule, as those policies and programs relate to family concerns.

Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 USC 3545) (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 USC 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 USC 552) and HUD's implementing regulations at 24 CFR part 15.

(e) *Prohibition Against Advance Information on Funding Decisions.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) *Prohibition Against Lobbying Activities.* The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 USC 1352) and the HUD implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying

the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

If the amount applied for is greater than $100,000, the certification is required at the time application for funds is made that federally appropriated funds are not being or have not been used in violation of the Byrd Amendment. If the amount applied for is greater than $100,000 and the HA has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87 (Byrd Amendment), the submission also must include the SF–LLL, Disclosure of Lobbying Activities. The HA determines if the submission of the SF–LLL is applicable.

VIII. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program Number is 14.852.

Dated: April 23, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–11272 Filed 4–30–97; 8:45 am]

BILLING CODE 4210–33–P

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Thursday, May 1, 1997

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REMINDERS

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/nara/fedreg/fedreg.html.

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, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 785/P.L. 105–10
To designate the J. Phil Campbell, Senior, Natural Resource Conservation Center. (Apr. 24, 1997; 111 Stat. 21)

H.R. 1225/P.L. 105–11
To make a technical correction to title 28, United States Code, relating to jurisdiction for lawsuits against terrorist states. (Apr. 25, 1997; 111 Stat. 22)

Last List April 16, 1997

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1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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4. An introduction to the finding aids of the FR/CFR system.

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WASHINGTON, DC

WHEN: May 13, 1997 at 9:00 am

WHERE: Office of the Federal Register
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RESERVATIONS: 202–523–4538

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WHEN: May 20, 1997 at 9:00 am to 12:00 noon

WHERE: Glenn M. Anderson Federal Building
501 W. Ocean Blvd.
Conference Room 3470
Long Beach, CA 90802

San Francisco, CA

WHEN: May 21, 1997 at 9:00 am to 12:00 noon

WHERE: Phillip Burton Federal Building and Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Anchorage, AK

WHEN: May 23, 1997 at 9:00 am to 12:00 noon

WHERE: Federal Building and U.S. Courthouse
222 West 7th Avenue
Executive Dining Room (Inside Cafeteria)
Anchorage, AK 99513

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 1997

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
May 1	May 16	June 2	June 16	June 30	July 30
May 2	May 19	June 2	June 16	July 1	July 31
May 5	May 20	June 4	June 19	July 7	August 4
May 6	May 21	June 5	June 20	July 7	August 4
May 7	May 22	June 6	June 23	July 7	August 5
May 8	May 23	June 9	June 23	July 7	August 6
May 9	May 27	June 9	June 23	July 8	August 7
May 12	May 27	June 11	June 26	July 11	August 11
May 13	May 28	June 12	June 27	July 14	August 11
May 14	May 29	June 13	June 30	July 14	August 12
May 15	May 30	June 16	June 30	July 14	August 13
May 16	June 2	June 16	June 30	July 15	August 14
May 19	June 3	June 18	July 3	July 18	August 18
May 20	June 4	June 19	July 7	July 21	August 18
May 21	June 5	June 20	July 7	July 21	August 19
May 22	June 6	June 23	July 7	July 21	August 20
May 23	June 9	June 23	July 7	July 22	August 21
May 27	June 11	June 26	July 11	July 28	August 25
May 28	June 12	June 27	July 14	July 28	August 26
May 29	June 13	June 30	July 14	July 28	August 27
May 30	June 16	June 30	July 14	July 29	August 28