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Federal Register

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Monday, December 22, 1997

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule; request for comments.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to implement provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The purpose of these amendments is to provide guidance to the parties to MSPB cases, and their representatives, on how to proceed in cases raising claims that an agency employer or the Office of Personnel Management (OPM) has not complied with a USERRA provision governing the employment and reemployment rights to which a person is entitled after service in the uniformed services.

DATES: Effective date December 22, 1997. Submit written comments on or before February 20, 1998.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Comments may be sent via e-mail to mspb@mspb.gov.

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

SUPPLEMENTARY INFORMATION: The Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 (108 Stat. 3149), consists principally of a revision of chapter 43 of title 38 of the United States Code, "Employment and Reemployment Rights of Members of the Uniformed Services."

Under USERRA, Federal employees have expanded employment and reemployment rights and benefits after service in the uniformed services, including a new statutory right to appeal USERRA violations to MSPB. Previously, a Federal employee had the right to appeal only an alleged failure to restore to duty, or improper restoration to duty, after military service, a right provided under OPM regulations (5 CFR part 353).

USERRA provides new mechanisms for Federal employees to enforce their employment or reemployment rights. In addition to the right to appeal to MSPB, a Federal employee has the right to seek assistance from the Secretary of Labor, to file a complaint with the Secretary of Labor, and to request representation before MSPB by the Special Counsel if the Secretary of Labor is unable to resolve the complaint. 38 U.S.C. 4321, 4322, and 4324.

USERRA authorizes OPM and the agencies involved in enforcement of USERRA rights for Federal employees—the Department of Labor (DOL), Office of Special Counsel (OSC), and the Board—to promulgate regulations to carry out their functions under the Act. 38 U.S.C. 4331(b)(2)(A).

OPM has issued interim regulations, in the form of amendments to 5 CFR parts 353, 870, and 890, to implement USERRA (60 FR 45650, September 1, 1995). As amended, part 353 includes separate MSPB appeal right provisions for USERRA appeals at 5 CFR 353.211 and for appeals involving restoration to duty after recovery from a compensable injury at 5 CFR 353.304.

The Board is amending its regulation at 5 CFR 1201.3(a), describing appealable actions, to conform to this change by OPM. Section 1201.3(a)(12) is amended to describe only restoration after recovery from a compensable injury and to conform the language to that in OPM's regulation at 5 CFR 353.304. USERRA actions are described in a new section 1201.3(a)(22), which includes citations to both the applicable enforcement provision of USERRA (38 U.S.C. 4324) and the OPM regulation at 5 CFR 353.211.

In describing appealable USERRA actions in new section 1201.3(a)(22), the Board has relied on the following provisions of the Act. The enforcement mechanisms for Federal employees under 38 U.S.C. 4324 apply to an agency

employer's or OPM's failure or refusal to comply with the provisions of chapter 43 of title 38. 38 U.S.C. 4322(a)(2)(B). The Act prohibits discrimination against an employee on the basis of service in the uniformed services and prohibits acts of reprisal for exercising a right or seeking to enforce a protection under chapter 43 of title 38. 38 U.S.C. 4311. One kind of action related to the rights and benefits afforded by USERRA is specifically excluded from the enforcement mechanism—an "action relating to benefits to be provided under the Thrift Savings Plan under title 5." 38 U.S.C. 4322(f).

USERRA does not prescribe specific procedures that the Board must apply to appeals brought under chapter 43 of title 38. The Board has determined that all USERRA cases should be processed under its appellate jurisdiction procedures and that its original jurisdiction procedures, contained in subpart D of part 1201, should not be applied to those USERRA appeals filed by the Special Counsel. Appeals involving restoration after military service that were authorized by OPM regulation have traditionally fallen under the Board's appellate jurisdiction. Congress was presumably aware of that practice, and nothing in USERRA or its legislative history suggests an intent that this practice be changed.

Subpart B of part 1201 is amended at section 1201.2(a) to exclude USERRA appeals from the Special Counsel actions included under the Board's "original jurisdiction," at section 1201.3(a) to add USERRA actions to the list of appealable actions as new paragraph (a)(22), and at section 1201.31 to add a specific provision in new paragraph (e) for representation of a person in a USERRA appeal by the Special Counsel. Subpart D of part 1201 is amended at sections 1201.121 and 1201.131 to exclude USERRA appeals specifically from the original jurisdiction procedures applying to corrective actions brought by the Special Counsel.

USERRA does not establish a time limit for appealing to the Board, nor does it specifically prohibit the establishment of a time limit. *Petersen v. Department of the Interior*, 71 M.S.P.R. 227 (1996); *Duncan v. U.S. Postal Service*, 73 M.S.P.R. 86 (1997); *Jasper v. U.S. Postal Service*, 73 M.S.P.R. 367 (1997); *Wright v.*

Department of Veterans Affairs, 73 M.S.P.R. 453 (1997). The Board is authorized by 5 U.S.C. 1204(h) to promulgate regulations to carry out its functions and has used this authority since its inception to prescribe time limits for filing appeals with the Board. The Board is also authorized by 38 U.S.C. 4331(b)(2)(A) to promulgate regulations to carry out its functions under USERRA.

The Act provides a person three opportunities to file an appeal with MSPB: (1) after the alleged violation, if the person does not file a complaint with DOL; (2) after DOL notifies the person that it cannot resolve the matter with the agency, if the person chooses not to have the matter referred to the Special Counsel; and (3) after being advised that the Special Counsel chooses not to represent the person in an appeal to MSPB. 38 U.S.C. 4324(b). If a matter is referred to the Special Counsel, the Special Counsel may file an appeal with MSPB. 38 U.S.C. 4324(a)(2).

Any filing time limit established by the Board by regulation must allow sufficient time for a person to explore his or her options, including possibly pursuing the matter with DOL and OSC, while not allowing the matter to become stale. The Board has ruled that if a person files a formal complaint with DOL, the DOL procedure must be exhausted before an appeal may be filed with MSPB. *Petersen*, 71 M.S.P.R. at 233; *Jasper*, 73 M.S.P.R. at 370.

The Board is amending its regulation at 5 CFR 1201.22(b), prescribing time limits for filing, to provide that a USERRA appeal may be filed directly with MSPB within 180 days of the alleged violation. If a person seeks assistance from DOL under 38 U.S.C. 4321 but does not file a formal complaint under 38 U.S.C. 4322(a), he or she may subsequently file an appeal with MSPB at any time during the 180-day period. If a person files a formal complaint with DOL under 38 U.S.C. 4322(a) and receives notification from DOL that it has been unable to resolve the matter, he or she may subsequently file an appeal with MSPB within 30 days after receipt of the notification from DOL or within 180 days of the alleged violation, whichever is later. If DOL refers a person's complaint to OSC under 38 U.S.C. 4322(a) and the person receives notification from the Special Counsel that OSC will not represent the person before MSPB, he or she may subsequently file an appeal with MSPB within 30 days after receipt of the notification from the Special Counsel or within 180 days of the alleged violation, whichever is later.

This guarantees that a person will have at least six months from the time of an alleged violation of USERRA to file an appeal with MSPB. If a person files a formal complaint with DOL or seeks OSC representation, the time limit for filing with MSPB may be greater than six months.

Where the Special Counsel chooses to represent a person in a USERRA appeal before MSPB, the Board has not set a time limit for filing. The intent is to allow the Special Counsel time to secure voluntary compliance before filing an appeal with MSPB. Because DOL will have already tried, and failed, to secure compliance by the agency, the Board expects that the Special Counsel will file an appeal with MSPB expeditiously where a matter cannot be resolved with the agency.

In addition to the amendments with respect to USERRA discussed above, the Board is making several technical amendments to its regulation at 5 CFR 1201.3(a).

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h) and 38 U.S.C. 4331.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Section 1201.2 is amended by revising paragraph (a) to read as follows:

§ 1201.2 Original jurisdiction.

(a) Actions brought by the Special Counsel under 5 U.S.C. 1214, 1215, and 1216;

3. Section 1201.3 is amended by revising paragraph (a)(12), by removing "and" at the end of paragraph (a)(19), by removing the period at the end of paragraph (a)(20) and adding a semi-colon in its place, by revising the citation in the parenthetical at the end of paragraph (a)(21) to read "(22 U.S.C. 4011)", by deleting the period at the end of paragraph (a)(21) and substituting "; and", and by adding a new paragraph (a)(22) to read as follows:

§ 1201.3 Appellate jurisdiction

(a) * * * (12) Failure to restore, improper restoration of, or failure to return

following a leave of absence an employee or former employee of an agency in the executive branch (including the U.S. Postal Service and the Postal Rate Commission) following partial or full recovery from a compensable injury (5 CFR 353.304);

(22) Non-compliance by a Federal executive agency employer or the Office of Personnel Management with the provisions of chapter 43 of title 38 of the United States Code relating to the employment or reemployment rights or benefits to which a person is entitled after service in the uniformed services (38 U.S.C. 4324, 5 CFR 353.211), excluding any action related to benefits to be provided under the Thrift Savings Plan under title 5 of the United States Code (38 U.S.C. 4322(f)).

4. Section 1201.22 is amended by redesignating the text of paragraph (b) as paragraph (b)(1), by revising the first sentence of paragraph (b)(1) and by adding a new paragraph (b)(2) to read as follows:

§ 1201.22 Filing an appeal and responses to appeals.

(b) * * * (1) Except as provided in paragraph (b)(2) of this section, an appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the agency's decision, whichever is later. * * *

(2) (i) Where a person alleges non-compliance with the provisions of chapter 43 of title 38 of the United States Code relating to the employment or reemployment rights or benefits to which a person is entitled after service in the uniformed services (see paragraph (a)(22) of § 1201.3 of this part), he or she may file an appeal directly with the Board within 180 days after the alleged act or incidence of non-compliance.

(ii) Where a person seeks assistance from the Secretary of Labor under 38 U.S.C. 4321 but does not file a complaint under 38 U.S.C. 4322(a), he or she may file an appeal directly with the Board within 180 days after the alleged act or incidence of non-compliance.

(iii) Where a person files a complaint with the Secretary of Labor under 38 U.S.C. 4322(a) and receives notification under 38 U.S.C. 4322(e) that the Secretary has been unable to resolve the matter, he or she may subsequently file an appeal with the Board within 30 days after the date of receipt of the Secretary's notification or within 180 days after the alleged act or incidence of non-compliance, whichever is later. A

copy of the Secretary's notification must be submitted with the appeal.

(iv) Where the Secretary of Labor refers a person's complaint to the Special Counsel under 38 U.S.C. 4322(a) and the person receives notification that the Special Counsel declines to represent the person in an appeal to the Board, he or she may subsequently file an appeal with the Board within 30 days after the date of receipt of the Special Counsel's notification or within 180 days after the alleged act or incidence of non-compliance, whichever is later. A copy of the Special Counsel's notification must be submitted with the appeal.

(v) Where the Secretary of Labor refers a person's complaint to the Special Counsel under 38 U.S.C. 4322(a) and the Special Counsel agrees to represent the person in an appeal to the Board, the Special Counsel may file an appeal with the Board at any time thereafter.

* * * * *

5. Section 1201.31 is amended by adding a new paragraph (d) to read as follows:

§ 1201.31 Representatives.

* * * * *

(e) The Special Counsel may represent a person in an appeal alleging non-compliance with the provisions of chapter 43 of title 38 of the United States Code relating to the employment or reemployment rights or benefits to which a person is entitled after service in the uniformed services (see paragraph (a)(22) of § 1201.3 of this part and 38 U.S.C. 4324). In such an appeal, a copy of any written request by the person to the Secretary of Labor that the matter be referred to the Special Counsel for litigation before the Board will be accepted as the written designation of representative required by paragraph (a) of this section.

6. Section 1201.121 is amended by adding a new paragraph (c) to read as follows:

§ 1201.121 Scope of jurisdiction; application of subparts B, F, and H.

* * * * *

(c) The provisions of this subpart do not apply to appeals alleging non-compliance with the provisions of chapter 43 of title 38 of the United States Code relating to the employment or reemployment rights or benefits to which a person is entitled after service in the uniformed services, in which the Special Counsel appears as the designated representative of the appellant. Such appeals are governed by subpart B of this part.

§ 1201.131 [Amended]

7. Section 1201.131 is amended at paragraph (a) by adding after "Special Counsel" the phrase, "under this subpart".

Dated: December 17, 1997.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 97-33353 Filed 12-19-97; 8:45 am]

BILLING CODE 7400-01-U

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

Rules Implementing the Freedom of Information Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Final rule.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) is amending its Freedom of Information Act (FOIA) rules to provide for expedited processing of certain requests, to conform response deadlines with those now provided in the statute, and to add a category of documents to be made available in the Public Reading Room. These changes result from new statutory provisions in the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104-231. A minor change is also made in the Board's fee provision.

EFFECTIVE DATE: January 21, 1998.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Ave. NW, Suite 700, Washington, D.C. 20004, (202) 208-6387.

SUPPLEMENTARY INFORMATION: On October 21, 1997, the Board published proposed changes to its Freedom of Information Act rule (62 FR 54594) in response to the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104-231. One additional change was proposed to the Board's FOIA fee provision. No public comments were received on the proposed changes. Therefore, the amendments are being made final without change.

Executive Order No. 12866

These amendments do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to Office of Management and Budget review.

Regulatory Flexibility Act

These amendments will not have a significant economic impact on a

substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations will impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

List of Subjects in 10 CFR Part 1703

Freedom of information.

For the reasons stated in the preamble, the Board amends 10 CFR part 1703 as follows:

PART 1703—PUBLIC INFORMATION AND REQUESTS

1. The authority citation for part 1703 continues to read as follows:

Authority: 5 U.S.C. 552 as amended; 42 U.S.C. 2286b(c).

2. Section 1703.103 is amended by adding paragraph (b)(12) to read as follows:

§ 1703.103 Requests for Board records available through the public reading room.

* * * * *

(b) * * *

(12) Copies of records released pursuant to FOIA requests, along with an index to these records. The format will generally be the same as the format of the released records.

3. Section 1703.105 is amended by adding a new paragraph (e) to read as follows:

§ 1703.105 Requests for Board records not available through the public reading room (FOIA requests).

* * * * *

(e)(1) *Expedited processing.* A person may request expedited processing of an FOIA request when a compelling need for the requested records has been shown. "Compelling need" means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information; or

(iii) The records pertain to an immediate source of risk to the public health and safety or worker safety at a defense nuclear facility under the Board's jurisdiction.

(2) A requester seeking expedited processing should so indicate in the

initial request, and should state all facts supporting the need to obtain the requested records rapidly. The requester must also state that these facts are true and correct to the best of the requester's knowledge and belief.

(3) When a request for expedited processing is received, the Board will respond within ten calendar days from the date of receipt of the request, stating whether or not the request has been granted. If the request for expedited processing is denied, any appeal of that decision will be acted upon expeditiously.

4. Section 1703.107(b)(2)(iv) is removed and reserved.

5. Section 1703.108(b) is revised to read as follows:

§ 1703.108 Processing of FOIA requests.

* * * * *

(b) Action pursuant to this section to provide access to requested records shall be taken within twenty working days. This time period may be extended up to ten additional working days, in unusual circumstances, by written notice to the requester. If the Board will be unable to satisfy the request in this additional period of time, the requester will be so notified and given the opportunity to—

(1) Limit the scope of the request so that it can be processed within the time limit, or

(2) Arrange with the Designated FOIA Officer an alternative time frame for processing the original request or a modified request.

* * * * *

Dated: December 15, 1997.

John T. Conway,
Chairman.

[FR Doc. 97-33298 Filed 12-19-97; 8:45 am]

BILLING CODE 3670-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052-AB81

Loan Policies and Operations; Interest Rates and Charges

AGENCY: Farm Credit Administration.

ACTION: Direct final rule with opportunity for comment.

SUMMARY: The Farm Credit Administration (FCA), through the FCA Board (Board), issues a direct final rule amending its regulations concerning interest rates and charges. This action is consistent with the FCA's continuing efforts to reduce regulatory burden and unnecessary prior approval

requirements whenever possible. The amendments eliminate the prior approval requirement for changes in interest rate policies at banks for cooperatives (BCs), eliminate unnecessary or duplicative regulatory requirements, clarify existing requirements that are retained.

The effect of the amendments is to enable BCs to revise rate policies for discounting negotiable paper without prior FCA approval, to eliminate the requirement that fees charged by an association are subject to bank approval, and to clarify that, in all Farm Credit System (FCS or System) banks and direct lender institutions, the board of directors is responsible for setting interest rates and annually reviewing interest rate plans in conjunction with the review and approval of the institution's annual business plan.

DATES: If no significant adverse comment is received on or before January 21, 1998, these regulations shall be effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**. If significant adverse comment is received, the FCA will publish a notice of withdrawal of the regulations and indicate how the Agency expects to proceed with further rulemaking.

ADDRESSES: Comments may be submitted via electronic mail to "reg-comm@fca.gov" or facsimile transmission to (703) 734-5784. Comments also may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all communications received will be available for review by interested parties in the Office of Policy Development and Risk Control, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Linda C. Sherman, Policy Analyst, Regulation Development Division, Office of Policy Development and Risk Control, (703) 883-4498, TDD (703) 883-4444; or Rebecca S. Orlich, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION:

I. Background

The regulations in 12 CFR part 614—subpart G pertain to interest rates and charges by FCS institutions. Most of the regulations in subpart G were originally

promulgated by the FCA in 1972 following Congress' modernization and consolidation of existing farm credit law in the Farm Credit Act of 1971. The structure of the System has changed considerably in the past 25 years, and the regulatory relationship between FCS institutions and the FCA has become an arm's-length relationship. The amendments set forth below reflect those changes, as well as the FCA's current regulatory philosophy of removing prior approval requirements not mandated by the current Farm Credit Act of 1971, as amended (Act), and unnecessary to the safe and sound operation of an institution. The FCA will continue to hold FCS institution boards and management accountable for their internal operations through the examination process. Likewise, regulatory language that merely restates statutory provisions is eliminated.

Five sections in 12 CFR part 614—subpart G are eliminated, and the two remaining sections are renumbered and moved to 12 CFR part 614—subpart D. Because the changes conform existing regulations to the statute and make only minor changes to the regulatory language, the FCA believes the rule to be noncontroversial and anticipates no significant adverse comment from the public.

II. Description of Amendments

1. Section 614.4270—Policy

The provisions in this section are nearly identical to provisions in sections 1.8(b), 2.4(c), and 3.10(a) of the Act and are therefore removed, as they are duplicative and unnecessary.

2. Section 614.4280—Interest Rates

The FCA is amending existing § 614.4280, which concerns interest rate plans and policy, to make it applicable to direct lender associations as well as to banks. This change will clarify that the board of directors of every System direct lender is responsible for establishing interest rates or interest rate plans. This change is consistent with the underwriting regulation adopted earlier this year, § 614.4150, which requires the boards of directors of both banks and associations to adopt written policies and procedures that, at a minimum, prescribe prudent loan pricing practices.

Although no other substantive changes are made to existing § 614.4280, the FCA makes two technical changes to the final sentence. The first clause, which states that the board "may not delegate its ultimate responsibilities for setting interest rates," is deleted as unnecessary. Because the boards of

System institutions cannot delegate their "ultimate responsibility" for any policy decision, the FCA believes that the deleted clause adds nothing to the regulation. At the end of the final sentence, the FCA has replaced the reference to "fiscal plan and long-range financial plan" with the words "operational and strategic business plan," to conform with the terms used in § 618.8440 and elsewhere in FCA regulations. The revised regulation is redesignated as § 614.4155.

3. Section 614.4281—Discounts and Related Fees

The FCA is deleting § 614.4281, which authorizes BCs to "discount or rediscount notes, drafts, acceptances, and other negotiable paper at such rates as may be determined by bank management under policies of the bank board as approved by the Farm Credit Administration." The FCA has concluded that the language in § 614.4281 is not necessary to authorize BCs to engage in any of the activities listed, as they are already authorized pursuant to section 3.7(a) of the Act. The prior approval is not required by the Act or necessary to the safe and sound operations of the institution.

4. Section 614.4290—Interest on Past Due Loans

Section 614.4290, which allows banks and production credit associations (PCAs) to provide for the collection of interest at a higher rate after maturity, is deleted as unnecessary. This deletion will not affect the ability of a System direct lender to provide for a default interest rate in its loan documents, nor will it diminish the rights of borrowers. Section 4.13(a)(4) of the Act, § 614.4376(c) of the regulations, and the provisions of Regulation Z (Truth-in-Lending) require that any change in the interest rate applicable to an individual borrower's loan be disclosed to the borrower within certain stated periods of time. These requirements would apply to interest rate changes after maturity and, therefore, provide sufficient protection for individual borrowers.

5. Section 614.4300—Other Charges and Fees

The FCA is deleting § 614.4300, which states that banks and associations may impose reasonable charges or fees on members, borrowers, or applicants in connection with loans or other services rendered. It also provides that the fees charged by an association are subject to bank prior approval. Regulatory authority to charge fees is unnecessary because such authority is provided

expressly in sections 1.5(6), 2.2(13), and 3.10(a) of the Act.

Consistent with the FCA Board's regulatory philosophy of repealing regulations that prescribe needlessly detailed management and operational practices, the FCA is deleting the requirement that banks give prior approval to affiliated associations' fees. Bank approvals that are appropriate to the debtor-creditor relationship of a bank and an association may be set forth in the general financing agreement between the institutions. Therefore, the prior approval provision is unnecessary.

6. Section 614.4320—Production Credit Associations

The FCA is deleting § 614.4320, which states that "the rate of interest charged by an association shall be the rate authorized by the bank, within programs prescribed by the bank board" and allows for different computations of interest payments authorized under such programs. This regulation in part restates section 2.4(c) of the Act, which provides for PCAs to charge interest rates "under standards prescribed by the board of the bank" and is thus unnecessary. The regulatory direction on the computation of interest payments was driven by limitations in computer accounting systems that no longer exist; thus, it is now obsolete.

7. Section 614.4321—Differential Interest Rate Programs

Section 614.4321 describes the types of interest rate programs that System banks and associations may adopt under policies of their boards of directors. This section was recently updated by amending outdated language and removing an unnecessary prior approval. See 61 FR 67186 (December 20, 1996). The FCA continues to believe that it is important to set forth the principle of nondiscrimination among similarly situated borrowers in setting differential interest rates. Therefore, the language in this section is retained, and the regulation is redesignated as § 614.4160 and moved to part 614, subpart D.

III. Direct Final Rulemaking

The FCA is using a "direct final" procedure for this rulemaking. In a direct final rulemaking, an agency gives notice that a rule will become final at a specified future date unless the agency receives significant adverse comment on the rule during the comment period established in the rulemaking notice. Direct final rulemaking is justified under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 551-59, *et seq.* (APA). Section 553(b)(B)

is the APA's "good cause" exemption for omitting notice and comment on a rule where an agency finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." However, rather than eliminating public comment altogether, as would be permissible under section 553(b)(B), in a direct final rule the FCA gives the public adequate opportunity to comment on or object to a rule. For a full explanation of direct final rulemaking, see 62 FR 63644 (December 3, 1997).

The FCA believes that the changes to 12 CFR part 614—subpart G fit the category of rules appropriate for direct final rulemaking. These changes delete unnecessary approvals, remove duplicative language, and incorporate prudent oversight standards that the FCA already applies to all institutions. As such, the amendments are straightforward and noncontroversial. For these reasons, the FCA does not anticipate that there will be significant adverse comment on this rulemaking.

This rule has a 30-day comment period. If, during that period, the FCA receives a significant adverse comment on the rule, the FCA will withdraw the rule and may either issue another direct final rule or promulgate the rule in proposed form. A significant adverse comment is defined as one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the FCA in a notice-and-comment proceeding.

If no significant adverse comment is received, the FCA will publish its customary notice of the effective date of the rule following the required Congressional waiting period under section 5.17(c)(1) of the Act.

List of Subjects in 12 CFR Part 614

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

For the reasons set out in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

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

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9,

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

Subpart D—General Loan Policies for Banks and Associations

2. Sections 614.4280 and 614.4321 in subpart G are redesignated as §§ 614.4155 and 614.4160 in subpart D, and § 614.4155 is revised to read as follows:

§ 614.4155 Interest rates.

Loans made by each bank and direct lender association shall bear interest at a rate or rates as may be determined by the institution board. The board shall set interest rates or approve individual interest rate changes either on a case-by-case basis or pursuant to an interest rate plan within which management may establish rates. Any interest rate plan shall set loan-pricing policies and objectives, provide guidance regarding the circumstances under which management may adjust rates, and provide the upper and lower limits on management authority. Any interest rate plan adopted shall be reviewed on a continuing basis by the board, as well as in conjunction with its review and approval of the institution's operational and strategic business plan.

Subpart G—Interest Rates and Charges

Subpart G [Removed and Reserved]

3. Subpart G, consisting of §§ 614.4270, 614.4281, 614.4290, 614.4300 and 614.4320, is removed and reserved.

Dated: December 16, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.
[FR Doc. 97-33260 Filed 12-19-97; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-AGL-44]

Modification of Class E Airspace; Grand Rapids, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Grand Rapids, MI. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 35 has been developed for Kent County International Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing Class E airspace.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, September 19, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Grand Rapids, MI (62 FR 49182). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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 Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Grand

Rapids, MI, to accommodate aircraft executing the ILS Runway 35 SIAP at Kent County International Airport by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth

* * * * *

AGL MI E5 Grand Rapids, MI [Revised]

Kent County International Airport, MI
(Lat. 42°52'58"N, long. 85°31'26"W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Kent County International Airport.

* * * * *

Issued in Des Plaines, Illinois on November 24, 1997.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 97-33284 Filed 12-19-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL-067-FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Alabama regulatory program (hereinafter referred to as the "Alabama program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama proposed revisions to the Alabama Surface Mining Commission Rules pertaining to hearing orders and decisions, license application requirements, procedures for permit application review, determination of bond forfeiture amount, surface and ground water monitoring, disposal of excess spoil, and coal mine waste. The amendment is intended to revise the Alabama program to provide additional safeguards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Arthur Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290-7282.

SUPPLEMENTARY INFORMATION:

- I. Background on the Alabama Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 901.15 and 901.16.

II. Submission of the Proposed Amendment

By letter dated March 28, 1997 (Administrative Record No. AL-0562), Alabama submitted a proposed amendment to its program pursuant to SMCRA. Alabama submitted the proposed amendment at its own initiative.

OSM announced receipt of the proposed amendment in the April 25, 1997, **Federal Register** (62 FR 20138), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on May 27, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to hearing orders and decisions (Rule 880-X-5A-.22), and placement of coal mine waste on refuse piles (Rules 880-X-10C-.40 and 880-X-10D-.36). OSM notified Alabama of these concerns by telephone and fax on June 16, 1997 (Administrative Record No. AL-0570).

By letter dated July 9, 1997 (Administrative Record No. AL-0560), Alabama responded to OSM's concerns regarding placement of coal mine waste on refuse piles by submitting additional explanatory information to its proposed program amendment. Regarding OSM's concerns on hearing orders and decisions, Alabama submitted an emergency rule, on July 30, 1997 (Administrative Record No. AL-0572), that changed the number of days in which hearing officers are to furnish written decisions on hearings from 60 days to 30 days. Based upon the additional explanatory information and/or revisions to the proposed program amendment submitted by Alabama, OSM reopened the public comment period in the October 17, 1997, **Federal Register** (62 FR 53996). The public comment period closed on November 3, 1997.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

A. Nonsubstantive Revisions to the Alabama Program

Alabama proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes:

Topic	State regulations	Federal counterpart regulations
Procedures for Permit Application Review	880-X-7B-.07(5)	30 CFR 761.12(e)(1)-(e)(3).
Determination of Forfeiture Amount	880-X-9E-.05(2) and (3)	30 CFR 800.50(d)(1) and (d)(2).
Hydrologic Ground Water Monitoring	880-X-10C-.23(2)(a)	30 CFR 816.41(e)(1).
Disposal of Excess Spoil	880-X-10C-.36(13)(b) and (b)(1) and (15)(B)(3).	30 CFR 816.71(i) and 816.74(h)(4).
Disposal of Excess Spoil and Underground Development Waste.	880-X-10D-.33(13)(b) and (b)(1) and (15)(b)(3).	30 CFR 817.71(i) and 817.74(h)(4).

Because Alabama's proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that the proposed revisions do not render Alabama's rules less effective than the Federal regulations.

B. Revisions to Alabama's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations Rules 880-X-10C-.40 and 880-X-10D-.36 Cost Mine Waste: Refuse Piles

At paragraphs (3)(a), Alabama proposed an exception to the

requirement that limits coal mine operators from spreading coal mine waste in layers thicker than 24 inches. If engineering data substantiates a minimum safety factor of 1.5 for the refuse pile, the State regulatory authority may approve layers exceeding 24 inches in thickness. The Federal

regulations at 30 CFR 816.83 and 817.83 require refuse piles to meet the requirements of 816.81 and 817.81, respectively. At 30 CFR 816.81(c)(2) and 817.81(c)(2), respectively, a disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The Director is approving Alabama's proposed exception because it is no less effective than the Federal regulations.

C. Revisions to Alabama's Regulations With No Corresponding Federal Regulations

1. Rule 880-X-5A-.22 Orders and Decisions

Alabama proposed to replace the existing requirements with the following new requirements. At paragraph (1)(a), the hearing officer is to make a written decision within 30 days after the close of "any" hearing. OSM has regulations for hearings that provide time frames of 30 or 60 days in which written decisions must be furnished to the participants of the hearing based upon the reason the hearing is being held. For example, the Federal regulation at 30 CFR 775.11(b)(4) regarding administrative review of decisions on permits require that decisions be made, in writing, within 30 days after these hearings. As another example, the Federal regulation at 30 CFR 769.18 regarding decisions on petitions for designating lands unsuitable for mining requires that a written decision be made within 60 days of the completion of the hearing. The Director finds that Alabama's proposal for requiring decisions to be made within 30 days after the close of "any" hearing is no less effective than the Federal regulations and is approving it.

At paragraph (1)(b), Alabama proposed that the Division of Hearings and Appeals (DHA) provide copies of all orders of the hearing officer to all parties. Parties other than the regulatory authority will receive copies of the orders by the first class mail. The Federal regulations at 30 CFR 769.18(b) regarding decisions on petitions for designating lands unsuitable for mining and 30 CFR 775.11(b)(4) regarding administrative review of decisions on permits, require written hearing decisions to be sent to each person who participated in the hearing. The Director finds that Alabama's proposed amendment is not inconsistent with the Federal regulations and is approving it.

At paragraph (2), Alabama proposed that any party may petition the Commission for an expedited review of any pending appeal if the hearing officer

fails to render a decision within the time specified in paragraph (1)(a). OSM does not have a counterpart Federal regulation that provides for an expedited review of any pending appeal if the hearing officer fails to render a decision within specified time frames. The Director finds that Alabama's proposed regulation is not inconsistent with the Federal regulations and is approving it.

2. Rule 880-X-6A-.06 License Application Requirements

At paragraph (k), Alabama proposed to replace the reference to "Chapter 880-X-7" with the corrected reference to "Chapter 880-X-8." The Director is approving this correction.

3. Rule 880-X-10C-.36 Disposal of Excess Spoil and 880-X-10D-.33 Disposal of Excess Spoil and Underground Development Waste

At paragraphs (16)(a) in the first sentence, Alabama proposed to remove the language "in natural ground along the periphery of the fill." The Director is approving the removal of this language because there is no Federal counterpart and because the removal of this language will not render the Alabama program less effective than the Federal regulations.

4. Rules 880-X-10C-.38 and 880-X-10D-.34 Coal Mine Waste: General Requirements

Alabama proposed to remove existing paragraphs (1)(d) for its regulations and to redesignate existing paragraphs (1)(e) and (1)(f) as paragraph (1)(d) and (1)(e), respectively. The Director is approving these revisions because there is no Federal counterpart regulation to existing paragraph (d) that the State proposed to remove and because its removal will not render the Alabama program less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment. No public comments were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal Agencies with an actual or potential interest in the Alabama program. OSM received comments from the U.S. Fish and Wildlife Service dated April 24, 1997 (Administrative Record No. AL-0564), and the U.S. Department of Labor Mine Safety and Health

Administration dated May 5, 1997 (Administrative Record No. AL-0565). The agencies stated that they either had no comments or no concerns regarding the amendment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. AL-0563). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. AL-0563). The ACHP did not respond to OSM's request. OSM received a comment dated June 3, 1997, from the Alabama Historical Commission (Administrative Record No. AL-0567). The Alabama Historical Commission felt that properties eligible for inclusion on the National Register along with properties listed on the National Register should be included in the Alabama Surface Mining Commission Rules regarding procedures for areas unsuitable for mining at 880-X-7B-.07(6)(a). The Alabama Historical Commission felt that this inclusion of properties would be appropriate because it would conform with the Advisory Council on Historic Properties' regulations at 36 CFR Part 800. In response to these comments, Alabama did not propose to amend its regulation at 880-X-7B-.07(6)(a) which is substantially identical to the Federal regulation at 30 CFR 761.12(f)(1), and, therefore, is not inconsistent with the Federal requirement. Also, in acting on State program amendments, the Directory only addresses those sections of a State's laws and regulations where revisions are proposed by the State.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Alabama on March 28, 1997, and as revised on July 9 and 30, 1997.

The Director approves the rules as proposed by Alabama with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Director is also taking this opportunity to correct editorial errors in the required regulatory program amendments section at 30 CFR 901.16.

The Federal regulations at 30 CFR Part 901, codifying decisions concerning the Alabama program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and

program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a

significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 25, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment sub- mission date	Date of final publication	Citation/description
March 28, 1997	December 22, 1997	880-X-5A-.22(1)(a), (1)(b) and (2); 880-X-6A-.06(k); 880-X-7B-.07(5); 880-X-9E-.05(2) and (3); 880-X-10C-.23(2)(a), .36(13)(b) and (b)(1), (15)(b)(3), and (16)(a), .38(1)(d) through (1)(f), .40(3)(a); 880-X-10D-.33(13)(b) and (b)(1), (15)(b)(3), and (16)(a), .34(1)(d) through (1)(f), and .36(3)(a)

§ 901.16 Removed and [Reserved]

3. The text of § 901.16 is removed and the section and section heading are reserved.

[FR Doc. 97-33335 Filed 12-19-97; 8:45 am]

BILLING CODE 4310-05-M

Dated: December 17, 1997.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 97-33313 Filed 12-19-97; 8:45 am]

BILLING CODE 1410-30-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 97-8]

Registration of Claims to Copyright: Group Registration of Serials

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule; technical amendment.

SUMMARY: The Copyright Office is making a technical amendment to one of the addresses designated in the group registration procedures.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Kent Dunlap, Principal Legal Advisor to the General Counsel, Copyright GC/I&R P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: In 1990, the Copyright Office adopted a new registration procedure which permitted group registration of serial publications under certain conditions. 55 FR 50556 (1990). This procedure is part of the regulations of the Copyright Office at 37 CFR Chap. II, §§ 202.3(b)(5) and 202.20(c)(2)(xvii). This document amends the address to which the complimentary subscriptions must be mailed.

List of Subjects in 37 CFR Part 202

Claims, Copyright, Registration.

Technical Amendment

In consideration of the foregoing, the Copyright Office is amending part 202 of 37 CFR, chapter II in the manner set forth below.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 202.3 [Amended]

2. Section 202.3(b)(5)(iii) is amended to add “-4161,” after “20540”.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY 26-2-176a; FRL-5936-8]

Determination of Attainment of the One-Hour Ozone Standard for the Poughkeepsie, New York Ozone Nonattainment Area and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is determining, through direct final procedure, that the Poughkeepsie moderate ozone nonattainment area in New York has attained the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of complete, quality assured ambient air monitoring data for the years 1995-97. This data demonstrates that the one-hour ozone NAAQS has been attained in this area. On the basis of this determination, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act are not applicable to this area.

In the proposed rules section of this Federal Register, EPA is proposing this determination and soliciting public comment on it. If adverse comments are received on this direct final rule, EPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this Federal Register.

DATES: This action will be effective February 5, 1998 unless adverse or critical comments are received by January 21, 1998. If the effective date is delayed, a timely document will be published in the Federal Register.

ADDRESSES: Written comments should be mailed to Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007-1866.

Copies of the relevant material for this notice are available for inspection during normal business hours at: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, at the above address. Phone: 212-637-4249.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act (CAA) contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. EPA has interpreted provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the one-hour ozone standard (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995 from John Seitz to the Regional Air Division Directors, entitled “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” EPA has interpreted the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP “means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.” Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is

to ensure attainment by the applicable attainment date.¹ If an area has in fact attained the one-hour standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area needs to submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498, April 16, 1992), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR at 13564.)²

Second, with respect to the attainment demonstration requirements of section 182(b)(1) an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act." As with the RFP requirements, if an area has in fact monitored attainment of the one-hour standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment of the one-hour standard. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the

¹ EPA notes that paragraph (1) of subsection 182(b) is entitled "PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS" and that subparagraph (B) of paragraph 182(c)(2) is entitled "REASONABLE FURTHER PROGRESS DEMONSTRATION," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

² See also "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard") (hereinafter referred to as "September 1992 Calcagni memorandum").

General Preamble to Title I, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR at 13564; see also September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to the contingency measure requirements of section 172(c)(9). EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the one-hour standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR at 13564; see also September 1992 Calcagni memorandum at page 6.) As the section 172(c)(9) contingency measures are linked with the RFP requirements of section 182(b)(1), the requirement no longer applies once an area has attained the one-hour standard.

This action is only a suspension of the requirements to submit the SIP revisions discussed above. If the area were to violate the one-hour ozone NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the state of that determination and would also provide notification to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a period of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue.

However, EPA recently promulgated a new eight-hour ozone standard. The President's Directive of July 16, 1997 outlines how EPA will make the transition from the old one-hour standard to the new SIP requirements for the eight-hour standard. The Directive states that EPA will revoke the one-hour standard once an area has air monitoring data showing attainment of the one-hour standard. If EPA revokes the one-hour standard for an area, the requirement for the area to submit RFP requirements and an attainment demonstration for the one-hour standard will be permanently ended.

The state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be

consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determination that is being made with this **Federal Register** document that air quality data shows attainment of the one-hour standard is not equivalent to the redesignation of the area to attainment. Using monitoring data to show attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully-approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully-approved maintenance plan.

Furthermore, the determination made in this notice does not shield an area from future EPA action. EPA can require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under section 110(a)(2) to require such emission reductions if necessary and appropriate to deal with transport situations. Also, EPA can require SIPs from this area if EPA or the state proposes, in future actions, that the area is in violation of the eight-hour standard.

II. Analysis of Air Quality Data

On November 17, 1997, New York requested that EPA find that air monitoring data from New York State for the Poughkeepsie ozone nonattainment area shows that the area is attaining the one-hour ozone standard. New York State, also on November 17, 1997, submitted quality assured data (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) through the end of the 1997 ozone season and certified that these data met EPA's requirements. The EPA has reviewed the ambient air monitoring data for ozone from 1995 through 1997 for the Poughkeepsie ozone nonattainment area, which includes Dutchess, Putnam and northern Orange Counties in New York. The data were taken from the

EPA-approved New York State air quality monitoring network. It should be noted that New York expanded air monitoring in the Poughkeepsie area from one to three monitors during the 1990s. The monitors in these locations were sited to measure ozone concentrations typical of concentrations across the area. New York did this to

better define the extent of ozone nonattainment in the area. Expanding the network increased the opportunity for finding violations of the ozone standard in the Poughkeepsie area. EPA believes that these data are representative of the Poughkeepsie ozone nonattainment area. This is especially true since ozone is not

emitted directly from sources, but is formed from pollutants that react in sunshine over a period of time. The ozone air quality data for the Poughkeepsie ozone nonattainment area, summarized in Table I, shows that the area has met the one-hour NAAQS.

TABLE I.—EXCEEDANCES OF THE ONE-HOUR OZONE STANDARD FOR MONITORING SITES IN THE POUGHKEEPSIE OZONE NONATTAINMENT AREA
[From EPA AIRS]

Site	Number of exceedances (in parentheses) Number of expected exceedances in bold			Total number of expected exceedances 1995–7	Average number of expected exceedances 1995–7	Attainment status 1995–7
	1995	1996	1997			
Millbrook	(0) 0.0	(0) 0.0	(0) 0.0	0.0	0.0	Attain.
Mt. Ninham	(2) 2.0	(1) 1.1	(0) 0.0	3.1	1.0	Attain.
Valley Central	(0) 0.0	(1) 1.0	(0) 0.0	1.0	0.3	Attain.

Note: Expected exceedances are calculated from the actual number of exceedances (), adjusted for missing data as required by Appendix H. The 0.12 ppm one-hour average ozone standard is attained when the three year average of expected exceedances is 1.0 or less. The expected and average number of exceedances are rounded to the nearest tenth. [See CFR Part 51, Appendix H.]

As noted in Table I, attainment of the one-hour ozone standard is achieved when an area's monitoring sites have 1.0 or less exceedances per year, averaged over a three year period from 1995 through 1997. Since all of the monitors in the Poughkeepsie ozone nonattainment area average 1.0 or less exceedances per year, the Poughkeepsie area is attaining the one-hour NAAQS for ozone. Attaining the ozone standard would relieve New York from submitting a reasonable further progress plan whose purpose was to bring the area into attainment. Likewise, New York would not have to submit an attainment demonstration since the area has attained the one-hour ozone standard.

III. Final Action

EPA determines that the Poughkeepsie ozone nonattainment area has attained the one-hour ozone standard based on three years of quality-assured monitoring data at all three sites in the area. As a consequence of EPA's determination that the Poughkeepsie area has attained the one-hour ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures shall not be applicable to the area. This is effective as long as the area continues to attain the one-hour ozone standard, or

until EPA revokes the one-hour standard.

EPA emphasizes that as long as the one-hour standard applies to the Poughkeepsie area, these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the one-hour ozone NAAQS in this affected area. If while the one-hour standard is still in effect, a violation of the one-hour ozone NAAQS is monitored in the Poughkeepsie area (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Then EPA would reinstate the requirements of section 182(b)(1) and section 172(c)(9) for the Poughkeepsie area since the basis for the determination that they are not needed would not exist.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. EPA is strictly acting on the basis of real data, without modification or interpretation that impels EPA to make the determination in this document. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve this action in case adverse or critical comments be filed. This action will be effective February 5, 1998 unless, by January 21, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 5, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revisions to any SIP. Each request for revision of the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify

that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action removes a requirement that the Clean Air Act required the State to address. Therefore, because this action does not impose any new requirements, I certify that it does not have an impact on any small entities.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action does not include a federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action imposes no new requirements, and accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 1998. Filing a petition for

reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 4, 1997.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart HH—New York

2. Section 52.1683 is amended by adding new paragraph (f) to read as follows:

52.1683 Control strategy: Ozone.

* * * * *

(f) Attainment Determination—EPA has determined that, as of February 5, 1998, the Poughkeepsie ozone nonattainment area (consisting of Dutchess and Putnam Counties and northern Orange County) has air monitoring data that attains the one-hour ozone standard and that the requirements of section 182(b)(1) (reasonable further progress and attainment demonstration) and related requirements of section 172(c)(9) (contingency measures) of the Clean Air Act do not apply to the area.

[FR Doc. 97-33080 Filed 12-19-97; 8:45 am]

BILLING CODE 6560-50-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1110

Nondiscrimination in Federally Assisted Programs; Technical Amendment

AGENCY: National Foundation on the Arts and the Humanities.

ACTION: Final rule; technical amendment.

SUMMARY: This final rule incorporates the new name of the Institute of Museum and Library Services (the "Institute"), established by the Museum and Library Services Act of 1996, into the regulations promulgated by the National Foundation on the Arts and the Humanities regulations regarding nondiscrimination in federally assisted programs. These regulations implement Title VI of the Civil Rights Act of 1964, thereby prohibiting discrimination on the grounds of race, color, or national origin, in federally funded programs.

DATES: This final rule is effective December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Ann Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20405. Telephone: (202) 606-8536.

SUPPLEMENTARY INFORMATION: The Museum and Library Services Act of 1996, set forth as 20 U.S.C. 961 *et seq.*, expanded the functions of the Institute of Museum Services to create a new agency, The Institute of Museum and Library Services. The Institute, like its sister agencies The National Foundation on the Arts and the Humanities, is a subdivision of the National Foundation on the Arts and the Humanities.

The National Foundation on the Arts and the Humanities regulations governing nondiscrimination in federally assisted programs and implementing Title VI of the Civil Rights Act of 1964, are set forth in 45 CFR Part 1110. This rule conforms these regulations to the Museum and Library Services Act of 1996, by incorporating the new name of the agency into the regulations' provisions.

The National Foundation on the Arts and the Humanities considers this rule to be a technical amendment which is exempt from notice-and-comment under 5 U.S.C. 553(b)(3)(A). This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, The Foundation certifies that these regulatory amendments will not have a significant impact on small business entities.

List of Subjects in 45 CFR Part 1110

Civil rights.

For the reasons stated in the summary and pursuant to 20 U.S.C. 961 *et seq.*, 45 CFR, Chapter XI, Part 1110 is amended as follows:

PART 1110—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

1. The authorities citation continues to read as follows:

Authority: Sec. 602, 78 Stat. 252 and sec. 10(a)(1), 79 Stat. 852.

2. Revise § 1110.1 to read as follows:

§ 1110.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act"), 42 U.S.C. 2000d *et seq.*, to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Endowment for the Arts, the National Endowment for the Humanities, or the Institute of Museum and Library Services.

3. Revise the first sentence of § 1110.2 to read as follows:

§ 1110.2 Application of part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the National Endowment for the Arts, the National Endowment for Humanities, or the Institute of Museum and Library Services, including the federally assisted programs and activities listed in appendix A of this part. * * *

4. Amend § 1110.13 by revising paragraphs (a), (b), and (c) to read as follows:

§ 1110.13 Definitions.

* * * * *

(a) The term *Foundation* means the National Foundations for the Arts and the Humanities, and includes the National Endowment for the Arts, the National Endowment for the Humanities, the Institute of Museum and Library Services, and each of their organizational units.

(b) The term *Endowment* means the National Endowment for the Arts, the National Endowment for the Humanities, or the Institute of Museum and Library Services.

(c) The term *Chairman* means the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, or the Director of the Institute of Museum and Library Services.

* * * * *

Dated: December 16, 1997.

Michael S. Shapiro,
General Counsel, National Endowment for the Humanities.

Karen Christensen,
General Counsel, National Endowment for the Arts.

[FR Doc. 97-33303 Filed 12-19-97; 8:45 am]

BILLING CODE 7036-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-145; RM-9091]

Radio Broadcasting Services; Glen Rose and Stamford, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Cleburne Radio, Inc, substitutes Channel 221C1 for Channel 221C2 at Glen Rose and modifies the license of Station KCLE-FM to specify operation on the higher powered channel. To accommodate the upgrade at Glen Rose, the Commission also substitutes Channel 295A for Channel 221C2 at Stamford, Texas, and modifies the construction permit of M & M Broadcasting Company to specify the Class A channel. See 62 FR 36250, July 7, 1997. Channel 221C1 and Channel 295A can be allotted to Glen Rose and Stamford, respectively, in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 221C1 at Glen Rose are 32-16-30 and 98-08-30. The coordinates for Channel 295A at Stamford are 32-58-21 and 99-48-32. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97-145, adopted November 26, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 221C2 and adding Channel 221C1 at Glen Rose; by removing Channel 221A and adding Channel 295A at Stamford.

Federal Communications Commission.

John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97-33185 Filed 12-19-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Part 5231

Department of the Navy Acquisition Regulations; Shipbuilding Capability Preservation Agreements

AGENCY: Department of the Navy, DoD

ACTION: Interim rule with request for comments.

SUMMARY: The Deputy for Acquisition and Business Management, Office of the Assistant Secretary of the Navy (Research, Development and Acquisition), has issued an interim rule amending the Navy Acquisition Regulations to permit the Department of the Navy (DoN) to enter into a shipbuilding capability preservation agreement with a shipbuilder where it would facilitate the achievement of the policy objectives set forth in section 2501(b) of title 10, United States Code.

DATES: *Effective Date:* December 22, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before February 20, 1998, in order to be considered in formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to Department of the Navy, Office of the Assistant Secretary of the Navy, Acquisition and Business Management, Attn: Mr. Clarence Belton, ABM-P&R, 2211 South

Clark Place, Arlington, VA 22244-5104. Telefax number (703) 602-2117. Please cite "Shipbuilding Capability Preservation Agreements" in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Belton, (703) 602-2807.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds part 5231 to the Department of the Navy Acquisition Regulations (48 CFR Chapter 52), to implement section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 1027 permits the DoN to enter into a shipbuilding capability preservation agreement with a shipbuilder where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b). Such an agreement would permit the contractor to claim certain indirect costs, attributable to its private sector work, on its Navy shipbuilding contracts.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of the Navy that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule implements section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85), which became effective upon enactment on November 18, 1997. Congress specifically directed DoN to establish application procedures and procedures for expeditious consideration of shipbuilding capability preservation agreements within 30 days of enactment and to submit a report on applications for such agreements to Congress not later than February 15, 1998. Given these statutory-imposed deadlines, opportunity for public comment prior to promulgation of this rule is not possible. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis and do not require application of the cost principle contained in this rule. An initial regulatory flexibility analysis has therefore not been performed.

Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected Navy Acquisition Regulations subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (Shipbuilding Capability Preservation Agreement), in correspondence.

D. Paperwork Reduction Act

It is anticipated that collection of information requirements will not be imposed on ten or more persons within any 12-month period. Therefore, this 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.*, and 5 CFR part 1320.

List of Subjects in 48 CFR Part 5231

Government procurement.

For the reasons set forth in the preamble, add 48 CFR part 5231 to read as follows:

PART 5231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 5231.2—Contracts with Commercial Organizations

Sec.

5231.205 Selected costs.
5231.205-90 Shipbuilding capability preservation agreements.

Authority: 5 U.S.C. 301, 10 U.S.C. 2501, 10 U.S.C. 7315, DoD Directive 5000.35.

Subpart 5231.2—Contracts With Commercial Organizations

§ 5231.205 Selected costs.

§ 5231.205-90 Shipbuilding capability preservation agreements.

(a) *Scope and authority.* Where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b), the Navy may enter into a shipbuilding capability preservation agreement with a contractor. As authorized by section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85), such an agreement permits the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on Navy shipbuilding contracts.

(b) *Definition. Incremental indirect cost,* as used in this subsection, means an additional indirect cost that results from performing private sector work described in a shipbuilding capability preservation agreement.

(c) *Purpose and guidelines.* The purpose of a shipbuilding capability

preservation agreement is to broaden and strengthen the shipbuilding industrial base by providing an incentive for a shipbuilder to obtain new private sector work, thereby reducing the Navy's cost of doing business. The Navy will use the following guidelines to evaluate requests for shipbuilding capability preservation agreements:

(1) The Assistant Secretary of the Navy for Research, Development and Acquisition must make a determination that an agreement would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b). The primary consideration in making this determination is whether an agreement would promote future growth in the amount of private sector work that a shipbuilder is able to obtain.

(2) An agreement generally will be considered only for a shipbuilder with little or no private sector work.

(3) The agreement shall apply to prospective private sector work only, and shall not extend beyond 5 years.

(4) The agreement must project an overall benefit to the Navy, including net savings. This would be achieved by demonstrating that private sector work will absorb costs that otherwise would be absorbed by the Navy.

(d) *Cost-reimbursement rules.* If the Navy enters into a shipbuilding capability preservation agreement with a contractor, the following cost-reimbursement rules apply:

(1) The agreement shall require the contractor to allocate the following costs to private sector work:

(i) The direct costs attributable to the private sector work;

(ii) The incremental indirect costs attributable to the private sector work; and

(iii) The non-incremental indirect costs to the extent that the revenue attributable to the private sector work exceeds the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(2) The agreement shall require that the sum of the costs specified in paragraphs (d)(1)(ii) and (d)(1)(iii) of this subsection not exceed the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(3) The Navy may agree to modify the amount calculated in accordance with paragraph (d)(1) of this subsection if it determines that a modification is appropriate to the particular situation. In so doing, the Navy may agree to the allocation of a smaller or larger portion of the amount calculated in accordance

with paragraph (d)(1) of this subsection, to private sector work.

(i) Any smaller amount shall not be less than the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(ii) Any larger amount shall not exceed the sum of the costs specified in paragraph (d)(1)(i) of this subsection and the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(iii) In determining whether such a modification is appropriate, the Navy will consider factors such as the impact of pre-existing firm-fixed-price Navy contracts on the amount of costs that would be reimbursed by the Navy, the impact of pre-existing private sector work on the cost benefit that would be received by the contractor, and the extent to which allocating a smaller or larger portion of costs to private sector work would provide a sufficient incentive for the contractor to obtain additional private sector work.

(e) *Procedure.* A contractor may submit a request for a shipbuilding capability preservation agreement, together with appropriate justification, through the Deputy Assistant Secretary of the Navy for Ships, to the Assistant Secretary of the Navy for Research, Development and Acquisition, who has approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

Dated: December 16, 1997.

Michael I. Quinn,

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

[FR Doc. 97-33221 Filed 12-19-97; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 121597C]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

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

ACTION: Closure; catch limit adjustment.

SUMMARY: NMFS closes the fishery for large medium and giant Atlantic bluefin

tuna (ABT) conducted by Angling category fishermen in the southern area (the waters off Delaware and states south). Closure of this fishery is necessary because the 4 metric tons (mt) of large medium and giant ABT allocated for this subcategory is projected to be attained by December 17, 1997. The intent of this action is to prevent overharvest of this subcategory. In addition, effective January 1, 1998, the daily catch limit for ABT is adjusted to one fish per vessel, which may be from the school, large school, or small medium size class. This action is being taken to lengthen the fishing season and ensure reasonable fishing opportunities in all geographic areas without risking overharvest of the Angling category.

DATES: The closure is effective 11:30 p.m., local time, December 17, 1997, through December 31, 1997. The daily catch limit adjustment is effective 12:30 a.m., local time, January 1, 1998, until the end of the 1998 winter fishery. NMFS will publish a subsequent document specifying a closure or any additional adjustment.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301-713-2347, or Pat Scida, 978-281-9208.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Closure

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a total annual quota of 4 mt of large medium and giant ABT (measuring greater than 73 inches (185 cm)) to be harvested in the southern area (south of 38°47' N. lat.) by vessels permitted in the Angling category or the Charter/Headboat category. NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota applicable to any period.

As of December 15, 1997, reported recreational fishery landings of large medium and giant ABT in the southern area totaled approximately 3.8 mt. Information on fishing effort and catch rates available to NMFS indicates that the remaining quota is likely to be taken by the closure date. Therefore, fishing for, retaining, possessing, or landing large medium or giant ABT in the southern area by vessels in the Angling category or Charter/Headboat category must cease at 11:30 p.m., local time,

December 17, 1997. This action is to prevent overharvest of the quota established for this subcategory. Recreational anglers may continue to fish for large medium and giant ABT under the NMFS tag and release program (50 CFR 285.27). The Angling category trophy fishery for large medium and giant ABT remains open in the northern area until further notice.

Catch Limit Adjustment

Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for adjustments to the daily catch limits in order to lengthen the fishing season and ensure reasonable fishing opportunities for all geographic areas. The Assistant Administrator for Fisheries, NOAA, may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

The 1997 Angling category fishery closed effective October 19, 1997 (62 FR 53247, October 14, 1997). The 1998 Angling category fishery for ABT measuring 27 inches and greater will open January 1, 1998. NMFS adjusts the daily catch limit, effective January 1, 1998 as follows: No more than one bluefin tuna may be retained each day per Angling category vessel, which may be from the school, large school, or small medium size class. Based on the high catch rates and large average size of ABT landed during the first few months of 1997, this action is being taken to lengthen the fishing season and ensure reasonable fishing opportunities in all geographic areas without risking overharvest.

Charter/Headboat vessels, when engaged in recreational fishing for school, large school, and small medium ABT, are subject to the same rules as Angling category vessels. The trophy fish catch limit of one-per-vessel-per-year will remain in effect for 1998.

Subsequent adjustments to the daily catch limit, if any, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at 301-713-1279 or 978-281-9305 for updates on quota monitoring and catch limit adjustments.

Classification

This action is taken under 50 CFR 285.20(b)(1) and 285.24(d)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: December 16, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 97-33300 Filed 12-17-97; 3:35 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970801188-7288-02; I.D. 070797C]

RIN 0648-AJ45

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Prohibited Species Catch Limit for *Chionoecetes opilio*

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations implementing Amendment 40 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) as recommended by the North Pacific Fishery Management Council (Council). The implementing regulations establish a prohibited species catch (PSC) limit for *Chionoecetes opilio*, a crab species, in a new *C. opilio* Bycatch Limitation Zone (COBLZ) of the Bering Sea. Upon attainment of a *C. opilio* bycatch allowance apportioned to a particular trawl fishery category, the COBLZ will be closed to directed fishing for species in that trawl fishery category. This measure is necessary to further protect the stocks of Bering Sea *C. opilio* by limiting the incidental take of this species thereby mitigating the potential adverse effects of trawl fishing activities on the *C. opilio* stock. This measure is intended to accomplish the objectives of the FMP with respect to the management of the Bering Sea and Aleutian Islands management area (BSAI) groundfish fishery.

DATES: Effective January 21, 1998.

ADDRESSES: Comments should be sent to Chief, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/

RIR/FRFA) prepared for the amendment may be obtained from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501-2252; telephone: 907-271-2809. **FOR FURTHER INFORMATION CONTACT:** Kim S. Rivera, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the BSAI in the exclusive economic zone are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is implemented by regulations for the fisheries off Alaska at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Anticipated recruitment of male *C. opilio* crab is at a relatively low level, based on recent NMFS bottom trawl survey data. The 1996 *C. opilio* season produced only 64.6 million lb (29,302 metric tons) for the 235 vessels participating. This is the lowest catch since 1984. Survey data from 1996 indicate that adult males are abundant, but females and pre-recruits (males that have not reached legal commercial size) are becoming less abundant. This was corroborated by the 1997 survey which showed a 78 percent increase in the large male (greater than 102 mm, legal size) population, 45 percent decrease in the pre-recruit (less than 102 mm) male population, and a 22 percent decrease in the small (less than 50 mm) female population. Although the increase in the large male population should lead to a stable abundance of large males, the lack of very small crabs may indicate declining abundance over a longer term.

The groundfish fisheries incidentally catch crab. An objective of the FMP is to minimize the impact of groundfish fisheries on crab and other prohibited species, while providing for rational and optimal use of the region's fishery resources. All gear types used to catch groundfish have some potential to incidentally catch crab, but the large majority of crab bycatch occurs in trawl fisheries for flatfish.

In view of this FMP objective, the Council initiated an assessment in January 1995 of potential measures to further limit crab bycatch in the groundfish fisheries. This Council initiative was also responsive to increasing concern about the potential impact of crab bycatch on declining stocks and future harvests in the commercial crab fisheries. Proposed alternatives included the establishment of bycatch limits for *C. opilio*.

In June 1996, the Council formed an industry work group to review proposed PSC limits for *C. opilio*. This work group consisted of three crab fishery representatives, three trawl fishery representatives, and one shoreside processing representative. The group met November 6-7, 1996, and came to a consensus on a PSC limit for *C. opilio*, based on the best available scientific information on the abundance and distribution of the specified crab species and its rate of bycatch in fisheries for certain species of groundfish. The affected industry groups proposed the following: (1) Establishment of a COBLZ, (2) an annual specification of a PSC limit for *C. opilio* in the COBLZ based on the total abundance of *C. opilio* as indicated by the most recent NMFS bottom trawl survey, and (3) establishment of upper and lower bounds within which the annual *C. opilio* PSC limit must be specified.

At its December 1996 meeting, the Council endorsed the industry work group agreement and adopted it as Amendment 40 to the FMP. The Council recommended that NMFS initiate a rulemaking to implement the amendment. A notice of availability of Amendment 40 was published in the **Federal Register** on July 15, 1997 (62 FR 37860), and invited comment on the amendment through September 15, 1997. One letter containing 3 comments was received during the comment period on the amendment. A proposed rule to implement Amendment 40 was published in the **Federal Register** on August 13, 1997 (62 FR 43307). Comments on the proposed rule were invited through September 29, 1997. No additional comments were received by the end of the comment period on the proposed rule. The comments supported approval of Amendment 40 and the proposed rule with various suggestions for modifications. Comments on the proposed rule are summarized and responded to in the Response to Comments section.

The proposed rule included measures for a *C. opilio* PSC limit in 1997. However, after publication of the proposed rule, it became apparent that the proposed 1997 *C. opilio* PSC limit would not be approached. Consequently, those proposed measures have been removed from this final rule. NMFS anticipates that the Council will specify a 1998 PSC limit (4,654,000 *C. opilio* crab) and the fishery apportionment thereof as part of the 1998 groundfish specification process. *C. opilio* bycatch accrued from January 1, 1998, until the effective date of the final rule would apply to all fisheries that take *C. opilio* in 1998.

NMFS clarifies an erroneous statement made in the preamble to the proposed rule (62 FR 43307 August 13, 1997) which indicated that upon attainment of a *C. opilio* bycatch allowance apportioned to a particular trawl fishery category, the COBLZ would be closed to directed fishing for species in that trawl fishery category, except for pollock with nonpelagic trawl gear, according to § 679.21(e)(7)(i). That statement is corrected to indicate that the COBLZ would be closed to directed fishing for species in that trawl fishery category, except for pollock with pelagic trawl gear. As indicated by the existing exception at § 679.21(e)(7)(i), the bycatch concern is for the nonpelagic trawl gear, not for the pelagic trawl gear. This erroneous statement was not repeated in the text of the proposed regulations published at 62 FR 43307. Therefore, no change from the proposed rule to the final rule is necessary.

NMFS has determined that this action is necessary for the conservation and management of the groundfish fishery of the BSAI and for the resource allocation issue between the groundfish and crab industries. NMFS approved Amendment 40 on October 15, 1997, under section 304(a) of the Magnuson-Stevens Act. Additional information on this action may be found in the preamble to the proposed rule (62 FR 43307) and in the EA/RIR/FRFA.

Response to Comments

Comment 1. NMFS should modify the stated rationale for Amendment 40 from one that focuses on a conservation problem to one that acknowledges the health of the *C. opilio* resource and the allocation issue between groundfish and crab industries. The trawl industry, in general, believes that the establishment of a *C. opilio* PSC limit is simply a distributive decision. The rationale for Amendment 40 should focus on the allocation aspect of the industry agreement and should plainly state that the groundfish and crab industries have agreed to limit the trawl industry's take of *C. opilio* in the COBLZ to 0.1133 percent of abundance as determined by the annual NMFS bottom trawl survey.

Response. NMFS acknowledges that Amendment 40 addresses an allocation issue between groundfish and crab industries. However, NMFS also recognizes that this measure provides protection to stocks of Bering Sea *C. opilio* by limiting the incidental take of this species, thereby mitigating the potentially adverse effects of trawl fishing activities on the *C. opilio* stock. Historically, bycatch management measures instituted for groundfish fisheries in the eastern Bering Sea have

focused on reducing the incidental capture and injury of species traditionally harvested by other fisheries. The total abundance estimates for *C. opilio*, as determined by the NMFS annual trawl survey, have declined steadily since 1993. Although certain segments of the population may have increased (large male segment by 78 percent in 1997), others have declined (pre-recruit male segment by 45 percent and small female segment by 22 percent in 1997). Therefore, a conservative management approach is warranted.

Comment 2. If NMFS chooses to retain the current emphasis on addressing a "conservation problem," NMFS should concentrate on the significant level of *C. opilio* discards in the directed *C. opilio* fishery. Between the years 1992 and 1994, according to Alaska Department of Fish and Game (ADF&G) data, an average of 59,267,279 *C. opilio* crab were discarded annually in the directed crab fishery. Assuming a mortality rate of only 20 percent (which is reasonable for a crab fishery that takes place in the winter months), the impact of approximately 12 million dead crab from the directed fishery is far greater than the impact of the *C. opilio* PSC limit of 0.1133 percent of abundance (4.6 million crab for 1998), even assuming the entire PSC limit is taken and all trawl-caught *C. opilio* are killed, which is improbable.

Response. NMFS is aware that *C. opilio* discards in the directed *C. opilio* fishery contribute to the overall crab bycatch issue. NMFS also agrees that all sources of mortality are of concern for a resource, such as *C. opilio*, that experiences a reduction in biomass. NMFS and ADF&G are engaged in research initiatives on crab handling mortality and bycatch reduction in the directed crab fisheries. Various crab bycatch proposals for FMP amendments and regulatory amendments were submitted by industry groups to the Council in 1997.

Comment 3. Due to the current NMFS catch monitoring programs it may be difficult initially to monitor the *C. opilio* PSC limit in the COBLZ. We accept this unfortunate situation for 1998 alone. Trawl industry support for the *C. opilio* bycatch restrictions was based on tracking the PSC limit against the area specified as the COBLZ. The accord between the industries was landmark and involved a great deal of analysis and negotiation on the part of industry. Implementation of Amendment 40 after 1998 should proceed without modification of the PSC limit or the COBLZ area.

Response. Implementation of Amendment 40 in 1998 will proceed without modification of the PSC limit or the area monitored, the COBLZ. The proposed regulations at § 679.21(e)(1)(iii) indicated that through December 31, 1997, the areas to account for *C. opilio* bycatch PSC limit would be accounted for from Federal reporting areas 513, 514, 521, 523, and 524 until changes to recordkeeping and reporting requirements could be made. Due to unanticipated delays in implementing Amendment 40, however, the *C. opilio* PSC limit and the COBLZ will not be effective until January 1, 1998. At that time, the *C. opilio* PSC limit will be monitored in the COBLZ. This will be possible pending changes to the 1998 recordkeeping and reporting requirements that will require fishermen and processors to indicate by citing logbooks and production reports respectively, when fishing occurs in the COBLZ.

Changes From the Proposed Rule

For reasons stated above, the regulatory provisions for 1997 implementation of the *C. opilio* PSC limit and the establishment of the COBLZ in 1997 have been deleted.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 40 is necessary for the conservation and management of the groundfish fishery of the BSAI and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Council prepared an FRFA as part of the RIR, which describes the impact this rule would have on small entities. Many trawl vessels and processors participating in the BSAI groundfish fishery could be affected by this action. Catcher vessels harvesting groundfish in the BSAI are considered small entities and would be affected by the new *C. opilio* PSC limits. In 1995, 122 trawl catcher vessels harvested BSAI groundfish. Based on the best available information, NMFS anticipates that this rule could result in a greater than 5-percent reduction in gross revenues for any one of these vessels. Therefore, this rule could have a significant economic impact on a substantial number of small entities.

A number of alternatives to the rule which would have lessened the economic impact on small entities were considered and rejected. The no action alternative, that is not establishing a PSC limit for *C. opilio*, was rejected

because it would not accomplish the Council's objective of limiting bycatch, especially if the BSAI allocations of flatfish are increased in the future. The alternative of establishing a fixed limit of *C. opilio* that, upon attainment, would close affected trawl fisheries in Zone 2 (Federal reporting areas 508, 509, 512, and 516) unless the optimum limit was specified prior to the fishing season, was rejected because if the optimum limit was not correctly specified in advance, certain trawl fisheries (e.g., yellowfin sole fishery) could be adversely impacted. Another alternative was to set a fixed limit for Zone 2 of *C. opilio* within a specific percentage of the NMFS bottom trawl index. This alternative was rejected because Zone 2 does not correspond to crab distribution as does the preferred COBLZ, which was proposed specifically for *C. opilio* bycatch management. Alternatives that addressed modifying reporting requirements for small entities or the use of performance rather than design standards for small entities were not considered. Such alternatives were not relevant to this action. Exemptions for small entities from this action would not be appropriate in that the objective of the action to further limit *C. opilio* bycatch in the BSAI groundfish fisheries would not be adequately addressed. No steps to minimize the potential significant economic impacts on small entities have been taken. No comments on the IRFA were received during the public comment period for the proposed rule. A copy of the EA/RIR/FR is available from the Council (see ADDRESSES).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 16, 1997.

Rolland A. Schmitt,
Assistant Administrator for Fisheries,
National Marine Fisheries Services.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definitions of “*C. Opilio* Bycatch Limitation Zone” and “U.S.-Russian Boundary” are added in alphabetical order to read as follows:

§ 679.2 Definitions

* * * * *

C. Opilio Bycatch Limitation Zone (COBLZ) (see § 679.21(e)(7)(iv)(B)).

U.S.-Russian Boundary means the seaward boundary of Russian waters as defined in Figure 1 of this part.

* * * * *

3. In § 679.21, paragraphs (e)(1)(iii) through (vi) are redesignated as paragraphs (e)(1)(iv) through (vii), respectively, a new paragraph (e)(1)(iii) is added, paragraphs (e)(3)(ii)(A) and (C) and (e)(6) are revised, paragraphs (e)(7)(iv) through (vii) are redesignated as paragraphs (e)(7)(v) through (viii), and a new paragraph (e)(7)(iv) is added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *
(1) * * *

(iii) *C. opilio*. The PSC limit of *C. opilio* caught by trawl vessels while engaged in directed fishing for groundfish in the COBLZ will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. opilio* as indicated by the NMFS annual bottom trawl survey using the following criteria:

(A) *PSC Limit*. The PSC limit will be 0.1133 percent of the total abundance, unless;

(B) *Minimum PSC Limit*. If 0.1133 percent multiplied by the total abundance is less than 4.5 million, then the minimum PSC limit will be 4.5 million animals; or

(C) *Maximum PSC Limit*. If 0.1133 percent multiplied by the total abundance is greater than 13 million, then the maximum PSC limit will be 13 million animals.

* * * * *

(3) * * *

(ii) *Red king crab, C. bairdi, C. opilio, and halibut*—(A) *General*. For vessels engaged in directed fishing for groundfish in the GOA or BSAI, the PSC limits for red king crab, *C. bairdi*, *C. opilio*, and halibut will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv)(B) through (F) of this section.

* * * * *

(C) *Incidental catch in midwater pollock fishery*. Any amount of red king crab, *C. bairdi*, *C. opilio*, or halibut that is incidentally taken in the midwater pollock fishery as defined in paragraph (e)(3)(iv)(A) of this section will be counted against the bycatch allowances specified for the pollock/Atka mackerel/

“other species” category defined in paragraph (e)(3)(iv)(F) of this section.

* * * * *

(6) *Notification*—(i) *General*. NMFS will publish annually in the **Federal Register** the annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required under this paragraph (e).

(ii) *Public comment*. Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period of 30 days from the date of publication in the **Federal Register**.

(7) * * *

(iv) *C. opilio, C. Opilio Bycatch Limitation Zone (COBLZ), closure*—(A) *C. opilio Bycatch Allowance*. Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the COBLZ bycatch allowance, or seasonal apportionment thereof, of *C. opilio* specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the **Federal Register** the closure of the COBLZ, as defined in paragraph (e)(7)(iv)(B) of this section, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(B) *C. Opilio Bycatch Limitation Zone*. The *C. Opilio* Bycatch Limitation Zone is an area defined as that portion of the Bering Sea Subarea north of 56°30' N. lat. that is west of a line connecting the following coordinates in the order listed:

- 56°30' N. lat., 165°00' W. long.
- 58°00' N. lat., 165°00' W. long.
- 59°30' N. lat., 170°00' W. long.
- and north along 170°00' W. long. to its intersection with the U.S.-Russian Boundary.

* * * * *

Proposed Rules

Federal Register

Vol. 62, No. 245

Monday, December 22, 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.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 1997-20]

Definition of "Member" of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing revisions to its rules governing who qualifies as a "member" of a membership association to reflect the decision of the United States Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States v. Federal Election Commission*. A membership association can solicit contributions from its members to a separate segregated fund established by the association, and can include express electoral advocacy in communications to its members. The proposed rules would describe a range of financial and organizational attachments that would be sufficient to confer this status.

DATES: Comments must be received on or before January 21, 1998. If the Commission receives sufficient requests to testify, it will hold a hearing in early 1998. The precise date and time of the hearing will be announced in the **Federal Register**. Persons wishing to testify should so indicate in their comments.

ADDRESSES: All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up. Electronic mail comments should be sent to members@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail

address and postal service address of the commenter will not be considered. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street N.W., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: Although the Federal Election Campaign Act of 1971 as amended ("FECA" or "Act"), 2 U.S.C. 431 *et seq.*, prohibits direct corporate contributions in connection with federal campaigns, 2 U.S.C. 441b(a), it permits corporations, including incorporated membership associations, to solicit contributions from their restricted class to a separate segregated fund ("SSF"). In the case of membership associations, the restricted class consists of the members of each association, their executive and administrative personnel, and their families. These contributions can be used for federal political purposes. The Act also allows membership associations to communicate with their members on any subject, including communications that include express electoral advocacy, 2 U.S.C. 441b(b)(2)(A), 441b(b)(4)(C). The Commission's implementing regulations defining who is a "member" of a membership association are found at 11 CFR 100.8(b)(4)(iv) and 11 CFR 114.1(e).

The Commission's original "member" rules, which had been adopted in 1977, were the subject of a 1982 United States Supreme Court decision, *FEC v. National Right to Work Committee* ("NRWC"), 459 U.S. 196 (1982). In 1993, following a series of advisory opinions in this area, the Commission revised the text of the rules to reflect that decision. 58 FR 45770 (Aug. 30, 1993), effective Nov. 10, 1993. 58 FR 59640. The revised rules were held to be unduly restrictive by the United States Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States* ("Chamber") v. *FEC*, 69 F.3d 600 (D.C. Cir. 1995), *amended on denial of rehearing*, 76 F.3d 1234 (D.C. Cir. 1996).

On February 24, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the National Right to Life Committee, Inc. The Petition urged the Commission to revise its member rules

to reflect the *Chamber* decision. The Commission published a Notice of Availability ("NOA") in the **Federal Register** on March 29, 1997. 62 FR 13355. The Commission received two comments in response to the NOA.

On July 31, 1997, the Commission published in the **Federal Register** an Advance Notice of Proposed Rulemaking ("ANPRM") addressing these rules. 62 FR 40982. Because the *Chamber* decision, the petition for rulemaking, and the comments received in response to the NOA provided few specific suggestions as to how the rules should be amended to comport with the decision, the Commission did not propose specific amendments to the rules. Rather, it sought general guidance on the factors to be considered in determining the existence of this relationship.

The Commission received 14 comments in response to the ANPRM. Commenters included the American Association of Meat Processors ("AAMP"); the American Dental Association ("ADA"); the American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME"); the American Society of Association Executives ("ASAE"); the Chicago Board of Trade; the Chicago Mercantile Exchange; the Connecticut Veterinary Medical Association; the Metropolitan Kansas City Board of Realtors; the National Association of Realtors; the National Citizens Legal Network; the National Right to Life Committee, Inc.; Michael A. Schoenfield; the United States Chamber of Commerce; and the Wholesaler-Distributor Political Action Committee ("WDPAC"). After reviewing these comments, the Commission is now seeking further comment on the specific amendments to the member rules described below.

Background

In its *NRWC* decision, the Supreme Court rejected an argument by a nonprofit, noncapital stock corporation, whose articles of incorporation stated that it had no members, that it should be able to treat as members individuals who had at one time responded, not necessarily financially, to an *NRWC* advertisement, mailing, or personal contact. The Supreme Court rejected this definition of "member," saying that to accept it "would virtually excise from

the statute the restriction of solicitation to 'members.''' *Id.* at 203. The Court determined that "members" of nonstock corporations should be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions. Viewing the question from this perspective meant that "some relatively enduring and independently significant financial or organizational attachment is required to be a 'member'" for these purposes. *Id.* at 204. The NRWC's asserted members did not qualify under this standard because they played no part in the operation or administration of the corporation, elected no corporate officials, attended no membership meetings, and exercised no control over the expenditure of their contributions. *Id.* at 206. The 1993 revisions to the Commission's rules were intended to incorporate this standard.

The current rules provide that either a significant financial attachment to the membership association (not merely the payment of dues) or the right to vote directly for all members of the association's highest governing body is sufficient in and of itself to confer membership rights. However, in most instances a combination of regularly-assessed dues and the right to vote directly or indirectly for at least one member of the association's highest governing body is required. The term "membership association" includes membership organizations, trade associations, cooperatives, corporations without capital stock, and local, national and international labor organizations that meet the requirements set forth in these rules.

The United States District Court for the District of Columbia held that the current rules were not arbitrary, capricious or manifestly contrary to the statutory language, and therefore deferred to what the court found to be a valid exercise of the Commission's regulatory authority. *Chamber of Commerce of the United States v. FEC*, Civil Action No. 94-2184 (D.D.C. Oct. 28, 1994)(1994 WL 615786). However, the D.C. Circuit Court of Appeals reversed this ruling.

The case was jointly brought by the Chamber of Commerce and the American Medical Association ("AMA"), two associations that do not provide their asserted "members" with the voting rights necessary to confer this status under the current rules. The circuit court held that the ties between these members and the Chamber and the AMA are nonetheless sufficient to comply with the Supreme Court's *NRWC* criteria, and therefore concluded that the Commission's rules are invalid

because they define the term "member" in an unduly restrictive fashion. 69 F.3d at 604.

The Chamber is a nonprofit corporation whose members include 3,000 state and local chambers of commerce, 1,250 trade and professional groups, and 215,000 "direct business members." The members pay annual dues ranging from \$65 to \$100,000 and may participate on any of 59 policy committees that determine the Chamber's position on various issues. However, the Chamber's Board of Directors is self-perpetuating (that is, Board members elect their successors); so no member entities have either direct or indirect voting rights for any members of the Board.

The AMA challenged the exclusion from the definition of member 44,500 "direct" members, those who do not belong to a state medical association. Direct members pay annual dues ranging from \$20 to \$420; receive various AMA publications; and participate in professional programs put on by the AMA. They are also bound by and subject to discipline under the AMA's Principles of Medical Ethics. However, since state medical associations elect members of the AMA's House of Delegates, that organization's highest governing body, direct members do not satisfy the voting criteria set forth in the current rules.

The *Chamber* court, in an Addendum to the original decision, noted that the Commission "still has a good deal of latitude in interpreting" the term "member." 76 F.3d at 1235. However, in its original decision, the court held the rules to be arbitrary and capricious as applied to the Chamber, since under the current rules even those paying \$100,000 in annual dues cannot qualify as members. As for the AMA, the rule excludes members who pay up to \$420 in annual dues and, among other organizational attachments, are subject to sanctions under the Principles of Medical Ethics. The court explained that this latter attachment "might be thought, [] for a professional, [to be] the most significant organizational attachment." 69 F.3d at 605 (emphasis in original).

The current rules provide a "safe harbor" for membership associations, since those who meet the requirements set forth in these rules clearly enjoy "member" status. Associations can also seek advisory opinions pursuant to 2 U.S.C. 437f to determine how the rules, as interpreted in the *Chamber of Commerce* decision, apply to their particular situations. In addition, the Commission believes it is appropriate to include in the text of the rules more

guidance consistent with the *Chamber* decision. The effect of the proposed rules should be to expand the class of persons considered as "members."

Proposed Revisions

General Considerations

One commenter argued that, since the *NRWC* decision involved an entity whose by-laws specifically stated that it had no members, the Supreme Court's reasoning in that decision applies only to similar entities. That commenter urged the Commission to reinstate its original definition of "member," which included "all persons who are currently satisfying the requirements for membership in a membership organization."

However, the Court's discussion makes clear that the *NRWC*'s failure to provide for members in its by-laws was not the main focus of its reasoning. It was not until *after* the Court noted that the *NRWC*'s asserted "members" had no governance rights or significant other attachments to the organization, *supra*, that it reiterated an earlier statement that the "NRWC's own articles of incorporation and other publicly filed documents explicitly disclaimed the existence of members." 459 U.S. at 558-59. The Commission believes that the lack of financial or organizational attachments, as well as the failure to provide for members in its bylaws, led to the Court's conclusion that the asserted members did not so qualify.

One commenter, noting that it is possible to buy a single share of stock over the telephone, and sell it later that same day, argued that the analogy to stock ownership did not necessarily imply a strong bond. However, ownership of even a single share of stock permits the owner to attend stockholder meetings and thereby participate in the governance of the corporation during whatever time period the stock is held.

Some commenters argued that the Commission should look to the laws of the individual states where membership associations are incorporated to determine who qualifies as their members. The *NRWC* Court assumed, "since there is no body of federal law of corporations, [] Congress intended at least some reference to the laws of the various states dealing with nonprofit corporations." *Id.* at 558 (citation omitted). However, that statement was in response to the argument that the Commission should have acted without reference to state law. The Court explained that, "[g]iven the wide variety of treatment of the subject of membership in state incorporation laws,

and the focus of the Commission's regulation on the corporation's own standards, we think it was entirely permissible for the Commission in this case to look to NRWC's corporate charter under the laws of Virginia and the bylaws adopted in accordance with that charter." *Id.* Far from requiring the Commission to take that action, the Court merely said this was a permissible option under the former "member" definition.

The Commission is now proposing to revise this definition, to provide greater guidance to the regulated community in light of the NRWC decision. While under that decision the Commission may choose to examine state law in connection with a particular situation, it does not believe this is an appropriate standard to include in the regulatory language.

Overview

The current rules set out three preliminary requirements that an entity must meet before it qualifies as a "membership association" for purposes of these rules: It must expressly provide for "members" in its articles and by-laws; it must expressly solicit members; and it must expressly acknowledge the acceptance of membership, such as by sending a membership card or including the member on a membership newsletter list. 11 CFR 100.8(b)(4)(iv)(A), 114.1(e)(1). These three requirements were not challenged in the litigation and the Commission is not proposing any changes to this language.

The current rules also recognize as members those who have a stronger financial interest in an association than paying dues (for example, the ownership of a stock exchange seat). 11 CFR 100.8(b)(4)(iv)(B)(1), 114.1(e)(2)(i). The Commission is not proposing that these rules be changed. However, it is proposing three alternatives (*Alternatives A, B, and C*) to the other requirements contained in the current rules.

Preliminary Requirements

The Chamber of Commerce and some of the commenters argued that the three general requirements should in and of themselves be sufficient to confer membership status. However, the Commission questions whether these attachments, standing alone, are sufficient to meet the "relatively enduring and independently significant financial or organizational attachment" standard articulated by the NRWC Court. While that Court did not discuss what it considered to be a significant financial attachment, these three

requirements contain *no* financial attachment. With reference to organizational attachments, the Court cited such attachments as the right to play some part in the operation or administration of the corporation; the right to elect corporate officers; and the right of members to exercise control over the expenditure of their contributions. 459 U.S. at 558. The three requirements fall far short of any such attachments. For this reason none of the alternatives would provide that these three requirements, standing alone, be sufficient to confer membership status.

Financial Attachments

All three alternatives would also retain the current rule recognizing as members persons who have a stronger financial interest in an association than the payment of annual dues, such as those owning seats on stock exchanges or boards of trade. 11 CFR 100.8(b)(4)(iv)(B)(1); 114.1(e)(2)(i). While in most instances such persons would qualify under the other proposed requirements, the Commission believes it is appropriate to retain this separate category.

On May 16, 1997, the Commission determined in Advisory Opinion ("AO") 1997-5 that, based on the facts presented, both owners and lessees of seats on the Chicago Mercantile Exchange could be considered "members" of the CME for purposes of these rules. The member-owners, by virtue of their ownership stake, qualify as members under 11 CFR 100.8(b)(4)(iv)(B)(1) and 114.1(e)(2)(i). In addition, the Commission found, member-lessees have sufficient rights and obligations to also qualify as members. These attachments include substantial financial obligations to the CME, the right to serve on policy-formulating committees, and the possibility of sanctions by the CME that would impact on their professional status. AO 1997-5 overruled AO 1988-39 and 1987-31 (in part), which had concluded that, because only one seat was involved, only one membership in the Exchange existed with respect to each leased membership.

The Commission sought comments in the ANPRM on whether to include the holding of AO 1997-5 in the regulatory text. While both the Chicago Board of Trade and the Chicago Mercantile Exchange urged the Commission to do this, the Commission has determined that this is unnecessary, since the proposed rules would so clearly cover both owned and leased memberships. Further, AO 1997-5 remains in effect, should the regulated community require additional guidance on this point.

Therefore, the Commission has not included language to this effect in the text of the proposed rules.

Dues

The ANPRM suggested that a certain level of annual dues might be considered in and of itself sufficient to establish membership. Those who paid this amount would be considered members regardless of whether they had any organizational attachments to the association. The ANPRM suggested that any amount of annual dues set by an association might be a sufficient financial attachment, regardless of amount; or, alternatively, that \$200 per year might be an appropriate cut-off point, since \$200 is the amount that Congress has decided is such a significant attachment to a political committee that itemized disclosure is required for contributions to a political committee.

Some commenters supported the proposal that any amount of dues set by an association would be sufficient to confer membership; while others suggested that a nominal amount, such as \$5 per year, should be sufficient. No commenter who addressed this part of the ANPRM agreed with the proposed \$200 per year figure.

The Chamber of Commerce stated that a \$200 cut-off would exclude approximately 58% of its members, who pay annual dues ranging from \$65 through tens of thousands of dollars. ASAE pointed out that an association may charge an initial rate for the first person who joins from an organization, and a reduced rate for subsequent joiners. AAMP noted that membership associations sometimes offer a reduced rate for the first year of membership, in hopes of attracting members who will continue their membership notwithstanding the higher dues for subsequent years.

The three alternatives take different approaches to this question. *Alternative A* would set this level at \$50 per year; *Alternative B* would retain the \$200 level proposed in the ANPRM for those entities not formed to further business or economic interests; while under *Alternative C* any amount of annual dues set by the association would be sufficient.

Alternative A, which proposes that \$50 in annual dues be sufficient to confer membership status, if no organizational attachments exist other than the three preliminary requirements, reflects the Supreme Court's language in the NRWC decision making it clear that more than a token commitment is required to qualify as a significant financial attachment. The

Commission notes that it is also likely that many persons with lesser dues obligations would qualify as members through the organizational attachments discussed below.

Alternative B would distinguish between the types of organizations addressed by the Chamber of Commerce decision and ideological, social welfare, and political organizations. The first category would include organizations formed to further business or economic interests or to implement a system of self-discipline or self-regulation within a line of commerce, such as business leagues, trade associations, labor organizations, and self-regulating professional associations. These types of organizations clearly provide, as enunciated by the Supreme Court in the *NRWC* case, "some relatively enduring and independently significant financial or organizational attachment." 459 U.S. at 204. Persons paying regular dues of any amount could be treated as members of these organizations without doing violence to the intent of the statute. Such persons join to foster their business or economic interests and, thus, create an attachment that is independent of any political attachment. This is in contrast to persons who join ideological, social welfare, or political organizations. In the latter case, there is a far greater risk that "dues" are nothing more than political support indistinguishable from such support from the general public. In other words, there is a far greater risk that the Commission would "open the door to all but unlimited corporate solicitation and thereby render meaningless the statutory limitation to members." *NRWC*, 459 U.S. at 204.

For organizations that do not fall in the categories of "business leagues, trade associations, labor organizations, or self-regulating professional associations," this alternative would provide that a dues payment obligation by itself would suffice as an indication of "relatively enduring and independently significant financial or organizational attachment" if it exceeds \$200 per year. This is the amount Congress chose as the associational level of significance for donor disclosure. Also, although this "\$200 dues alone" provision for organizations other than business leagues, trade associations, labor organizations, and self-regulating professional associations would be more restrictive than *Alternative A*, it still would be more forgiving than the current rule whereunder there is no allowance for "member" status based solely on a dues obligation.

Alternative C would provide that an organization that qualified as a

membership association could consider as "members" all persons who paid the amount of annual dues set by the association, regardless of amount. This alternative would not distinguish between economic and ideological associations, reasoning that, for example, an emotional commitment to an organization such as Mothers Against Drunk Driving ("MADD") is as significant to their members as the economic attachments discussed with regard to *Alternative B, supra*. Also, a number of organizations that clearly qualify as membership associations, including the American Association of Retired Persons ("AARP"), have annual dues of less than \$50 and provide none of the organizational attachments discussed below.

Organizational Attachments

The ANPRM proposed that, for a lesser dues obligation than that which would automatically confer membership, the rules might specify other factors the Commission would consider *per se* sufficient to provide the required organizational attachment, provided that some level of dues was also required. Suggested factors included such attachments as the voting rights contained in the current rule; the right to serve on policy-making boards and/or vote on policy issues; eligibility to be elected to governing positions in the organization; and whether the member could be subject to disciplinary action by the association. The right to vote directly for all members of the highest governing body, contained in current 11 CFR 100.8(b)(4)(A)(3) and 114(e)(1)(iii), was not included in this listing because the other proposed attachments would cover this situation. No commenter suggested additional attachments for inclusion in this list.

Alternative A proposes that, consistent with the *NRWC* decision, certain organizational attachments be considered *per se* sufficient for membership, even where the association charges no dues. Of the above listing, this alternative would provide that the right to vote on policy matters, taken alone, does not provide the significant attachment envisioned by the *NRWC* Court. However, each of the other organizational attachments would be sufficient to confer membership status even where no dues are required. As noted, under this alternative, payment of less than \$50 per year in predetermined annual dues, coupled with a lesser organizational attachment, such as the right to vote on policy issues of interest to the membership association, also would be sufficient to confer membership status.

Under *Alternative B*, persons affiliated with ideological, social welfare, or political organizations who paid less than \$200 per year in annual dues would be considered members for purposes of these rules if they had some right to participate in the governance of the organization. Such rights would include a right to vote for at least one individual on the highest governing body or for the officers of the organization; a right to vote on policy questions where the highest governing body is obligated to abide by the results (a binding referendum, for example, rather than a mere informational survey) or to approve or disapprove the results (a resolution that must be acted upon, for example); a right to join (not just the opportunity to be selected for) a committee, board, or section within the organization that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or (if the opportunity to be selected for such a committee, board, or section is involved) the right to participate on such committee, board or section because of being selected. To round out the rules, this alternative would provide that even without any dues obligation, persons could be considered "members" if they have the right to vote for at least a majority of the individuals on the highest governing body.

These "dues plus governance rights" provisions, although not as loose as *Alternative A*, would be more forgiving than the current rule because several options other than voting for at least one member of the highest governing body would suffice. The "vote for a majority alone" rule would be more forgiving than the current rule because voting for all persons on the highest governing body would not be required.

The standards proposed in *Alternative B* would permit virtually all the organizations represented by the commenters to treat those they consider members as "members" under federal election law. At the same time, they would screen out ideological/social welfare/political organizations that are not willing to provide for a dues requirement and minimal governance rights. These organizations must be held to a standard that clearly demonstrates that members have a "relatively enduring and independently significant financial or organizational attachment."

Alternative C does not address the situation where persons pay no dues but have significant organizational attachments to an association.

Case by Case Determinations

The current rules at 11 CFR 100.8(b)(4)(iv)(C) and 114.1(e)(3) provide that persons who do not meet the precise membership requirements set out elsewhere in the rules may nevertheless be considered members on a case by case basis. The examples given include student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation. However, the current rules require that such persons may qualify as members only if they retain voting rights in the association. Consistent with the *Chamber* decision, the Commission is proposing that this voting requirement be dropped. The language would also be modified to refer to an organizational or financial attachment, rather than an organizational and financial attachment. This approach is included only in *Alternatives A and B*, as it would not be needed if *Alternative C* were adopted.

Multi-tiered Associations

The current rules at 11 CFR 100.8(b)(4)(iv)(B) and 114.1(e)(2) that require both a financial and an organizational attachment for members of most membership associations clearly include two-tiered associations, such as those in which members vote for delegates to a convention, and those delegates elect those who serve on the association's highest governing body. At the time of the 1993 amendment, the Commission explained that multi-tiered associations could solicit across all tiers, as long as the various tiers met the same criteria that govern solicitations by two-tiered associations. *Explanation and Justification for Regulations on the Definition of "Member" of a Membership Association*, 58 FR 45770 (1993). In addition, the Commission authorized farm cooperatives as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141j) and those entities eligible for assistance under the Rural Electrical Act of 1936 as amended (7 U.S.C. 901-950aa-1) to solicit across all tiers even though the precise attachments set forth at 11 CFR 100.8(b)(4)(iv)(B) and 114.1(e)(2) might not always be present. 11 CFR 114.7(k)(1). Federations of trade associations had earlier been given this same right, 11 CFR 114.8(g), as had labor organizations, 11 CFR 114.1(e)(4). The *Chamber of Commerce* court, in discussing the AMA's organizational attachments, cited these exceptions as another basis for its ruling that the AMA should be able to cross-solicit across

multiple tiers even where no voting rights were present. 69 F.3d at 606.

If the Commission expands the membership definition, many multi-tiered associations that do not presently qualify for cross-tier solicitation would likely be able to do so. In addition, all three alternatives would provide that direct membership in any level of a multi-tiered association be construed as membership in all tiers of the association for purposes of these rules. ASAE, in recommending this approach, noted that a person who joins one tier of a multi-tiered association clearly demonstrates an intention to associate with the entire organization. This approach would also make enforcement easier and prevent what could otherwise be a large number of requests for advisory opinions from multi-tiered associations.

The Commission is therefore proposing that new general language for this purpose replace that currently found at 11 CFR 100.8(b)(4)(iv)(D) and 114.1(e)(4). Current 11 CFR 114.7(k) and 114.8(g) would be repealed. However, *Alternative B* would in addition retain the Commission's long-standing regulations regarding federations of labor organizations. See 11 CFR 100.8(b)(4)(iv)(D) and 114.1(e)(4). Those rules relate to a situation where the federation is not affiliated with the member organizations (i.e., according to explicit legislative history, the PACs of the federation do not have to share contribution limits with the PACs of the member unions, just as the PACs of a business league or trade association do not have to share limits with the PACs of member corporations, yet the federation is allowed to solicit the members of the member organizations). See, e.g., H.R. Rep. 917, 94th Cong., 2d Sess. 8 (1976); *FEC v. Sailors' Union of the Pacific Political Fund*, 624 F.Supp. 492, 495 (N.D. Cal. 1986), *aff'd* 828 F.2d 502 (9th Cir. 1987). This rule for labor federations is needed to preserve a balance with trade associations which are given explicit allowances to solicit persons associated with member corporations.

AO 1991-24 addressed the efforts of the Credit Union National Association, Inc. ("CUNA") and the Wisconsin Credit Union League to make partisan communications across multiple tiers of the organization. While the Commission approved the proposed procedures, these draft rules would increase the options available to these and comparably-situated multi-tiered organizations. In AO 1993-24, the Commission determined that certain persons were not members of the National Rifle Association for purposes

of the current rules because they did not have the required voting rights. The draft rules, if approved, would supersede that portion of the AO that requires voting rights to establish membership.

The Commission also welcomes comments on any related topic.

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

These proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the rules would broaden the current definition of who qualifies as a member of a membership association, thus expanding the opportunity for such associations to send electoral advocacy communications and solicit contributions to their separate segregated funds, but do not require any expenditure of funds. Therefore, no significant impact would result for purposes of this requirement.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, it is proposed to amend Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100.8 would be amended by revising paragraph (b)(4)(iv) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9))

* * * * *

(b) * * *

(4) * * *

(iv) (A) For purposes of paragraph (b)(4) of this section *membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

- (1) Expressly provides for "members" in its articles and by-laws;
- (2) Expressly solicits members; and
- (3) Expressly acknowledges the acceptance of membership, such as by

sending a membership card or inclusion on a membership newsletter list.

(B) For purposes of paragraph (b)(4) of this section, the term *members* includes all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(1) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but not merely the payment of dues);

Alternative A for paragraphs (b)(4)(iv)(B)(2)–(4).

(2) Are required to pay on a regular basis a specific amount of dues of at least \$50 per year that are predetermined by the association;

(3) Have a significant organizational attachment to the membership association. Such attachments include the right to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; the right to serve on policy-making boards of the membership association; eligibility to be elected to governing positions in the membership association; and the possibility of disciplinary action against the member by the membership association; or

(4) Are required to pay on a regular basis a specific amount of dues of less than \$50 per year that are predetermined by the association and who have a lesser organizational attachment to the membership association than those set forth in paragraph (b)(iv)(B)(3) of this section, such as the right to vote on policy issues of interest to the association.

Alternative B for paragraphs (b)(4)(iv)(B)(2)–(4).

(2) Are required to pay on a regular basis a specific amount of dues of at least \$200 per year that are predetermined by the membership association;

(3) Are required to pay on a regular basis a specific amount of dues less than \$200 per year that are predetermined by the membership association and either the association is a business league, trade association, labor organization, or self-regulating professional association or such persons also have:

(a) A right to vote for at least one individual on the highest governing body of, or for the officers of, the membership association;

(b) A right to vote on policy questions where the highest governing body of the membership association is obligated to abide by the results (a binding referendum, for example, rather than a mere informational survey) or to approve or disapprove the results (a resolution that must be acted upon, for example);

(c) A right to join (not just the opportunity to be selected for) a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(d) A right to participate by virtue of being selected to serve on a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(4) Have the right to vote for at least a majority of the individuals on the highest governing body.

Alternative C for paragraph (b)(4)(iv)(B)(2).

(2) Are required to pay on a regular basis a specific amount of annual dues that are predetermined by the association.

Alternatives A and B for paragraph (b)(4)(iv)(C).

(C) Notwithstanding the requirements of paragraph (b)(4)(iv)(B) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have a significant organizational or financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members.

Alternatives A, B and C for paragraph (b)(4)(iv)(D).

(D) In the case of a membership association which has a national federation structure or has several levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (b)(4)(iv)(B)(1), (2), (3) or (4) of this section shall also qualify as a member of all affiliates for purposes of paragraph (b)(4)(iv) of this section. The factors set forth at 11 CFR 100.5(g)(4) shall be used

to determine whether entities are affiliated for purposes of this paragraph.

* * * * *

Alternative B for paragraph (b)(4)(iv)(E).

(E) Notwithstanding the requirements of paragraphs (b)(4)(iv)(B)(1) through (4) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

* * * * *

PART 114—CORPORATE AND LABOR UNION ACTIVITY

3. The authority citation for Part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

4. Section 114.1 would be amended by revising paragraph 114.7(e) to read as follows:

§ 114.1 Definitions.

* * * * *

(e) (1) *Membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(i) Expressly provides for “members” in its articles and by-laws;

(ii) Expressly solicits members; and

(iii) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(2) The term *members* includes all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(i) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but not merely the payment of dues);

Alternative A for paragraphs (e)(2)(ii)–(iv).

(ii) Are required to pay on a regular basis a specific amount of dues of at least \$50 per year that are predetermined by the association;

(iii) Have a significant organizational attachment to the membership association. Such attachments include the right to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those

who select at least one member of those on the highest governing body of the membership association; the right to serve on policy-making boards or vote on policy issues of interest to the membership association; eligibility to be elected to governing positions in the membership association; and the possibility of disciplinary action against the member by the membership association; or

(iv) Are required to pay on a regular basis a specific amount of dues of less than \$50 per year that are predetermined by the association and who have a lesser organizational attachment to the membership association than those set forth in paragraph (e)(2)(iii) of this section, such as the right to vote on policy issues of interest to the association.

Alternative B for paragraphs (e)(2)(ii)-(iv).

(ii) Are required to pay on a regular basis a specific amount of dues of at least \$200 per year that are predetermined by the membership association;

(iii) Are required to pay on a regular basis a specific amount of dues less than \$200 per year that are predetermined by the membership association and either the association is a business league, trade association, labor organization, or self-regulating professional association or such persons also have:

(A) A right to vote for at least one individual on the highest governing body of, or for the officers of, the membership association;

(B) A right to vote on policy questions where the highest governing body of the membership association is obligated to abide by the results (a binding referendum, for example, rather than a mere informational survey) or to approve or disapprove the results (a resolution that must be acted upon, for example);

(C) A right to join (not just the opportunity to be selected for) a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(D) A right to participate by virtue of being selected to serve on a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(iv) Have the right to vote for at least a majority of the members on the highest governing body.

Alternatives A and B for paragraph (e)(3).

(3) Notwithstanding the requirements of paragraph (e)(2) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have a significant organizational or financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members.

Alternatives A, B and C for paragraph (e)(4).

(4) In the case of a membership association which has a national federation structure or has several affiliated levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (e)(2)(i), (ii), (iii) or (iv) of this section shall qualify as a member of all affiliates for purposes of paragraph (e)(1) of this section. The factors set forth at 11 CFR 100.5(g)(4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

* * * * *

Alternative B for paragraph (e)(5).

(5) Notwithstanding the requirements of paragraphs (e)(2)(i) through (iv) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national or international union is affiliated.

* * * * *

§ 114.7 [Amended]

5. In Section 114.7, paragraph (k) would be removed.

§ 114.8 [Amended]

6. In section 114.8, paragraph (g) would be removed and reserved.

Dated: December 17, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97-33305 Filed 12-19-97; 8:45 am]

BILLING CODE 6715-01-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-AGL-61]

Proposed Modification of Class D Airspace; Minot AFB, ND; and Class E Airspace; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class D airspace at Minot Air Force Base (AFB), ND, and Class E airspace at Minot, ND. A review of the Instrument Landing System (ILS) 1 or Tactical Air Navigation (TACAN) Runway 29 Standard Instrument Approach Procedure (SIAP), the Instrument Landing System/Distance Measuring Equipment (ILS/DME) 2 Runway 29 SIAP, the ILS/DME Runway 11 SIAP, and the TACAN Runway 11 SIAP for Minot AFB necessitates these modifications. Controlled airspace extending upward from the surface, controlled airspace extending upward from 700 feet above ground level (AGL), and controlled airspace extending upward from 1,200 feet AGL is needed to contain aircraft executing these approaches. This proposal would increase the radius and remove the extensions to the Class D airspace for Minot AFB, ND, and would increase the radius and add a northwest extension to that portion of the Minot, ND, Class E airspace associated with Minot AFB, ND.

DATES: Comments must be received on or before January 26, 1998.

ADDRESSES: Comments: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 97-AGL-61, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Docket: The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

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 those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97-AGL-61." 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 Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. 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 procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace at Minot AFB, ND, and Class E airspace at Minot, ND. A recent joint FAA/Air Force review of the

controlled airspace for Minot AFB revealed a need to reinstate controlled airspace inadvertently dropped during the 1993 United States airspace reclassification. This action was completed by Final Rule on November 5, 1997 (97-AGL-59, 62 FR 59783). Further review of the current instrument approach procedures for Minot AFB, including the ILS 1 or TACAN Runway 29 SIAP, the ILS/DME 2 Runway 29 SIAP, the ILS/DME Runway 11 SIAP, and the TACAN Runway 11 SIAP, has indicated a need to modify the existing controlled airspace by increasing the radius and removing the extensions to the Class D airspace for Minot AFB, ND, and increasing the radius and adding a northwest extension to that portion of the Minot, ND, Class E airspace associated with Minot AFB, ND. Controlled airspace extending upward from the surface, controlled airspace extending upward from 700 feet AGL, and controlled airspace extending upward from 1,200 feet AGL is needed to contain aircraft executing these approaches. The areas would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AGL ND D Minot AFB, ND [Revised]

Minot AFB, ND
(Lat. 48°25'56"N, long. 101°21'29"W)

That airspace extending upward from the surface to and including 4,200 feet MSL and within a 5.3-mile radius of Minot AFB. This Class D airspace is 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.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL ND E5 Minot, ND [Revised]

Minot, AFB, ND
(Lat. 48°25'56"N, long. 101°21'29"W)
Deering TACAN
(Lat. 48°24'55"N, long. 101°21'58"W)
Minot International Airport, ND
(Lat. 48°15'34"N, long. 101°16'52"W)
Minot VORTAC
(Lat. 48°15'37"N, long. 101°17'14"W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Minot AFB and within 1.5 miles each side of the Deering TACAN 292° radial extending from the 7.1-mile radius to 9.3 miles northwest of the airport and that airspace within a 7.0-mile radius of Minot International Airport and within 4.8 miles each side of the Minot VORTAC 138° radial extending from the 7.0-mile radius to 12.1 miles southeast of the VORTAC and that airspace extending upward from 1,200 feet above the surface within a 47-mile radius of Minot AFB, excluding the area north of latitude 49°00'00"N.

* * * * *

Issued in Des Plaines, Illinois on November 26, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97-33282 Filed 12-19-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-AGL-50]

Proposed Establishment of Class E Airspace; Cooperstown, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Cooperstown, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 13 and a GPS SIAP to Runway 31 have been developed for Cooperstown Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) and controlled airspace extending upward from 1,200 feet AGL is needed to contain aircraft executing the approaches. This proposal would create controlled airspace both at Cooperstown Municipal Airport and include previously uncontrolled airspace nearby the airport.

DATES: Comments must be received on or before January 23, 1998.

ADDRESSES: *Comments:* Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 97-AGL-50, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Docket: The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

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 those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97-AGL-50." 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 Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. 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 procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Cooperstown, ND, to accommodate aircraft executing the GPS Runway 13

and GPS Runway 31 SIAPs at Cooperstown Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL within a 6.3-mile radius of Cooperstown Municipal Airport, and controlled airspace extending upward from 1,200 feet AGL in three previously uncontrolled Class G airspace areas is needed to contain aircraft executing the instrument flight rules arrival routing from the northwest and southeast and the proposed approaches. This proposal would create Class E airspace at Cooperstown Municipal Airport and in three Class G airspace areas: the entire existing Class G airspace area above Cooperstown, ND; the entire existing Class G airspace area approximately halfway between Cooperstown, ND, and Devils Lake, ND, and which overlies Johnson Lake National Wildlife Refuge, ND; and that portion of the existing Class G airspace area between Cooperstown, ND, and Valley City, ND, which lies west of longitude 97°49'30"W. The areas would be depicted on appropriate aeronautical charts. Class E airspace designations extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL ND E5 Cooperstown, ND [New]

Cooperstown Municipal Airport, ND
(Lat. 47°25'22"N, long. 98°06'21"W)

Devils Lake VORTAC
(Lat. 48°06'48"N, long. 98°54'29"W)

Grand Forks Air Force Base, ND
(Lat. 47°57'40"N, long. 97°24'04"W)

Valley City Barnes County Municipal Airport, ND

(Lat. 46°56'28"N, long. 98°01'03"W)

Jamestown VOR/DME
(Lat. 46°55'58"N, long. 98°40'44"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Cooperstown Municipal Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded on the east by longitude 97°49'30"W, on the south by the 7.9-mile radius of the Valley City Barnes County Municipal Airport and by V2–520, on the southwest by the 16.5-mile radius of the Jamestown VOR/DME and on the west by V561; that airspace bounded on the northwest by the 34-mile arc of the Grand Forks Air Force Base, on the east by V561, on the southwest by the 16.5-mile radius of the Jamestown VOR/DME and V170, and on the west by V55; and that airspace bounded on the north by V430, on the east by the 34-mile arc of the Grand Forks Air Force Base, on the south by V55, on the west by V170, and on the northwest by the 22-mile radius of the Devils Lake VORTAC.

* * * * *

Issued in Des Plaines, Illinois on November 24, 1997.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 97–33283 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 55

[AMS–FRL–5938–7]

RIN 2060–AH62

IM Program Requirement—On-Board Diagnostic Checks; Amendment to the Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to change a provision of the federal vehicle inspection and maintenance (I/M) rules relating to the implementation deadline by which states are required to begin On-Board Diagnostic (OBD) checks as a routine part of basic and enhanced I/M programs. The current rule requires Ozone Transport Region (OTR) areas with low enhanced programs to implement OBD checks by January 1, 1999, and all other areas to implement OBD checks by January 1, 1998. This notice proposes to delay for a period of up to three years the required implementation deadline for OBD in those areas. This proposed amendment will set a new implementation date for OBD checks as January 1, 2001 for all areas with basic and enhanced I/M programs. During this time extension the Agency will generate, collect and analyze the data necessary to accord OBD checks the appropriate level of emission reduction credits.

Additionally, certain clarifying amendments are being proposed to allow for updates to the Code of Federal Regulations which are cross-referenced in the OBD rule.

DATES: Written comments on this proposal must be received no later than January 6, 1998.

ADDRESSES: Materials relevant to this proposed rulemaking are contained in the Public Docket No. A–94–21. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 5:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material. The preamble, regulatory language and regulatory support document are also available electronically from the EPA internet Web site. This service is free of charge, except for any cost one may already incur for internet connectivity. The official **Federal Register** version is made available on the day of publication on the primary Web site listed below. The

EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below.

<http://www.epa.gov/EPA-AIR/> (either select desired date or use Search feature)

<http://www.epa.gov/OMSWWW/> (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, minor changes in format, pagination, etc. may occur.

FOR FURTHER INFORMATION CONTACT: Leila Cook, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 741–7820.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by the minor amendment to the I/M rule are those which adopt, approve, or fund I/M programs. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Local air quality agencies.
State government	State air quality agencies responsible for I/M programs.
Federal government ..	DOT.

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 of which EPA is now aware that could potentially be regulated by this proposed I/M amendment. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria of 40 CFR 51.350 of the I/M rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Summary of Rule

Under the Clean Air Act as amended in 1990 (the Act), 42 U.S.C. 7401 et. seq., the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** on November 5, 1992 (40 CFR part 51, subpart S) rules relating to motor vehicle inspection and maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR

52950). Subsequent to that rule, the EPA published in the **Federal Register** on August 6, 1996, (40 CFR parts 51 and 85) rules relating to the implementation of On-board Diagnostic (OBD) checks as a routine part of I/M programs (hereafter referred to as the I/M OBD rule; see 61 FR 40940).

The statutory requirement for OBD checks as an I/M program requirement is found in sections 182(c)(3)(C)(vii) and 202(m)(3) of the Act. Section 182(c)(3)(C)(vii) requires the inspection of emission control diagnostic systems. In the I/M OBD rule, EPA interpreted the statutory requirement to include OBD checks in addition to otherwise required emission testing, and thus promulgated a rule which required both tests as part of the regular I/M test procedure. Per the I/M OBD rule, until January 1, 2000, both OBD and evaporative system tests, where applicable, were to be required on each subject vehicle of model year 1996 and newer. During this period vehicles which fail the OBD check would not automatically fail the I/M test. Only after January 1, 2000, would failure of the OBD test require mandatory repair and retest. The two-year period from when OBD checks were to be started, until they could generate I/M failures, was to be a period during which the Agency would evaluate the relative effectiveness of OBD.

The Agency believes that sufficient data must be generated on which to base an appropriate level of emission reduction credits for OBD. It would be premature at this time, therefore, to require the states to perform OBD checks in addition to the regular exhaust and evaporative testing and attendant costs. EPA now believes that the data needed must be generated by a separate study that compares OBD's emission reduction potential to the Federal Test Procedure, the same procedure used to certify all new automobiles today. The Agency is currently conducting such a study which began October 1, 1997. Two years are needed to ensure ample time for fleet penetration of OBD-equipped vehicles, so that enough vehicles can be recruited for the study. The third year will be needed to allow sufficient time to analyze the data generated by the study and to develop and assign appropriate credits.

Today, EPA is proposing to amend 40 CFR section 51.373 to delay to January 1, 2001 the implementation deadline for OBD checks in OTR low enhanced areas and in all other areas. While these dates were different in the I/M OBD rule, i.e., January 1, 1999 and January 1, 1998, respectively, today's rule delays both to

the same deadline of January 1, 2001. This amounts to a two-year delay for those OTR low enhanced areas and a three year delay for all other areas.

Additionally, EPA is proposing to reserve 40 CFR 85.2207 (a) and (e) which address failure of the OBD test as a basis for failure of the I/M test. EPA proposes to reserve these subsections pending resolution of the appropriate level of emission reduction credits for OBD.

Additionally, certain clarifying amendments are being proposed to allow for updates to the Code of Federal Regulations which are cross-referenced in the OBD rule. Part 86 of the CFR, which includes the technical specifications for OBD systems, is periodically updated to include new requirements for these systems. The current rule requires compliance with certain I/M program requirements pursuant to section 86.094-17. As this section has now been amended to include new subsections which also apply to OBD systems, this action proposes to amend the sections of the OBD rule where that subsection is referenced to obviate the need for future amendments in this regard. Where section 86.094-17 was referenced before, this action proposes to amend such language to refer simply to certain vehicles with "certified OBD systems".

The requirement shall remain that states revise their I/M SIPs by August 6, 1998, to implement OBD. This is due to the Act's requirement in section 202(m)(3) that states revise their SIPs within two years after promulgation of the regulations to provide for OBD inspections. As the I/M OBD rule was promulgated on August 6, 1996, states must adopt rules, by two years from that date, which require OBD checks. Only the date for the start of testing is proposed for delay here.

Also unchanged, are the sections that allow for states to implement OBD inspections before December 31, 1999, and to allow failure of OBD to result in failure of the I/M test, thereby requiring repair. Both efforts shall remain optional to the states. States which choose to add OBD checks to their regular tailpipe and evaporative tests should be able to do so without regulatory hindrance. Those states should benefit from increased consumer acceptance of the technology and the resolution of implementation problems commonly associated with the startup of a new testing technology. However, states which choose to conduct OBD checks, on vehicles so equipped, before the proposed new deadline, cannot earn emission reduction credits for doing so unless they also perform the exhaust

and (where applicable) evaporative tests. Only after the Agency has accorded OBD a defined level of emissions reduction credit can states potentially drop the exhaust and evaporative tests and still earn emission reduction credits for performing OBD checks on those vehicles. Should EPA and states complete testing and review of OBD systems sooner than expected, the Agency may be able to make credits available to states who choose to implement OBD I/M checks prior to the proposed deadline.

These proposed amendments are consistent with the relevant requirements of the Clean Air Act. These changes will not result in any change in health and environmental benefits. The only Act-required deadline with regards to OBD testing is that described above, such that states must revise their SIPs by the date certain and that requirement has been retained in this amendment. The Act does not include a specific deadline for implementation of OBD testing. EPA believes it is reasonable to extend that deadline for the reasons stated above.

EPA here solicits comments on this proposal. Anyone wishing to comment on the proposal should do so at this time. Because the current deadline for implementation of OBD is January 1, 1998, and because time is needed to accept and respond to comment, time is of the essence in the promulgation of this rule. For the reasons stated above it will be necessary to limit the comment period for this proposal to fifteen days. A thirty day comment period would not allow the Agency to promulgate a final rulemaking action until after the January 1, 1998 deadline. The agency will make every effort to ensure that this proposed rule is distributed by every available mechanism so that concerned stakeholders will have ample time to comment.

Administrative Requirements

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. A small government jurisdiction is defined as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. This certification is based on the fact that the I/M areas impacted by this rulemaking

do not meet the definition of a small government jurisdiction, that is, governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. The I/M rule applies only to urbanized areas with populations in excess of 100,000 or 200,000 depending upon location.

Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the requirements in this action would impose any mandate at all as defined in Section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this rule is not estimated to impose costs in excess of \$100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts.

Paperwork Reduction Act

This regulatory action does not contain any information collection requirements requiring approval by the office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12866

It has been determined that this proposed amendment to the I/M OBD rule is not a significant regulatory action under the terms of Executive Order 12866 and has been waived from Office of Management and Budget (OMB) review.

List of Subjects

40 CFR Part 85

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 85

Confidential business information, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: December 16, 1997.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, parts 51 and 85 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. Section 51.351 is amended by revising paragraph (c) to read as follows:

§ 51.351 Enhanced I/M performance standard.

(c) On-Board Diagnostics (OBD). The performance standard shall include inspection of all 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357.

3. Section 51.352 is amended by revising paragraph (c) to read as follows:

§ 51.352 Basic I/M performance standard.

(c) On-Board Diagnostics (OBD). The performance standard shall include inspection of all 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357.

4. Section 51.373 is amended by revising paragraph (g) to read as follows:

§ 51.373 Implementation deadlines.

(g) On-Board Diagnostic checks shall be implemented in all basic, low enhanced and high enhanced areas as part of the I/M program by January 1, 2001.

PART 85—[AMENDED]

5. The authority citation for Part 85 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

6. Section 85.2207 is amended by removing and reserving paragraphs (a) and (e).

7. Section 85.2231 is amended by revising paragraph (b) to read as follows:

§ 85.2231 On-board diagnostic test equipment requirements.

(b) The test system shall be capable of communicating with the standard data link connector of vehicles with certified OBD systems.

[FR Doc. 97-33315 Filed 12-19-97; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY 26-2-176b, FRL-5936-7]

Determination of Attainment of the One-Hour Ozone Standard for the Poughkeepsie, New York Nonattainment Area and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to find that the Poughkeepsie ozone nonattainment area in New York has attained the one-hour National Ambient Air Quality Standard (NAAQS) for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain related requirements of Part D of Title I of the Clean Air Act are not applicable for as long as the area continues to attain the one-hour ozone standard. In the Final Rules section of this **Federal Register**, EPA is making these determinations without prior proposal because the Agency views this as a noncontroversial activity and anticipates no adverse comments. A detailed rationale for this activity is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties

interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before January 21, 1998.

ADDRESSES: All comments should be mailed to Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007-1866. Copies of the air quality data cited in the notice are available for inspection during normal business hours at: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, at the above address. Phone: 212-637-4249.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the rules section of this **Federal Register**.

Dated: December 4, 1997.

William J. Muszynski,

Acting Regional Administrator, Region 2.
[FR Doc. 97-33079 Filed 12-19-97; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 120997A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits (EFPs)

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

ACTION: Notification of experimental fishery proposals; request for comments.

SUMMARY: NMFS issues this notice to announce that the Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of an experimental fishing proposal that would permit vessels to conduct operations otherwise restricted by regulations governing the Fisheries of the Northeastern United States. The experimental fishery would involve fishing for, retention, and limited landing of dogfish using gillnets in the Nantucket Shoal Dogfish Exemption Area. Regulations under the Magnuson-Stevens Act Provisions require publication of this notice to provide interested parties the opportunity to comment on the proposed experimental fisheries.

DATES: Comments must be received by January 6, 1998.

ADDRESSES: Comments should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive,

Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Proposed Experimental Fisheries."

FOR FURTHER INFORMATION CONTACT: Mary M. Tokarcik, Fishery Management Specialist, 978-281-9326.

SUPPLEMENTARY INFORMATION: The New England Fisheries Management Council requested an experiment to fish for dogfish using gillnets in the Nantucket Shoal Dogfish Exemption Area. An application for an experimental fishing permit (EFP) was received by the Regional Administrator on November 6, 1997.

Fishing would be conducted in the Nantucket Shoal Dogfish Exemption Area, as described in § 648.80(a)(9). This exemption area currently allows for the harvest of dogfish using 6-inch (15.24-cm) minimum mesh trawl gear from June 1 through October 15. The experimental fishing activity would be conducted by vessels using 6-inch (15.24-cm) minimum mesh gillnet gear. A maximum of 15 vessels would participate in the fishery for the season May 1 through November 30. Participants would be limited to 60 nets, no overnight sets of gear, and no simultaneous fishing for regulated New England groundfish. EFPs would be issued to participating vessels to exempt them from the gear and days-at-sea restrictions of the Northeast Multispecies Fishery Management Plan.

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

Dated: December 15, 1997.

Gary C. Matlock,

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

[FR Doc. 97-33301 Filed 12-19-97; 8:45 am]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 62, No. 245

Monday, December 22, 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 Marketing Service

[Docket No. CN-98-001]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Cotton Classification and Market News Service.

DATES: Comments on this notice must be received on or before February 20, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Ronald K. Cole, U.S. Department of Agriculture, Agricultural Marketing Service, Cotton Programs, Market News Branch, 3275 Appling Road, Memphis, Tennessee, 38133; (901) 384-3016 telephone and (901) 384-3036 fax.

SUPPLEMENTARY INFORMATION:

Title: Cotton Classification and Market News Service.

OMB Number: 0581-0009.

Expiration Date of Approval: 06/30/98.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Cotton Classification and Market News Service program provides market information on Cotton prices, quality, stocks, demand and supply to growers, ginners, merchandisers, textile mills and the public for their use in making sound business

decisions. The Cotton Statistics and Estimates Act, 7 U.S.C. 471-476, authorizes and directs the Secretary of Agriculture to: (a) Collect and publish annually, statistics or estimates concerning the grades and staple lengths of stocks of cotton, known as the carryover, on hand on the 1st of August each year in warehouses and other establishments of every character in the continental U.S., and following such publication each year, to publish at intervals, in his/her discretion, his/her estimate of the grades and staple length of cotton of the then current crop (7 U.S.C. 471); (b) Collect, authenticate, publish and distribute by telegraph, radio, mail, or otherwise, timely information of the market supply, demand, location, and market prices of cotton (7 U.S.C. 473b). The Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627, authorizes and directs the Secretary of Agriculture to collect and disseminate marketing information, including adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products.

The information collection requirements in this request are essential to carry out the intent of the Act and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies. This includes information on cotton, cottonseed and cotton linters.

The information collected is used only by authorized employees of the USDA, AMS. The Cotton Industry is the primary user of the compiled information and AMS and other government agencies are secondary users.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0902 hours per response (218 hours divided by 2,217 responses).

Respondents: Cotton Merchandisers, Textile Mills, Ginners.

Estimated Number of Respondents: 495.

Estimated Number of Responses per Respondent: 4.883 (2,417 responses divided by 495 respondents).

Estimated Total Annual Burden on Respondents: 218 hours.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Ronald K. Cole, U.S. Department of Agriculture, Agricultural Marketing Service, Cotton Programs, Market News Branch, 3275 Appling Road, Memphis, Tennessee, 38133. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 16, 1997.

Mary E. Atienza,

Deputy Administrator, Cotton Programs.

[FR Doc. 97-33290 Filed 12-19-97; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Forestry Research Advisory Council

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of meeting.

SUMMARY: According to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) the United States Department of Agriculture announces a meeting of the Forestry Research Advisory Council.

DATES: January 12-13, 1998, 8:00 a.m.-5:00 p.m.

PLACE: ANA Hotel, 2401 M Street, NW, Washington, D.C.

TYPE OF MEETING: Open to the public. Persons may participate in the meeting if time and space permit.

COMMENTS: The public may file written comments before or after the meeting by contacting the person below.

PURPOSE: The Council agenda will include: Discussion of implications of new Research and Education Title of Farm Bill; Government Performance and Results Act; science planning as it relates to forestry and natural resources; review of the Cooperative Forestry Research Program (McIntire-Stennis); and other current research issues.

FOR INFORMATION CONTACT: Dr. Ralph A. Otto, Natural Resources and Environment, Aerospace Center, Suite 816, Stop 2210, Washington, D.C. 20250-2210; Telephone (202) 401-4555.

Done at Washington, DC, this 16th day of December 1997.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97-33339 Filed 12-19-97; 8:45 am]

BILLING CODE 3410-22-P

DEPARTMENT OF AGRICULTURE

Forest Service

North Fork St. Joe River Project; Idaho Panhandle National Forests, Shoshone County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The St. Joe Ranger District of the Idaho Panhandle National Forest, USDA Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of vegetation, road and trail, and watershed restoration activities on National Forest lands within the North Fork St. Joe River drainage. The project area is located immediately north of the town of Avery, Idaho. Based on an interdisciplinary assessment of resource conditions within the area, the purpose and need for this proposal is summarized as:

1. Maintain or improve long term water quality within the project area. Where water quality is currently limited, work towards restoring properly functioning hydrologic condition.
2. Maintain or improve habitat for native fish.
3. Maintain or develop habitat conditions (including forest structure, habitat connectivity, security habitat and limited road densities) to contribute to the conservation of forest dwelling species.
4. Forest structure: Where conditions

permit, maintain or begin restoration of large diameter trees and forest structures once more common within the North Fork St. Joe area. 5. Forest composition: Where conditions permit, maintain or begin restoration of large, potentially long lived seral species (western white pine, western larch, ponderosa pine, white bark pine) which once dominated the forested landscape of the St. Joe River basin. 6. Promote fire use and control strategies for safety and efficiency of suppression and protection and maintenance of resource values. Trend toward allowing fire to play its natural role as a forest disturbance mechanism. Reduce the risk of very large stand replacing fires through vegetation management and restore beneficial fire effects. 7. Maintain or improve the unique and diverse recreational opportunities available within the area. Provide dispersed and developed campsites for the increasing recreational use. Mitigate, where feasible and necessary, effects of the increasing recreational use and supporting infrastructure (trails, campsites, access routes) on other resource values. 8. Reduce the risk of blending genetic material from the poorly adapted, non-local ponderosa pine trees planted earlier this century with that of the native ponderosa pine. Replace the poorly adapted trees with more sustainable native species. 9. Timber harvest, when feasible and cost effective, will be used when it can help achieve the other landscape objectives so as to also contribute wood to the local timber supply. In as much as it is compatible with other objectives, harvest activities will maintain or improve the long term growth and production of commercially valuable wood products from the sites.

DATES: Comments should be postmarked on or before January 21, 1998. Please include your name and address and the name of the project you are commenting on.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or requests to be placed on project mailing list to Brad Gilbert, District Ranger, St. Joe Ranger District, P.O. Box 407, St. Maries, ID 83861. Brad Gilbert is the Responsible Official.

FOR FURTHER INFORMATION CONTACT: Pete Zimmerman, Project Team Leader, St. Joe Ranger District, (208) 245-2531.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection.

Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

SUPPLEMENTARY INFORMATION: The decision area contains approximately 75,000 acres within the Idaho Panhandle National Forests in Shoshone County, Idaho. All the proposed projects would occur on National Forest lands in the N. Fork St. Joe River drainage immediately north of Avery, Idaho. The legal location of the decision area is as follows: all or portions of

Township 45 North, Range 5 East; Township 45 North, Range 6 East; Township 46 North, Range 5 East; Township 46 North, Range 6 East; Township 46 North, Range 7 East; Township 47 North, Range 5 East; Township 47 North, Range 6 East; Township 47 North, Range 7 East;

The proposed action is designed to achieve the purpose and need for action as described above. The proposed activities would be initiated over the next ten years. While many of the proposed management activities may work towards achieving more than one of the project objectives, they have been grouped here into four basic categories to simplify the description.

Vegetation

The St. Joe District proposes to use prescribed fire, timber harvest, planting, and other methods to achieve the desired vegetation conditions described above in the purpose and need. Proposed individual treatments by method are as follows (please note that acreage values are gross and would generally include 10 to 25 percent untreated area within the gross area).

Prescribed burning would be the primary treatment on approximately 3,420 acres. (1) Approximately 310 acres of decadent shrubfields within primary big game winter range would be burned to stimulate fresh browse production.

(2) Approximately 2720 acres would be burned to reintroduce the beneficial effects of fire into this ecosystem, reduce fuel loads, and create fuel breaks to reduce the risk of larger, more destructive conflagrations within the landscape. About 1,140 of these acres consist of decadent shrubfields outside of primary big game winter range. Another 740 acres consist of subalpine balds along the northern divide where conifers have begun encroaching after seventy plus years of successful fire suppression. The remaining 840 acres consist of lodge-pole pine stands within the unroaded portions of the North Fork St. Joe River landscape. (3)

Approximately 270 acres of poorly adapted ponderosa pine planted early in this century would be burned to kill these "off-site" trees. The purpose is to prevent these trees from cross pollinating with the native ponderosa pine (genetic contamination). These acres would be replanted with better adapted local stock of ponderosa pine, western white pine, and/or western larch. An additional 970 acres of similar non-local ponderosa pine would be treated in this manner if the trees prove uneconomical to harvest prior to burning (see harvest of non-local ponderosa pine below). (4)

Approximately 34 acres in and around white bark pine stands would be burned and/or treated mechanically to limit encroachment by other tree species and facilitate natural and planted regeneration.

Timber harvest, in combination with prescribed fire and tree planting, would be the primary treatment on approximately 2,580 acres. (1)

Regeneration harvest treatments (harvest methods designed to establish a new stand of more desirable tree species) would occur on approximately 2,030 acres. Prescribed fire would be used to reduce fuels and prepare the sites for planting. About 1,060 of these acres consist primarily of lodgepole pine, a short lived seral tree specie. The remaining 970 acres consist of poorly adapted ponderosa pine planted early in this century. The purpose of removing these ponderosa pine is to prevent these trees from cross pollinating with the better adapted native ponderosa pine (genetic contamination). As noted above, if any or all of these "off-site" ponderosa pine stands prove uneconomical to harvest (they occur primarily in unroaded areas and would require the more expensive helicopter logging) they would still be burned to kill the trees prior to planting to better adapted species.

(2) Commercial thinning (harvesting excess and less desirable trees from a

stand to provide more growing room for the remaining trees) would occur on approximately 550 acres.

Access

The St. Joe District proposes to manage the transportation network (roads and trails) in the following ways: (1) Maintain existing access (motorized and non-motorized) on approximately 145 miles of road and 72 miles of trail within the area. (2) Approximately 5.7 miles of new road would be constructed to provide access for timber harvest activities noted above. All but 0.3 miles of these new roads would be either obliterated or stabilized for long term storage following use. The 0.3 miles that would be kept drivable would provide new access for an existing mining claim, thereby allowing obliteration of an additional mile of existing road currently accessing the claim. (3) Approximately 36 miles of existing road would be either obliterated or stabilized for long term storage. (4) Approximately 1 mile of new trail would be constructed to replace trail access currently served by one of these roads which are proposed to be obliterated.

Recreation

The St. Joe District proposes to make improvements to several campsites as follows: (1) Additional campsites and facilities would be constructed at the Squaw Creek Campground. (2) Several dispersed camp sites would be hardened within the Loop Creek meadows and toilet facilities added to protect adjacent resources.

Aquatic Restoration

The St. Joe District proposes the following aquatic restoration activities in addition to those identified above (e.g. road stabilization, etc.). (1) Complete exploratory core drilling on three old railroad grade through-fills to determine and evaluate their condition and structural integrity. Based on the results, develop an action plan to mitigate potential risks. (2) Plant trees within 140 acres of riparian areas adjacent to the North Fork St. Joe River and Clear Creek. (3) Develop and implement a stream restoration plan for Loop Creek downstream from the mouth of Moss Creek. (4) Construct baffles to facilitate fish passage through the Loop Creek water bypass tunnel.

Preliminary Issues

We expect issues and concerns with this project to include the effects on wildlife, fish, water quality, roadless, visual quality/aesthetics and recreation as well as the effects of road construction, clearcutting, size of

openings, and economic feasibility. Final issues will be developed and analyzed based on your comments and the interdisciplinary team's analysis of potential effects of the proposed action on the various resource values. These issues will be used to develop alternatives to the proposed action and guide the type and detail of analysis conducted.

Additionally, some of the vegetation treatment may result in openings of over 60 acres. While we would like comments that would affect alternatives early, comments on the size of openings and their effects will be accepted for 60 days after publication of this notice. This 60 day public review period and approval of the Regional Forester for exceeding the 40 acre limitation for regeneration harvest would be required prior to the signing of the Record of Decision.

The Forest Service will consider a range of alternatives to this proposed action. One of these will be the "No Action" alternative. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purpose, as well as to respond to the issues and other resource values.

Public participation is an important part of the analysis and will play an important role in developing the alternatives. The mailing list for public scoping will be developed from responses to this NOI and responses to the Forest's "Quarterly Schedule of Proposed Actions." In addition, the public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service will also be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. Comments from the public and other agencies will be used in preparation of the Draft EIS.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March 1998. The final environmental impact statement is expected to be completed in May 1998.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First,

reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concern on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 1-800-245-6340 (voice) or 202-720-1127 (TDD). USDA is an equal employment opportunity employer.

Dated: December 11, 1997.

Bradley Burmark,

Deputy District Ranger.

[FR Doc. 97-33346 Filed 12-19-97; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock market named below is a stockyard as defined by Section 302 (a). Notice was given to the stockyard owner and to the public as required by Section 302 (b), by posting notices at the stockyard on the date specified below, that the stockyard is subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
PA-159, Troy Sales, Troy, Pennsylvania.	September 17, 1997.

Done at Washington, D.C. this 12th day of December 1997.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 97-33331 Filed 12-19-97; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review, and revocation in part of antidumping duty order.

SUMMARY: On November 10, 1997, the Department of Commerce (the Department) published a notice of initiation of a changed circumstances antidumping duty administrative review and preliminary results of review with intent to revoke, in part, the

antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. We are now revoking this order in part, with respect to corrosion-resistant steel flat products with certain dimensions and coatings, based on the fact that domestic parties have expressed no interest in the importation or sale of this product, imported from Japan.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Gideon Katz or Maureen Flannery, AD/CVD Enforcement, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-5255 and (202) 482-3020, respectively.

The 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 codified at 19 CFR by Part 351, 62 FR 27295 (May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1997, Sudo Corporation (Sudo) requested that the Department conduct a changed circumstances administrative review to determine whether to partially revoke the order with regard to imports of certain corrosion-resistant carbon steel flat products from Japan. The order with regard to imports of other types of corrosion-resistant carbon steel flat products is not affected by this request. On October 28, 1997, domestic producers AK Steel Corporation, Bethlehem Steel Corporation, Inland Steel Industries, Inc., LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation, informed the Department in writing that they did not object to the changed circumstances review and had no interest in the importation or sale of electrolytic zinc-coated steel coiled rolls produced in Japan as described in detail in Sudo's letter.

We preliminarily determined that domestic producers' affirmative statement of no interest constituted changed circumstances sufficient to warrant a partial revocation of this order. Consequently, on November 10, 1997, the Department published a notice of initiation and preliminary results of

changed circumstances antidumping duty administrative review and intent to revoke this order in part (62 FR 60470). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received a comment from domestic producers and a rebuttal comment from Sudo.

Comment: Domestic producers claim that the Department's description of the merchandise to be excluded from the order is overly broad. They state that the Department, in its preliminary results, described the product to be excluded from the order only by width and thickness, ignoring the chemical composition and thickness of the coating. Domestic producers claim that their statement of no interest was based on a description of the product using all of the above criteria. Sudo agrees that the product to be excluded should be defined by all criteria.

Department's Position: We agree with domestic producers and with Sudo, and have added the chemical composition of each of the three coating layers and the thickness of the total coating to the characteristics of the product to be excluded from the antidumping order.

Scope of Review

The merchandise covered by this changed circumstances review is certain corrosion-resistant carbon steel flat products from Japan. This changed circumstances administrative review covers all manufacturers/exporters of certain corrosion-resistant carbon steel flat products meeting the following specifications: widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners in certain corrosion-resistant carbon steel flat products, as described above, produced in Japan, constitutes changed circumstances sufficient to warrant partial revocation of this order. Therefore, the Department is partially revoking the order on certain corrosion-resistant carbon steel flat products from

Japan with regard to products which meet the specifications detailed above, in accordance with sections 751 (b) and (d) and 782(h) of the Act and 19 CFR 351.216(d)(1). This partial revocation applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after October 27, 1995.

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of certain corrosion-resistant carbon steel flat products with the dimensions and coatings described above from Japan, entered, or withdrawn from warehouse, for consumption on or after October 27, 1995. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of this product from Japan entered, or withdrawn from warehouse, for consumption on or after October 27, 1995, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1997). 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 terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751 (b) and (d) and 782(h) of the Act and sections 351.216 and 351.222(g) of the Department's regulations.

Dated: December 16, 1997.

Robert S. LaRussa,
Assistant Secretary for Import Administration.

[FR Doc. 97-33351 Filed 12-19-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-824, A-475-820, A-588-843, A-580-829, A-469-807, A-401-806, and A-583-828]

Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta, James Maeder, or Erik Warga, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482-6320, (202) 482-3330, or (202) 482-0922, respectively.

Postponement of Preliminary Determinations

On August 19, 1997, the Department initiated antidumping duty investigations of imports of stainless steel wire rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan. The notice of initiation stated that we would issue our preliminary determinations on or before January 6, 1998 (62 FR 45224, August 26, 1997).

On December 11, 1997, petitioners made a timely request pursuant to 19 CFR 351.205(e) of the Department's regulations for 50-day postponements of the preliminary determinations, until February 25, 1998, pursuant to section 733(c)(1) of the Tariff Act of 1930, as amended (the Act). Petitioners requested postponements because the Department is either (a) in the process of conducting below-cost investigations (in the Spain and Taiwan cases) or (b) evaluating petitioners' requests to initiate below-cost investigations (in the Italy, Japan, Korea and Sweden investigations), and it is the petitioners' intention that, by requesting postponements, the additional time will allow the Department to include data from any cost investigations in its preliminary determinations.

In the investigation of stainless steel wire rod from Germany, the respondents have informed the Department that they are not cooperating in the investigation; as a result, the Department will have no choice but to use the most adverse facts available in its determination. Although no additional time is likely to be needed for the Department to prepare its preliminary determination in the Germany investigation, petitioners are

requesting postponement in this case as well so that all of the antidumping cases will remain on the same schedule and, thus, permit the International Trade Commission to cumulate the cases if it deems appropriate to do so. For these same reasons, petitioners also ask the Department to postpone all of the above-referenced cases by the same number of days in order to ensure that they remain on identical time schedules.

For the reasons identified by petitioners, we are postponing the preliminary determinations under Section 733(c)(1) of the Act. We will make our preliminary determinations no later than February 25, 1998.

This notice is published pursuant section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: December 16, 1997.

Holly Kuga,

Acting Deputy Assistant Secretary AD/CVD Enforcement, Group II.

[FR Doc. 97-33350 Filed 12-19-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection: Comment Request

AGENCY: Air Force Junior Reserve Officer Training Corps, Operations Section.

ACTION: Notice.

In compliance with Section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, the Air Force Junior Reserve Officer Training Corps, Operations Section, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the 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 February 20, 1998.

ADDRESSES: Written comments and recommendations on the proposed

information collection should be sent to AFROTC/DOJ, 551 East Maxwell Blvd, Maxwell Air Force Base, AL 36112-6106.

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 AFROTC/DOJO at (334) 953-5116.

Title, Associated Form, and OMB Number: Application for Establishment of Air Force Junior ROTC Unit, AFROTC Form 59, OMB Number 0701-0114.

Needs and Uses: The information collection requirement is necessary to obtain information about schools which would like to host an Air Force Junior ROTC unit.

Affected Public: Schools which desire to establish an Air Force Junior ROTC unit.

Annual Burden Hours: 20.

Number of Respondents: 40.

Average Burden Per Respondent: 30 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are high school officials who provide information about their school which is interested in hosting an Air Force JROTC unit. The completed form is used to determine the eligibility of the school to host an Air Force JROTC unit. If the form is not included in the file, a school cannot be offered the opportunity to host an AFJROTC unit.

Barbara A. Carmichael,

Alternate Air Force, Federal Register Liaison Officer.

[FR Doc. 97-33347 Filed 12-19-97; 8:45 am]

BILLING CODE 3910-01-P

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for the Disposal of the Long Beach Naval Station (NAVSTA) and the Long Beach Naval Shipyard (NSY)

AGENCY: Department of the Navy, DoD.

ACTION: Announcement of public hearing.

SUMMARY: The Department of the Navy and the City of Long Beach have prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement/Environmental Impact Report (DEIS/

EIR) for the disposal of NAVSTA and NSY and the subsequent reuse of those properties and other adjacent properties. A public hearing will be held for the purpose to receive oral and written comments on the DEIS/EIR. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing.

DATES: Hearing date is as follows:

1. January 14, 1998, 7:00 p.m., Long Beach, CA.

ADDRESSES: Hearing location is:

1. Long Beach—the City of Long Beach Council Chambers, 333 West Ocean Boulevard, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Ault, (619) 532-4744.

SUPPLEMENTARY INFORMATION: Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing the procedural provisions of National Environmental Policy Act (NEPA), California Public Resources Code 21000 *et seq.*, and 14 California Code of Regulation 15000 *et seq.*, implementing the procedural provisions of the California Environmental Quality Act (CEQA), the Department of the Navy and the City of Long Beach have prepared and filed with the U.S. Environmental Protection Agency a DEIS/EIR for the disposal of NAVSTA and NSY and the subsequent reuse of those properties and other adjacent properties. The DEIS/EIR has also been prepared in accordance with the Defense Base Closure and Realignment Act of 1990 (DBCRA) (10 U.S.C. 2687 note) and the recommendations of the Defense Base Closure and Realignment Commission approved by the President and accepted by Congress in 1991 and 1995.

The purpose of the proposed federal action is to dispose of NAVSTA and NSY for reuse in accordance with DBCRA established procedures for closing and realigning military installations. The portion of NAVSTA addressed in this action includes the main station, the Navy Mole, and Site 6A-LB. The Navy Fuel Depot, located on the Navy Mole, was not declared to be surplus to the needs of the federal government and will remain the property of the Navy. Of the 250 acres NSY site, 84 acres are subject to reversion under the terms of the final judgment in *United States of America v. 1039 Acres of Land etc. et al.* The Navy has no discretion regarding the reversion of this property. There are also 602 acres of submerged land that will revert to the City under the terms of that judgment. The remaining land at NSY will be disposed of by the Navy under

BRAC and federal property transfer laws. Therefore, the federal action is the disposal of a total of 454 acres.

The purpose and need for the proposed local action is to reuse Navy property (NAVSTA and NSY) in order to offset the negative socioeconomic effects caused by the base closures. A high priority of reuse of the Navy property is job creation and economic redevelopment in accordance with President Clinton's Five Point Program and Governor Wilson's Executive Order W-81-94. The City of Long Beach, as the Local Redevelopment Authority (LRA), proposes to reuse the NAVSTA and NSY property to meet the projected demand for marine terminal expansion and to satisfy the need for new police facilities. In order to meet these needs, the LRA expanded its plan to include 89 acres of Port of Long Beach (POLB) lands adjacent to the Navy property. A ten-acre parcel (included within the 89 acres) north of Ocean Boulevard, which is owned by POLB, was added to the project in response to comments received on another EIR which addressed the POLB Pier T. The term Long Beach Complex (LBC) will be used to define the Navy property and the surrounding Port of Long Beach properties in the DEIS/EIR. Therefore, the local action includes 1,229 acres of property and submerged lands.

Under NEPA and DBCRA, the Navy has two disposal options for the 454 acres: no action, or disposal of the non-reversionary Navy properties.

Under the No Action Alternative, the Navy would retain ownership of the 454 acres of nonreversionary federal property, while current use of the adjacent POLB would continue. The Navy properties have been closed, all mission-related activities have ceased, and all buildings are vacant. This caretaker condition would remain indefinitely under the No Action Alternative. Site environmental cleanup would continue until completed. The existing lease of the property on the Navy Mole to POLB would remain through its term. The 84 acres on NSY and the 602 acres of submerged land reverting to the City of Long Beach could be transferred, but it is assumed that existing uses would remain unchanged.

Federal disposal would precede implementation of the reuse alternatives. Three reuse alternatives are evaluated in detail in the DEIS/EIR:

- LRA Reuse Alternative;
- Auto Terminal Alternative; and
- Institutional Campus Alternative.

A brief summary of the three reuse alternatives is presented below.

The LRA Reuse Alternative would include development of marine container terminal facilities, including container staging areas; loading and unloading facilities; trucking facilities; on-dock railyard and tracks, administration and maintenance facilities; access roadway and entry gates; and other related facilities on NAVSTA and portions of NSY. A ship repair and/or breaking facility of approximately 18 acres would be centered around and include Drydock 1. Vessels would be staged along the west side of Navy Pier E. This component would primarily use existing facilities and structures within the designated area. The Navy Pier E area would be used for development of a mixture of marine cargo facilities, including a deepwater liquid bulk terminal on the southern end of POLB Pier T, reconfiguration of existing lumber and scrap metal terminals, relocation of the City of Long Beach police headquarters and training academy to the former NSY Building 300, relocation and consolidation of oil operations on Port of Long Beach Pier T, and reconstruction of roadways and utilities to serve the facilities. The southern one-half of the Navy Mole (excluding the Fuel Depot) would be used for the development of a neobulk/breakbulk terminal, facilities for ancillary and water-dependent uses, and Sea Launch, a satellite assembly and transfer facility. The police headquarters component may require a public subsidy. This alternative would require demolition of the Roosevelt Base Historic District, an historic resource eligible for listing in the National Register of Historic Places.

The Auto Terminal Alternative would retain the majority of the Historic District, which would provide facilities for an auto terminal operator, port terminal operators, and a naval museum, which may require public subsidy. The remainder of LBC would support the same uses as the LRA Reuse Alternative, including marine container terminal facilities, intermodal rail facilities, neobulk/breakbulk facilities, ship repair facility, a liquid bulk facility, and port ancillary uses as described above. The auto terminal would use roll-on/roll-off (Ro/Ro) transfer of wheeled cargos such as automobiles and light trucks. Access to the auto terminal, port terminal facilities, and museum would be provided by a proposed grade-separated crossing from Reeves Avenue. This would provide uninterrupted access to the site over the proposed intermodal rail operations.

The Institutional Campus Alternative would include a police academy and

police administrative offices, POLB administration, fire department, and naval museum within the Historic District. Unlike the other reuse alternatives, all of the Historic District recreational facilities would be retained in a campus setting under this alternative. A public subsidy may be required to support this component. The remainder of LBC would include marine container terminal facilities, intermodal rail facilities, neobulk/breakbulk facilities, a 91-acre ship repair facility, a liquid bulk facility, and port ancillary uses. This alternative would consolidate several of the existing City of Long Beach Police Department functions, which are currently being performed at several different locations throughout the City, into the Historic District buildings. Similar to the Auto Terminal Alternative, access to the proposed institutional uses would be provided via a grade-separated crossing from Reeves Avenue.

In accordance with NEPA requirements, a Notice of Intent (NOI) to prepare a joint EIS/EIR and to reopen scoping for the disposal and reuse of NAVSTA and NSY was published in the **Federal Register** on July 21, 1997. On July 18, 1997, the NOI was mailed directly to regulatory agencies, local jurisdictions, elected officials, public service providers, organizations, and special interest members of the public. In accordance with requirements under CEQA, a Notice of Preparation (NOP) to prepare a joint EIS/EIR and to reopen scoping for the disposal and reuse of NAVSTA and NSY was distributed on July 18, 1997, to regulatory agencies, local jurisdictions, elected officials, and public service providers, among others.

As part of the EIS/EIR scoping process, the Navy and the City held a public scoping meeting on August 20, 1997, in the City of Long Beach Council Chambers. The meeting was advertised in the Long Beach Press Telegram on August 4, 11, and 18, 1997, as well as in the **Federal Register**.

This DEIS/EIR analyzes potential environmental impacts relating to land use; socioeconomic; utilities; historic and archaeological resources; aesthetics; biological resources; topography, soils, and geology; hydrology and water quality; hazardous materials and environmental contamination; public health and safety; traffic and transportation; air quality; and noise. Potentially significant and mitigable environmental impacts include impacts to land use; biological resources; and noise. Potentially significant and not mitigable impacts are related to disturbance and/or demolition of the Historic District and public health and

safety impacts from potential increase for oil spills and risks posed from the liquid bulk facilities explosion hazard arcs. Remediation of contaminated areas will continue to be the responsibility of the Navy.

No decision on the proposed action will be made until the NEPA and CEQA processes have been completed.

The DEIS/EIR has been distributed to various federal, state, and local agencies, local groups, elected officials, special interest groups, and individuals. The DEIS/EIR is also available for review at the following libraries:

- Long Beach Public Library, 101 Pacific Avenue, Long Beach, CA.
- Alamitos Public Library, 1836 E. Third Street, Long Beach, CA.
- Bach Public Library, 4055 Bellflower Blvd., Long Beach, CA.
- Bay Shore Public Library, 195 Bay Shore, Long Beach, CA.
- Brewitt Public Library, 4036 E. Anaheim Street, Long Beach, CA.
- Burnett Public Library, 560 E. Hill Street, Long Beach, CA.
- Dana Public Library, 3680 Atlantic Avenue, Long Beach, CA.
- El Dorado Public Library, 2900 Studebaker Road, Long Beach, CA.
- Harte Public Library, 1595 W. Willow Street, Long Beach, CA.
- Los Altos Public Library, 5614 Britton, Long Beach, CA.
- Mark Twain Public Library, 1325 E. Anaheim Street, Long Beach, CA.
- San Pedro Regional Branch Library, 931 S. Gaffey Street, Los Angeles, CA.
- Wilmington Branch Library, 1300 N. Avalon Blvd., Los Angeles, CA.
- Bell Library, 4411 E. Gage Avenue, Bell, CA.
- Carson Library, 151 E. Carson Street, Carson, CA.
- City of Commerce Central Library, 5655 Jillson Street, City of Commerce, CA.
- Compton Library, 240 W. Compton Blvd., Compton, CA.
- Cudahy Library, 5218 Santa Ana Street, Cudahy, CA.
- El Segundo Public Library, 111 W. Mariposa Avenue, El Segundo, CA.
- Hawthorne Library, 12700 S. Grevillea Avenue, Hawthorne, CA.
- Inglewood Public Library, 101 W. Manchester Blvd., Inglewood, CA.
- Lawndale Library, 14615 Burin Avenue, Lawndale, CA.
- Lynwood Library, 11320 Bullis Road, Lynwood, CA.
- Maywood Library, 4323 E. Slauson, Maywood, CA.
- Paramount Library, 16254 Colorado Avenue, Paramount, CA.
- Redondo Beach Main Library, 303 North Pacific Coast Highway, Redondo Beach, CA.

- Leland R. Weaver Library, 4035 Tweedy Blvd., South Gate, CA.
- Diane Gayton Library, 707 Electric Avenue, Seal Beach, CA.
- Torrance Public Library, 3301 Torrance Blvd., Torrance, CA.
- Vernon Public Library, 4504 S. Central Avenue, Vernon, CA.

The Navy and the City will conduct a public hearing to receive oral and written comments concerning the DEIS/EIR on Wednesday, January 14, 1998, at 7:00 p.m. in the City of Long Beach Council Chambers. A brief presentation will precede a request for public information and comments. Navy and City representatives will be available at the hearing to receive information and comments from agencies and the public regarding issues of concern. Federal, state, and local agencies, and interested individuals are invited to be present or represented at the hearing. Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all comments should be submitted in writing. All comments, both oral and written, will become part of the public record in the study. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to Ms. Melanie Ault, BRAC Program Office, Southwest Division, Naval Facilities Engineering Command, 1420 Kettner Boulevard, Suite 501, San Diego, California 92101-2404, telephone (619) 532-4744, fax (619) 532-4743. Written comments are requested not later than February 2, 1998.

Dated: December 17, 1997.

Michael I. Quinn,

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

[FR Doc. 97-33349 Filed 12-19-97; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy.

ACTION: Notice of meeting.

SUMMARY: The Naval Research Advisory Committee will meet to acquaint Committee members with technology issues related to aircraft systems development, F/A-18E/F and V-22 operations, and aircraft tracking and

testing operations. All sessions of this meeting will be closed to the public.

DATES: The meeting will be held on Monday, January 12, 1998 from 2:00 p.m. to 4:00 p.m., and on Tuesday, January 13, 1998 from 8:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Office of Naval Research, Arlington, Virginia and at Naval Air Systems Command and Naval Air Warfare Center, Aircraft Division, Patuxent River, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Mason-Muir, Office of Naval Research, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217-5660, Telephone Number: (703) 696-6769.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the Federal Advisory Committee Act (Appendix 2 of title 5, United States Code). All sessions of the meeting will be devoted to briefings, demonstrations, tours and discussions involving technical examination of information related to aircraft technologies and aircraft operations. These briefings, demonstrations, tours and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. app. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Dated: December 10, 1997.

Michael I. Quinn,

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

[FR Doc. 97-33294 Filed 12-19-97; 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 Deputy Chief Information Officer, Office of the Chief Information

Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 20, 1998.

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 Deputy Chief Information Officer, Office of the Chief Information Officer, 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: December 16, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Consolidation Loan Rebate Fee Report.

Frequency: Monthly.

Affected Public: Business or other for-profit; State, local or Tribal Gov't; SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 400.

Burden Hours: 5,200.

Abstract: The Consolidation Loan Rebate Fee Report for payment by check for Electronic Funds Transfer (EFT) will be used by approximately 400 lenders participating in the Title IV, Part B loan programs. The information collected is used to transmit interest payment rebate fees to the Secretary of Education.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Alcohol and Other Drug (AOD) and Violence Prevention Survey.

Frequency: On occasion.

Affected Public: Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 250.

Burden Hours: 63.

Abstract: The Department of Education requires that a formal assessment be conducted to determine the status of AOD and violence prevention efforts and the current and emerging needs of institutions of higher education. The Department will utilize findings in planning and policy development and the contractor will use the findings to help it better meet the needs of its clients.

[FR Doc. 97-33261 Filed 12-19-97; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A-3]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: This program provides support for planning, conducting, administering, and

evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants: To be eligible to apply, an applicant must—(a) be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4(b); (b) have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); (c) be able to plan, conduct, administer, and evaluate a center for independent living consistent with the requirements of section 725(b) and (c) of the Act and Subparts F and G of 34 CFR Part 366; and (d) either—(1) not currently be receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to entities that meet the requirements of 34 CFR 366.24 and propose to serve areas that are unserved or underserved in the States and territories listed under *Available Funds*.

Deadline for Transmittal of Applications: March 6, 1998.

Deadline for Intergovernmental Review: May 6, 1998.

Applications Available: January 9, 1998.

Available Funds: \$1,352,041 as distributed in the following manner:

Arizona	\$53,407
California	244,181
Delaware	50,970
Florida	118,792
Georgia	66,114
Illinois	57,577
Indiana	43,025
Louisiana	29,835
New Jersey	57,811
North Carolina	63,162
Ohio	76,485
Pennsylvania	77,288
Texas	152,128
Guam	53,610
American Samoa	154,046
Northern Mariana Islands	53,610

Estimated Range of Awards: \$29,835-\$154,046.

Estimated Number of Awards: 1–2 per eligible State.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for the program in 34 CFR parts 364 and 366.

For Further Information Contact: Merri Pearson, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3316, Switzer Building, Washington, D.C. 20202–2741. Telephone: (202) 205–8484 (voice) and (202) 205–8243 (TDD).

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

For Applications Contact: The Grants and Contracts Services Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8351. 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. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at any of the following sites: <http://www.ed.gov/offices/OSERS/RSA/rsakits.html>
<http://ocfo.ed.gov/fedreg.htm>
<http://www.ed.gov/news.html>

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at any of the previous sites. If you have questions about using the pdf, please call the U.S. Government Printing Office toll free at 1–888–293–6498. Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. These

documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 721(c) and (e) and 796(f).

Dated: December 16, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–33244 Filed 12–19–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.250G]

Vocational Rehabilitation Service Projects for American Indians with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: To provide vocational rehabilitation services to American Indians with disabilities who reside on Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

Eligible Applicants: Applications may be submitted only by the governing bodies of Indian Tribes and consortia of those governing bodies located on Federal or State reservations.

Deadline for Transmittal of Applications: May 19, 1998.

Applications Available: December 22, 1997.

Available Funds: \$6,200,000.

Estimated Range of Awards: \$250,000–\$350,000.

Estimated Average Size of Awards: \$300,000.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, and 82; and (b) The regulations for this program in 34 CFR parts 369 and 371.

Priority

Under 34 CFR 75.105(c)(2)(i) and section 130(b)(4) of the Rehabilitation Act of 1973, as amended, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 10 points to an application that meets this competitive

priority. These points are in addition to any points the application earns under the selection criteria for the program:

Competitive Preference Priority—Continuation of Previously Funded Tribal Programs

Section 130(b)(4) of the Rehabilitation Act of 1973, as amended, provides that in making new awards under this program the Secretary gives priority consideration to applications for the continuation of tribal programs that have been funded under this program. For this competition in fiscal year 1998, the Secretary implements this priority by giving a competitive preference of 10 bonus points, in accordance with 34 CFR 75.105(c)(2)(i), to applications that meet this priority.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in § 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: The Grants and Contracts Services Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8351. 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. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Pamela Martin, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3314, Switzer Building, Washington, D.C., 20202–2650. Telephone: (202) 205–8494.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World

Wide Web at either of the following sites:

<http://ocfo.ed.gov/fedreg/htm>
<http://www.ed.gov/news.html>

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1-888-293-6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219-1511 or, toll free, 1-800-222-4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 711(c) and 750.

Dated: December 16, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97-33245 Filed 12-19-97; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, January 17, 1998 8:30 a.m.–12:00 p.m. (public comment session: 11:45 a.m.–12:00 p.m.).

ADDRESS: Alpha Building, 10967 Hamilton-Cleves Highway, Harrison, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens' Advisory Board, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens' Advisory Board office (513) 648-6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda:

8:30 a.m. Call to Order
 8:30–8:45 Opening Remarks
 8:45–9:00 Recommendations on
 Copper Recycling
 —Waste Retrieval
 —Off-Site Disposal
 —Critical Analysis Team
 10:30–10:45 Break
 10:45–11:00 Committee Reports
 11:00–11:45 1998 Citizens' Advisory
 Board Planning
 11:45–12:00 Public Comment
 12:00 p.m. Adjourn

A final agenda will be available at the meeting, Saturday, January 17, 1998.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens' Advisory Board, P.O. Box 544, Ross, Ohio 45061 or by calling the Advisory Board at (513) 648-6478.

Issued at Washington, DC on December 16, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97-33308 Filed 12-19-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, January 7, 1998—6:00 p.m.–9:30 p.m.

ADDRESS: Ramada Inn, 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576-0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Provided the announcement of a new management and integration contract has been made by the January meeting, a presentation will be made by the manager of that selected contractor. If the announced winner of the management and integration contract has not been made, a business meeting will be conducted with no technical presentation provided.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and

9:00 am and 1:00 pm on Saturday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576-0314.

Issued at Washington, DC on December 17, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97-33309 Filed 12-19-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-29-001]

Florida Gas Transmission Company; Notice of Compliance Filing

December 16, 1997.

Take notice that on December 11, 1997, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective December 1, 1997, the following tariff sheets:

Substitute Fourth Revised Sheet No. 39
Substitute Fourth Revised Sheet No. 40
Substitute Seventh Revised Sheet No. 120
Substitute Fourth Revised Sheet No. 121
Substitute Fifth Revised Sheet No. 143

FGT states that on October 31, 1997, FGT filed tariff sheets proposing to offer a new interruptible Part 'N Ride (PNR) service under Rate Schedule PNR. Subsequently, on November 26, 1997, the Commission issued an order (Order) accepting FGT's proposal subject to FGT's filing revised tariff sheets clarifying the term "total cost commitment." FGT states that the instant filing is being made in compliance with such Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-33276 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC98-6-000]

Florida Power Corporation; Notice of Filing

December 16, 1997.

Take notice that on November 3, 1997, Florida Power Corporation, tendered for filing a letter seeking approval to begin accruing the increase amount of \$1,213,656 on a wholesale basis, retroactive to January 1, 1995. FPC states that it is only seeking approval for an increase in the accrual amount, not in rates.

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, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 26, 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. 97-33266 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-123-000]

Iroquois Gas Transmission System, L.P.; Notice of Request Under Blanket Authorization

December 16, 1997.

Take notice that on December 8, 1997, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite

600, Shelton, Connecticut 06484, filed in Docket No. CP98-123-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a sales tap on behalf of Duke Energy Trading & Marketing, LLC (DETM) for the Bridgeport Power Station repowering project, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Iroquois proposes to construct and operate a sales tap at the request of DETM and both Iroquois and DETM expect Iroquois to deliver up to 83,000 Mcf/d to DETM at the proposed sales tap.

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. 97-33271 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG96-93-000]

Liberty Power, Ltd., Notice of Surrender of Exempt Wholesale Generator Status

December 16, 1997.

Take notice that on December 2, 1997, pursuant to section 365.7 of the Commission's regulations, 18 CFR 365.7, Liberty Power, Ltd. filed notification that it surrenders its status as an exempt wholesale generator under section 32(a)(1) of the Public Utility

Holding Company Act of 1935, as amended.

Lois D. Cashell,

Secretary.

[FR Doc. 97-33273 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-88-000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 16, 1997.

Take notice that on December 11, 1997, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Tariff Sheet No. 196, to become effective January 1, 1998.

Nautilus states that the purpose of this filing is to comply with Order 636-C issued on February 27, 1997, whereby the matching term on the right-of-first-refusal to retain existing capacity was shortened from twenty years to five years.

Any person desiring to be heard or to protest this 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-33279 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-89-000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 16, 1997.

Take notice that on December 12, 1997, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Tariff Sheet No. 279 proposed to become effective January 11, 1998.

Nautilus states that the purpose of this filing is to change the Form of Service Agreement for Rate Schedule IT-1 to reflect interruptible service and not firm service in the second *Whereas* statement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-33280 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94-38-002]

Ouachita River Gas Storage Company L.L.C.; Notice of Petition to Amend

December 16, 1997.

Take notice that on November 17, 1997, Ouachita River Gas Storage Company, L.L.C. (Ouachita) 9801 Westheimer, Suite 602, Houston, Texas 77042, filed in Docket No. CP94-38-002 a petition to amend the existing authorizations issued in Docket Nos. CP94-38-000 and CP94-38-001,

pursuant to Section 7(c) of the Natural Gas Act, to expand the working gas capacity of the South Downsville Storage Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

On August 1, 1996, the Commission authorized Ouachita to construct and operate the South Downsville Storage Project, an underground gas storage field with related pipeline and header facilities in Union and Lincoln Parishes, Louisiana. The August 1, 1996, order approved market-based rates for Ouachita's storage services but denied market-based rates for hub services. On February 26, 1997, the Commission approved cost-based rates for Ouachita's hub services and issued Ouachita a Subpart G blanket certificate to render firm and interruptible gas storage services and interruptible hub transportation services.

Ouachita states that the project was originally designed with a working gas storage capacity of 27 Bcf. Ouachita explains that as result of additional analysis, it has determined that the working capacity of the project can be efficiently increased. Based on the results of a recent open season, Ouachita believes it can subscribe all of the expanded capacity. Accordingly, Ouachita proposes to increase the working gas storage capacity from 27 Bcf to 37.5 Bcf. Ouachita asserts that the increase will permit it to spread the fixed costs of the project over more units of storaged capacity and thereby decrease the unit cost of storage.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before January 6, 1998, file with the Federal Energy Regulatory Commission, 888 First St., NE, Washington, D.C. 20426, a motion to intervene or a 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. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. 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.

A person obtaining intervenor status will be placed on the service list

maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order.

However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the 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 a grant of the certificate 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 a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Ouachita to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97-33267 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-124-000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

December 16, 1997.

Take notice that on December 9, 1997, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP98-124-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, own and operate a new delivery point to be located in Pittsboro, Hendriks County Indiana, under Panhandle's blanket certificate issued in Docket No. CP83-83-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically Panhandle proposes to install two 8-inch hot taps and check valves on Panhandle's mainline facilities, approximately 1,200 feet of 8-inch connecting pipe, and install electronic gas measurement equipment on the proposed metering facilities. Panhandle states that the proposed interconnection will be utilized to provide transportation service to Indiana Gas Company (Indiana Gas) for redelivery to Qualitech Corporation, a steel plant near Pittsboro, Indiana. Panhandle states that Indiana Gas will also construct facilities to accommodate receipt of the gas from Panhandle. The estimated cost of the proposed facilities is approximately \$85,000, which Panhandle states will be reimbursed by Indiana Gas. Panhandle states that the new interconnection will be designed to deliver up to 36,000 Dt/d of natural gas.

Panhandle states that the construction of the proposed facilities will have no effect on its peak day and annual delivery requirement, and that Panhandle has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

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. 97-33272 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-87-000]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 16, 1997.

Take notice that on December 11, 1997, Shell Gas Pipeline Company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Tariff Sheet Nos. 101 and 102 to become effective November 1, 1997.

SGPC states that the purpose of this filing is to comply with Order 636-C issued on February 27, 1997, whereby the matching term on the right-of-first-refusal to retain existing capacity was shortened from twenty years to five years.

Any person desiring to be heard or to protest this 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-33278 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. GT98-7-000]

Williston Basin Interstate Pipeline Company; Notice of Filing

December 16, 1997.

Take notice that on December 12, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective December 12, 1997:

Eighth Revised Sheet No. 775
Eighth Revised Sheet No. 776
Tenth Revised Sheet No. 777
Eleventh Revised Sheet No. 825
Eighteenth Revised Sheet No. 829
Sixteenth Revised Sheet No. 830
Nineteenth Revised Sheet No. 831
Twenty-first Revised Sheet No. 832
Twenty-first Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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 in the Public Reference Room.

Lois D. Cashell,*Secretary.*

[FR Doc. 97-33274 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP98-31-001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

December 16, 1997.

Take notice that on December 12, 1997, Williston Basin Interstate Pipeline

Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective December 1, 1997:

Substitute Original Sheet No. 283A
Substitute Original Sheet No. 283B
Substitute Original Sheet No. 283C

Williston Basin states that the revised tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's "Order Accepting Tariff Sheets Subject to Conditions" issued November 28, 1997 in the above referenced docket as more fully detailed in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,*Secretary.*

[FR Doc. 97-33277 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP97-769-000]

Colorado Interstate Gas Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Campo Lateral Project and Request for Comments on Environmental Issues

December 16, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities, about 115 miles of 16-inch-diameter pipeline, proposed in the Campo Lateral Project.¹ This EA will be used by the Commission in its decision-making process to determine whether

¹ Colorado Interstate Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

the project is in the public convenience and necessity.

Summary of the Proposed Project

Colorado Interstate Gas Company (CIG) wants to transport Raton Basin Area gas directly from its existing Picketwire Lateral through its Campo Regulator Station through the proposed new Camp Lateral to existing delivery points (south of the Campo Meter Station) for increased service to three interstate pipelines (Transwestern Pipeline Company, Northern Natural Gas Company, and El Paso Natural Gas Company). The proposed Campo Lateral would bypass upstream bottlenecks on CIG's system and increase the capacity of the Picketwire Lateral from 43 MMcf per day to about 110.5 MMcf per day. CIG seeks authority to:

- Construct and operate 115.53 miles of 16-inch-diameter pipeline (to be known as the Campo Lateral) in Las Animas and Baca Counties, Colorado;
- Increase the MAOP of the Picketwire Lateral from 1233 psia to 1308 psig.

The general location of the project facilities is shown in appendix 1.² If you are interested in obtaining detailed maps of a specific portion of the project, or procedural information please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would require the disturbance of about 1,475 acres of land. Following construction, about 700 acres would be maintained as new permanent right-of-way. A total of about 0.05 acre will be maintained for five (20 feet by 20 feet each) permanent aboveground block valve sites. Except for the five permanent block valve sites, all land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important

² The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Land use;
- Cultural resources;
- Endangered and threatened species.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northern. This preliminary list of issues may be changed based on your comments and our analysis.

- Nine federally listed endangered or threatened species may occur in the proposed project area.
- The Granada Branch or the Cimarron Cutoff of the Santa Fe Trail would be crossed.
- About 14 miles of the Comanche National Grass Lands would be crossed.
- Five perennial, streams would be crossed: Frijole, San Francisco, Salt, Trinchera, and Chacuaco Creeks.

Public Participation

You can make a difference by sending a letter addressing your specific

comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR-11.2)
- Reference Docket No. CP97-769-000; and
- Mail your comments so that they will be received in Washington, DC on or before January 15, 1998.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "Intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules or Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97-33268 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-49-000]

K N. Wattenberg Transmission Limited Liability Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Front Runner Pipeline Project and Request for Comments on Environmental Issues

December 17, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed by K N Wattenberg Transmission Limited Liability Company (KNW) as the Front Runner Pipeline Project.¹ This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether the project is in the public convenience and necessity.

Summary of the Proposed Project

KNW proposes to construct, acquire, and operate new and existing pipeline facilities to establish a new natural gas transportation system along the Front Range of the Rocky Mountains in north central Colorado. KNW would interconnect three segments (about 75 miles) of new pipeline with two segments (about 33.5 miles) of existing pipeline, providing new capacity for transporting gas between the Rockport "gas hub" in northern Weld County and natural gas processors, users, and transporters in southern Weld and northern Adams County (northern Denver). The new pipeline would have the capacity to provide users at the southern end with 250 million cubic feet (MMcf) of natural gas per day, and gas producers at the southern end with the ability to transport 80 MMcf per day to new markets accessible via several existing interstate carriers whose facilities converge at Rockport.² Specifically, KNW seeks authority to construct and operate:

- About 45.2 miles of new 24-inch-diameter pipeline extending from Rockport (in northern Weld County) south to northern Johnstown;

¹ KNW's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

² Pipeline carriers having facilities at Rockport include K N Interstate Gas Transmission Company, Colorado Interstate Gas Company, Trailblazer Pipeline Company, Williams Natural Gas Company, and Wyoming Interstate Company.

- About 10.6 miles of new 16-inch-diameter pipeline extending from the Pan Energy-Mark Mewbourne Gas Processing Plant westward towards an area northwest of Platteville; and

- About 19.3 miles of new 6- and 12-inch-diameter pipeline extending eastward from the Erie area in southern Weld County.

To complete the new system, KNW would also acquire existing gathering and related facilities from its affiliate K N Gas Gathering Company (KNGG). These facilities, which KNGG no longer needs to meet its current level of service requirements in Colorado, include:

- About 9.5 miles of 16-inch-diameter unprocessed gas pipeline extending from northern Johnstown to an area northwest of Platteville; and

- About 24 miles of 12-, 10-, and 8-inch-diameter processed gas pipeline extending south from the Amoco gas processing plant near Platteville to an area southeast of Brighton in northern Adams County. (This segment is essentially 21 miles of 12-inch-diameter mainline with three short, small-diameter laterals extending to nearby customers.)

KNW would need to clean and dry the 9.5-mile-long segment of unprocessed gas pipeline before converting it to processed gas service. KNW also plans to construct/install mainline valves, interconnects, metering and valving at gas delivery/receipt points, and pigging facilities along the system.

The location of the project facilities is shown in appendix 1.³ If you are interested in obtaining more detailed maps of a specific portion of the project, or procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would disturb about 698 acres of land overall, based on a typical 75-foot-wide pipeline construction right-of-way and including extra work spaces needed temporarily at waterbody, road, and railroad crossings. Following construction, about 458 acres would be maintained as new permanent pipeline rights-of-way (typically 50-foot-wide) or aboveground facility sites. (This figure excludes existing easements associated with the pipeline segments that KNW would acquire from KNGG.) The remaining 240 acres of land disturbed

during construction would be restored and allowed to revert to its former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received will be considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Land use;
- Cultural resources;
- Air quality and noise;
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impact on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified two issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental

information provided by KNW. This preliminary list may be changed based on your comments and our analysis.

- Eleven federally listed endangered or threatened species may occur in the proposed project area.

- The proposed facilities would require at least three waterbody crossings which would impact associated wetland and riparian vegetation which are considered sensitive resources in the project area.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes/locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of the Environmental Review and Compliance Branch, PR-11.1;
- Reference Docket No. CP98-49-000; and
- Mail your comments so that they will be received in Washington, DC on or before January 16, 1998.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

³The appendices referred in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97-33270 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of As-Built Exhibits

December 16, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* As-Built Exhibits.

b. *Project No.:* 8914-012.

c. *Dates Filed:* July 7, 1993 and December 5, 1997.

d. *Applicant:* Rio Blanco Water Conservancy District.

e. *Name of Project:* Taylor Draw Project.

f. *Location:* On the White River in Rio Blanco County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. *Applicant Contact:* Ms. Ann Brady 2252 East Main Street Rangely, CO 81648 (970) 675-5055.

i. *FERC Contact:* Paul Shannon, (202) 219-2866.

j. *Comment Date:* January 28, 1997.

k. *Description of Filings:* Rio Blanco Water Conservancy District (Rio Blanco) filed as-built exhibit drawings showing changes to the projects transmission line and boundary. Rio Blanco was authorized to construct a 7.5-mile-long transmission line from the project to the Southwest Rangely Substation. During construction, Rio Blanco instead tied into an existing transmission line 1,000 feet from the project's powerhouse. The as-built exhibits revise the project boundary to include the 1,000-foot-long new transmission line.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments,

protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97-33275 Filed 12-19-97; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5938-1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Hazardous Waste Generator Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Hazardous Waste Generator Standards, OMB Control Number 2050-0035, expiring on 2/28/98. The ICR describes the nature of the information collection and its expected burden and

cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, (202) 260-2740, or download off the Internet at <http://www.epa.gov/icr/icr.htm> and refer to EPA ICR No. 0820.07.

SUPPLEMENTARY INFORMATION:

Title: Hazardous Waste Generator Standards (OMB Control Number 2050-0035; EPA ICR No. 0820.07.) expiring 2/28/98. This is a request for extension of a currently approved collection.

Abstract: In the Resource Conservation and Recovery Act (RCRA), as amended, Congress directed the U.S. Environmental Protection Agency (EPA) to implement a comprehensive program for the safe management of hazardous waste. The core of the national waste management program is the regulation of hazardous waste from generation to transport to treatment and eventual disposal, or from "cradle to grave." Section 3001(d) of RCRA requires EPA to develop standards for small quantity generators. Section 3002 of RCRA among other things states that EPA shall establish requirements for hazardous waste generators regarding recordkeeping practices. Section 3002 also requires EPA to establish standards on appropriate use of containers by generators.

Finally, section 3017 of RCRA specifies requirements for individuals exporting hazardous waste from the United States, including a notification of the intent to export, and an annual report summarizing the types, quantities, frequency, and ultimate destination of all exported hazardous waste (additional reporting requirements for exporters and importers of recyclable materials are covered under ICR Number 1647.01).

This ICR targets four categories of informational requirements in part 262: pre-transport requirements for both large (LQG) and small (SQG) quantity generators (including the generator pre-transport requirements referenced in 40 CFR part 265), air emission standards requirements for LQGs (referenced in 40 CFR part 265, subparts I and J), recordkeeping and reporting requirements for LQGs and SQGs, and export requirements for LQGs and SQGs (i.e., notification of intent to export and annual reporting).

This collection of information is necessary to help generators and EPA (1) identify and understand the waste streams being generated and the hazards

associated with them, (2) determine whether employees have acquired the necessary expertise to perform their jobs, and (3) determine whether LQGs have developed adequate procedures to respond to unplanned sudden or non-sudden releases of hazardous waste or hazardous constituents to air, soil, or surface water. This information is also needed to help EPA determine whether tank systems are operated in a manner that is fully protective of human health and the environment and to ensure that releases to the environment are managed quickly and efficiently.

Additionally, this information contributes to EPA's goal of preventing contamination of the environment from hazardous waste accumulation practices, including contamination from equipment leaks and process vents. Export information is needed to ensure that (1) foreign governments consent to U.S. exported wastes, (2) exported waste is actually managed at facilities listed in the original notifications, and (3) documents are available for compliance audits and enforcement actions. In general, these requirements contribute to EPA's goal of preventing contamination of the environment. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 9/3/97 (62 FR 46491); no comments were received.

Burden Statement: The average annual public reporting burden per response for LQGs under this collection of information is estimated to range from 21 minutes to 32 hours, and the average annual public reporting burden per response for SQGs is estimated to range from 21 minutes to 7 hours. The average annual recordkeeping burden per response for LQGs under this collection of information is estimated to range from 27 minutes to 1 hour, and the average annual recordkeeping burden per response for SQGs is estimated to range from 18 minutes to 45 minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing

and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Hazardous Waste Generators, Hazardous Waste Transporters who commingle waste with different Department of Transportation descriptions; and Importers or Exporters of Hazardous Waste.

Estimated Number of Respondents: 244,932.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 282,696 hours.

Estimated Total Annualized Cost Burden: \$1,867,304.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0820.07 and OMB Control No. 2050-0035—in any correspondence:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460. (or E-Mail Farmer.Sandy@epamail.epa.gov) and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 16, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97-33326 Filed 12-19-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5938-2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Application for Preauthorization of a CERCLA Response Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval:

Application for Preauthorization of a CERCLA Response; OMB Control No. 2050-0106; expiring on January 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR call Sandy Farmer at EPA, (202) 260-2740, or download off the Internet at <http://www.epa.gov/icr/icr.htm>. Refer to EPA ICR No. 1304.05.

SUPPLEMENTARY INFORMATION:

Title: "Application for Preauthorization of a CERCLA Response (OMB Control No. 2050-0106; EPA ICR No. 1304.05) expiring 1/31/98. This is a renewal of a previously approved collection.

Abstract: This statement supports the request for renewal of the information collection requirements contained in EPA's final rule "Response Claims Procedures for the Hazardous Substance Superfund" (40 CFR part 307), hereinafter referred to as the RCP. The RCP was promulgated on January 21, 1993, and the ICR for this rule needs to be renewed. The information collection requirements under the RCP will provide the information necessary to fulfill the statutory requirements of section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Under section 111(a)(2) of CERCLA, claimants are authorized to be reimbursed from the Hazardous Substance Superfund (the Fund) for necessary response costs incurred as a result of carrying out the National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 40 CFR Part 300). In addition, section 122(b)(1) of CERCLA provides the President (EPA, by delegation under Executive Order (E.O.) 12580) with the discretionary authority to enter into agreements with potentially responsible parties (PRPs), whereby the PRPs will perform a preauthorized phase of a response action in return for reimbursement of an agreed-on portion of response costs from the Fund (i.e., a "mixed-funding" agreement).

Section 112(b)(1) of CERCLA authorizes EPA (as delegated by E.O. 12580) to prescribe the appropriate

forms and procedures for filing response claims against the Fund, including a provision requiring the claimant to make a sworn verification of the claim to the best of his/her knowledge. EPA has promulgated the RCP pursuant to the section 112 authority.

Under the RCP and pursuant to sections 111(a)(2) and 122(b)(1) of CERCLA, individuals, private entities, and potentially responsible parties (PRPs) (including States and political subdivisions) are eligible to submit claims against the Fund for reimbursement of response costs. As specified by section 111(a)(2) of CERCLA and section 300.700(d) of the NCP, all proposed response actions must be approved in advance by EPA through the preauthorization process in order for a subsequent claim to be awarded. Applicants may obtain preauthorization from EPA for proposed response actions by completing and submitting the "Application for Preauthorization of a CERCLA Response Action" (EPA Form 2075-3). EPA will review and evaluate such applications and will respond in writing to applicants within approximately 45 days of receipt of a completed application. After completing this review, EPA will develop a Preauthorization Decision Document (PDD). The PDD will establish a record of the Agency's preauthorization decision and will contain the terms and conditions that must be satisfied for the applicant to be reimbursed from the Fund.

After an applicant has obtained preauthorization from EPA and has completed the preauthorized response action (or a preauthorized phase of a response action), he/she may submit a claim for reimbursement of the resultant response costs. In order to file a claim, the claimant must complete and submit to EPA the "Claim for CERCLA Response Action" (EPA Form 2075-41). EPA will review and evaluate the information contained on the completed claim form and will make a determination on whether to award or deny the claim, in whole or in part.

The application for preauthorization and the claim form may be obtained from any of the EPA Regional Offices, and shall be submitted to the appropriate EPA Regional Office for review. The EPA Regional Office will review and evaluate the application for preauthorization and the claim form in coordination with the Office of Emergency and Remedial Response, the Office of the General Counsel, the Office of Enforcement and Compliance Assurance, and other offices, as necessary. Both forms will be evaluated

according to the criteria set forth in the RCP. The information contained on the application and the claim form will be retained in the EPA Regional Office for three years after the completion of a project and will be available (if not deemed confidential), upon request, to the public through the public docket in accordance with the Freedom of Information Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 8/4/97 (62 FR 41962); no comments were received.

Burden Statement: EPA estimates that five preauthorization requests will be submitted annually with an average of 258 work hours per request. It is estimated that 12 claim applications will be submitted annually with an average of 42 work hours per claim. Once claims are awarded, claimants will have to maintain records for 10 years. Record maintenance will be performed by 10 claimants annually at an average of 15 hours per activity. The total annual costs will be \$107,650.

The total burden hours for completing the preauthorization application, the claim form, and maintaining necessary records is an average of 317 hours. Total annual average burden for all respondents is 1,968 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses.

Please refer to EPA ICR No.1304.05 and OMB Control No.2050-0106 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 (or email Farmer.Sandy@epamail.epa.gov).

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 16, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97-33327 Filed 12-19-97; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:10 a.m. on Tuesday, December 16, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's personnel and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Acting Chairman Andrew C. Hove, Jr., 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)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (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: December 16, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97-33419 Filed 12-18-97; 1034 am]

BILLING CODE 6714-01-M

FEDERAL HOUSING FINANCE BOARD

[No. 97-N-11]

Privacy Act of 1974; System of Records**AGENCY:** Federal Housing Finance Board.**ACTION:** Notice with request for comments.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), the Federal Housing Finance Board (Finance Board) is providing notice of its intent to amend the system of records entitled FHFB-1 Employee Attendance Records, to include payroll records and a new routine use required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Reconciliation Act).

DATES: This amendment will become effective as proposed without further notice on January 21, 1998 unless comments dictate otherwise. The Finance Board will accept comments in writing on or before January 21, 1998.

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

FOR FURTHER INFORMATION CONTACT: E. Alan Simpson, Personnel Officer, Office of Resource Management, 202/408-2585, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408-2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: Pursuant to the requirements of the Privacy Act, the Finance Board is publishing a notice of an amendment to its system of records entitled FHFB-1 Employee Attendance Records, to expressly include payroll records and a new routine use required by the Reconciliation Act. See 5 U.S.C. 552a(e)(4) and (11); Pub. L. 104-193, sec. 316(f), 110 Stat. 2175 (Aug. 22, 1996), *codified at* 42 U.S.C. 653.

Under the Reconciliation Act, the Finance Board is required to disclose data from the system of records entitled FHFB-1 Employee Payroll and Attendance Records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for use in the National Database of New Hires, which is part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09-90-0074. See 62 FR 61663 (Oct. 2, 1997) (describing FPLS).

FPLS is a computerized network through which states may request location information from federal and state agencies to find non-custodial parents and their employees for purposes of establishing and enforcing child support obligations. On October 1, 1997, FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, FPLS will be expanded further to include a Federal Case Registry that will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. The appropriate state will be notified if FPLS identifies a person as a participant in a child support case. State requests to FPLS for location information also will continue to be processed after October 1, 1998.

When the Finance Board hires a person, it may disclose to FPLS his or her name, social security number, home address, date of birth, date of hire, and information identifying the Finance Board as the employer. The Finance Board also may disclose to FPLS the names, social security numbers, and quarterly earnings of each Finance Board employee, within one month of the end of the quarterly reporting period.

Information the Finance Board submits to FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. It also will be disclosed to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the Finance Board hereby amends the system of records entitled FHFB-1 Employee Attendance Records, originally published in the **Federal Register** in September 1995, see 60 FR 46120 (Sept. 5, 1995), as follows:

FHFB-1**SYSTEM NAME:**

Employee Attendance and Payroll Records.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Finance Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of salary and payroll data, including time and attendance information.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

2. The Department of Agriculture's National Finance Center for payroll purposes.

* * * * *

7. OPM or the General Accounting Office (GAO) when the information is required for evaluation of payroll or leave administration.

10. The Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, upon its request and as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, see Pub. L. 104-193, sec. 316(f), 110 Stat. 2175 (Aug. 22, 1996), *codified at* 42 U.S.C. 653, for the purposes of establishing and enforcing child support obligations.

* * * * *

SYSTEM MANAGER AND ADDRESS:

Office of Resource Management, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

* * * * *

By the Federal Housing Finance Board.

Dated: December 12, 1997.

William W. Ginsberg,
Managing Director.

[FR Doc. 97-33255 Filed 12-19-97; 8:45 am]

BILLING CODE 6725-01-U

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. The notices also will 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 January 6, 1998.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Lee Allen Novak, Rebecca Sue Novak, and Nicholas Lee Novak*, all of Urichsville, Ohio; to acquire voting shares of FNB, Inc., Dennison, Ohio, and thereby indirectly acquire First National Bank of Dennison, Dennison, Ohio.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Joseph Rohlen Kondisko*, and Allana Minerva Kondisko, both of Venice, Florida, and William Graham McKelvey, and Jeanne Wolford McKelvey, both of Salix, Pennsylvania; to collectively control outstanding voting shares of Community National Bank Corporation, Venice, Florida, and thereby indirectly acquire Community National Bank of Sarasota County, Venice, Florida.

2. *Rachel J. Reeves*, Miami, Florida; to retain 31.63 percent, and acquire an additional 19.37 percent, for a total of 51 percent, of the voting shares of NGLC, Inc., Miami, Florida, and thereby indirectly acquire Peoples National Bank of Commerce, Miami, Florida.

Board of Governors of the Federal Reserve System, December 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-33334 Filed 12-19-97; 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. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Community National Bank Corporation, ESOP*, Venice, Florida; to become a bank holding Company by acquiring 30 percent of the voting shares of Community National Bank Corporation, Venice, Florida, and thereby indirectly acquire Community National Bank of Sarasota County, Venice, Florida.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *State National Bancshares, Inc.*, Lubbock, Texas; to acquire 100 percent of the voting shares of First Sierra, Bancshares, Inc., Truth or Consequences, New Mexico, and thereby indirectly acquire Sierra Bank, Las Cruces, New Mexico.

2. *State National Bancshares, Inc.*, Lubbock, Texas, and State National Bancshares of Delaware, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of First National Bank of Denver City, Denver City, Texas.

Board of Governors of the Federal Reserve System, December 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-33332 Filed 12-19-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the

Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 1998.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *Franklin Financial Services Corporation*, Chambersburg, Pennsylvania; to engage *de novo* through its subsidiary, Farmers and Merchants Trust Company of Chambersburg, Chambersburg, Pennsylvania, in community development activities, pursuant to § 225.28(b)(12) of the Board's Regulation Y. **Comments on this application must be received by January 6, 1998.**

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *BB&T Corporation and BB&T Financial Corporation of Virginia*, both of Winston-Salem, North Carolina; to acquire Life Bancorp, Inc., Norfolk, Virginia, and thereby indirectly acquire Life Savings Bank, F.S.B., Norfolk, Virginia, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y; engaging in real estate appraisal activities, pursuant to § 225.28(b)(2)(i) of the Board's Regulation Y; engaging in the sale of credit related insurance, pursuant to § 225.28(b)(11)(i) of the Board's Regulation Y; and engaging in discount brokerage activities, pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-33333 Filed 12-19-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 971-0081]

Guinness Plc; Grand Metropolitan Plc; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 20, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, Federal Trade Commission, 6th & Pennsylvania Ave., NW, H-374, Washington, DC 20580. (202) 326-2932. George S. Cary, Federal Trade Commission, 6th & Pennsylvania Ave., NW, H-374, Washington, DC 20580. (202) 326-3741.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 15, 1997), on the World Wide Web, at "<http://www.ftc.gov/os/actions97.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-

130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from Guinness plc ("Guinness") and Grand Metropolitan plc ("Grand Met") an Agreement Containing Consent Order ("Proposed Consent Order"). The Proposed Consent Order remedies the likely anticompetitive effects arising from the proposed merger of Guinness and Grand Met in two relevant product markets. This agreement has been placed on the public record for sixty (60) days for receipt of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the consent order in the agreement.

According to the draft of complaint that the Commission intends to issue, Guinness and Grand Met are competitors in the sale and distribution in the United States of premium Scotch and premium gin. The premium Scotch products of Guinness include Johnnie Walker Red and Dewar's White Label and the premium Scotch brands of Grand Met include J&B Rare, J&B Select, and The Famous Grouse. The premium gin brands of Guinness include Tanqueray gin and the premium gin brands of Grand Met are Bombay Original and Bombay Sapphire.

The Commission's draft of complaint states that Guinness and Grand Met entered into an agreement to merge their companies on May 11, 1997. The size of the transaction, measured in terms of the market capitalization of both parties, is about \$36 billion.

The Commission is concerned that the proposed merger would eliminate substantial competition between Guinness and Grand Met, and increase concentration substantially, in the very highly concentrated premium Scotch and premium gin markets, resulting in higher prices. The Commission stated it has reason to believe that the proposed merger would have anticompetitive effects and violate Section 7 of the

Clayton Act and Section 5 of the Federal Trade Commission Act.

In the United States premium Scotch market, Guinness is the largest competitor with about 68% of all sales and Grand Met is the second largest competitor, with about 24% of sales. Together, the merged firm will control approximately 92% of all United States premium Scotch sales. The proposed merger would increase the Herfindahl-Hirschman Index ("HHI"), the customary measure of industry concentration, by over 3000 points and produce a market concentration of over 8000 points. In the United States premium gin market, Guinness is the largest competitor with about 58% of all sales and Grand Met is the third largest, and about 15% of sales. Together, the merged firm will control approximately 73% of all United States premium gin sales. The proposed merger would increase the HHI by over 1700 points and produce a market concentration of over 6000 points.

The Proposed Consent Order, if finally issued by the Commission, would settle all of the charges alleged in the Commission's complaint. Under the terms of the Proposed Consent Order, Guinness and Grand Met will be required to divest their Dewar's Scotch, Bombay Original gin, and Bombay Sapphire gin brands, worldwide, to one or two acquirers acceptable to the Commission. To insure an uninterrupted supply of Dewar's Scotch after the brand divestiture, Guinness will be required to divest additional assets, including Scotch distilling capacity, if the Commission should determine that these additional assets are necessary for the acquirer effectively to compete. Also, to insure an uninterrupted supply of Bombay Original and Bombay Sapphire gins, Guinness and Grand Met may be required to produce these gins for the acquirer, in England, should the independent third party that has been producing Bombay Original and Bombay Sapphire for Grand Met not wish to continue to do so for the acquirer.

Guinness and Grand Met will be required to complete the required divestitures within six (6) months from the date of the Commission's acceptance of the consent order for public comment. In the event Guinness and Grand Met do not divest Dewar's, Bombay Original, and Bombay Sapphire to an acquirer or acquirers acceptable to the Commission in the requisite time, procedures for the appointment of a trustee to sell the assets have been agreed to and will be triggered.

Accompanying the Proposed Consent Order is an Asset Maintenance Agreement. Under its terms, Guinness and Grand Met are required to preserve and maintain the competitive viability of all of the assets to be divested in order to insure that the competitive value of these assets will be maintained after the merger but before the assets are actually divested.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Proposed Consent Order. It is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms in any way.

Donald S. Clark,
Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Guinness PLC, File No. 971-0081

Today, the Commission accepts for public comment a consent order settling allegations that the merger of Guinness PLC and Grand Metropolitan PLC would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint alleges as antitrust product markets: (1) "premium Scotch," which is defined as "blended Scotch whisky that is made and bottled in Scotland, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of the Johnnie Walker Red, Dewar's White Label, and J&B Rare brands," and (2) "premium gin," which is defined as "gin that is made and bottled in England, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of Tanqueray, Bombay Original, and Bombay Sapphire brands." I cannot support the complaint as written.

Although at first glance the markets may sound wacky (to use the vernacular), the complaint merits our careful attention. For reasons that are not apparent, the proposed product markets exclude brands not marketed throughout the United States, if there are any, that compete head to head with the national brands. By definition, the "premium gin" product market also excludes domestically bottled gin brands, if any, that are sold at prices comparable to Tanqueray and Bombay.

I see no reason for these seemingly arbitrary exclusions.

More importantly, the price limitations in the product markets do not seem justifiable. As recognized in Commission precedent, competition occurs along a continuum of prices as brands compete with products above and below their prices. In *Heublein, Inc.*, 96 F.T.C. 385 (1980), for example, the Commission dismissed the complaint based on findings in an "all wine" market and the table, dessert and sparkling wine submarkets. As then Commissioner Pitofsky stated in the *Heublein* opinion, although the competitive offerings of the wine industry were not altogether homogeneous, "those diverse products nevertheless may 'appropriately be designated as a market' for antitrust analysis," 96 F.T.C. at 576 *quoting* *Coca Cola Bottling Co. of New York, Inc.*, 93 F.T.C. 110 (1979).

Despite my disagreement with the allegations in the complaint, I find reason to believe that the merger of Guinness PLC and Grand Metropolitan PLC would violate the law on the basis of a broader market and that an order to remedy the lessening of competition in the broader market would be appropriate. The divestiture of the Dewar's Scotch and Bombay gin brands will have some remedial effect in the broader market, and for that reason, I have voted to accept the order for public comment. After the public comment period, I will revisit the question whether the order is sufficient or whether the Commission should reject the order and seek additional divestitures in an administrative proceeding.

[FR Doc. 97-33306 Filed 12-19-97; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collection projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS

Reports Clearance Officer on (202) 690-6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1

Evaluation of the Proposed Cash and Counseling Demonstration—New—Cash and Counseling is a consumer directed care model for individuals with physical or developmental disabilities. A demonstration project utilizing this model has been proposed. The Office of the Assistant Secretary for Planning and Evaluation is planning to engage in an information collection for the purpose of evaluating this demonstration. Respondents: Individuals or Households; *Burden Information for Baseline Interview*—Number of Respondents: 15,250; Burden per Response: .62 hours; Total Burden for Baseline: 9,455 hours—*Burden Information for Four-Month Treatment Group Interview*— Number of Respondents: 7,245; Burden per Response: .5 hours; Total Burden for Four-Month Treatment Group Interview: 3,622 hours—*Burden Information for Eight-Month Treatment Group Interview*—Number of Respondents: 6,900; Burden per Response: .58 hours; Total Burden for Eight-Month Treatment Group Interview: 4,002 hours—*Burden Information for Nine-Month Followup Interview*—Number of Respondents: 13,800; Burden per Response: .75 hours; Total Burden for Nine-Month Followup: 10,350 hours—Total Burden for Project: 27,429 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: December 4, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97-33355 Filed 12-19-97; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Office of the Secretary

Information Collection Activity Under Emergency Review by the Office of Management and Budget (OMB)

Title: Survey of Biomedical Equipment Manufacturers for Year 2000 Compliance

Paperwork Reduction Act Requirements

We are required to solicit public comments under section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. Specifically, comments are invited on (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. We are seeking emergency OMB approval for this collection of information.

Description

The Deputy Secretary of the Department of Health and Human Services, on behalf of the government-wide Biomedical Equipment Subgroup of the CIO Council's Year 2000 Subcommittee, is surveying manufacturers of biomedical equipment about the Year 2000 compliance of their products. The existence of a Year 2000 date problem in biomedical equipment could pose potentially serious health and safety consequences.

Manufacturers are requested to post information about noncompliance products on a web site and link this to a government web site on biomedical equipment. If all of a manufacturer's products are compliant, they are requested to provide notice of total product compliance. Manufacturers have the option to mail the information to the Department of Health and Human Services for posting on the government web site. All information collected will be available to the public through the government web site.

To be Year 2000 compliant, a product must be able to accurately process date information in the Year 2000 and between the twentieth and twenty-first centuries, including leap year

calculations. Medical devices and scientific laboratory equipment may experience problems beginning January 1, 2000 if the computer systems, software applications, or embedded chips used in these devices and equipment contain two-digit fields for year representation.

The Food and Drug Administration (FDA) regulates medical devices and needs information regarding the Year 2000 compliance of these products. Under a previous Good Manufacturing Practices regulation and the current Quality System Regulation, effective June 1, 1997, manufacturers must investigate and correct problems with medical devices that present a significant risk to public health. This includes devices that fail to operate according to their specifications because of inaccurate date recording and/or calculations. Also, section 518 of the Food, Drug and Cosmetic Act requires notification of users or purchasers when a device presents a reasonable risk of substantial harm to public health. These regulations, however, do not apply to all biomedical equipment, such as scientific laboratory equipment, but only to medical devices. Therefore, a proactive collection of Year 2000 compliance information of all biomedical equipment is necessary to prevent a Year 2000 date problem from causing any public health risk in the patient care services and health research initiatives of the next century.

Burden Information

Respondents: Biomedical Equipment Manufacturers.

Estimated Number of Potentially Noncompliant Products: 20,500.

Estimated Percentage of Responses Collected Electronically: 75%.

Estimated Response Time to Post One Noncompliant Product: 5 minutes.

Estimated Percentage of Written Responses: 25%.

Estimated Written Response Time for One Noncompliant Product: 20 minutes.

Estimated Total Annual Burden: 2989 hours.

Additional Information

HHS is requesting that OMB grant a seven day approval under procedures for emergency processing.

Questions about this information collection can be directed to the Project Coordinator, Gayle Finch, Director, Office of Information Technology Planning and Investment, Humphrey Building, 200 Independent Avenue, S.W., Washington, D.C. 20201, phone 202-690-5515 or fax 202-690-8715.

Written comments about the information collection described above can be directed to Wendy Taylor, OMB Desk Officer, Office of Management and Budget, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, or fax 202-395-6974.

Dated: December 15, 1997.

Tom Joyce,

Reports Clearance Officer.

[FR Doc. 97-33310 Filed 12-19-97; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Population-Specific Issues.

Times and Dates: 10:00 a.m.-5:00 p.m., January 12, 1998; 10:00 a.m.-4:00 p.m., January 13, 1998.

Place: Room 303A, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington D.C. 20201.

Status: Open.

Purpose: The Subcommittee will discuss data needs and issues associated with Medicaid managed care. Presentations will be made by representatives of federal, State and local agencies, providers, plans, and patient advocacy groups who will describe their data needs and issues relating to Medicaid managed care. The Subcommittee also will plan site visits to selected States to assess data issues in Medicaid managed care.

Contact Person for More Information: Substantive program information as well as a roster of committee members may be obtained from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440-D, Humphrey Building, 200 Independence Avenue S.W., Washington D.C. 20201, telephone (202) 690-7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050. Additional information about the full Committee is available on the NCVHS website, where the tentative agenda for the Subcommittee meeting will also be posted when available: <http://aspe.os.dhhs.gov/ncvhs>

Dated: December 17, 1997.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 97-33354 Filed 12-19-97; 8:45 am]

BILLING CODE 4151-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces that the Agency for Health Care Policy and Research (AHCPR) is planning to request the Office of Management and Budget (OMB) to allow a proposed information collection project of "Medical Expenditure Panel Survey—Insurance Component (MEPS-IC) for 1998 and 1999." In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)), AHCPR invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 6, 1997 and allowed 60 days for public comment. As a result, public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 21, 1998.

ADDRESSES: Written comments should be submitted to the OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB; New Executive Office Building, Room 10235; Washington, 20503.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594-1406, ext. 1497.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Medical Expenditure Panel Survey—Insurance Component (MEPS-IC) for 1998 and 1999."

The AHCPR plans to continue collection of the MEPS-IC. This survey collects information from employers (including public and private sectors) and other health insurance providers. The survey was first conducted in 1997.

The MEPS-IC is the integration of two previous surveys which collected similar information from two different samples. The two surveys were:

1. The 1994 National Employer Health Insurance Survey (NEHIS) sponsored by AHCPR, the National Center for Health

Statistics (NCHS) and the Health Care Financing Administration (HCFA). The NEHIS had a sample drawn from (1) a list of private sector establishments, the Dunn Market Identifiers, provided by Dunn and Bradstreet, a major supplier of business information, (2) a list of all government entities, Federal, State and local, provided by the Census Bureau, and (3) a list of self-employed individuals provided by the NCHS; and

2. The 1987 Health Insurance Plans Survey (HIPS) sponsored by AHCPR's predecessor, the National Center for Health Statistics Research. The HIPS sample was a sample of employers and other health insurance providers generated from the 1987 National Medical Expenditure Survey, a household survey similar to the MEPS-HC.

As a result, the sample for the MEPS-IC is made up of two components:

1. A list sample of employers selected from three sample frames, private sector, government entities and self-employed individuals, available from the Bureau of the Census; and

2. a sample of employers and other health insurance providers identified by respondents to the MEPS-Household Component (MEPS-HC). The MEPS-HC is an annual household survey designed to collect medical expenditures and ancillary information for individuals.

Data will be produced in two forms:

(1) Files containing employer information from the list sample of selected employers; and (2) files containing calendar years 1997 and 1998 insurance data collected in 1998 and 1999 from employers and linked to information from the household respondents of the 1997 and 1998 MEPS-HC surveys.

The data are intended to be used for purposes such as:

- Generating national and State estimates of employer health care offerings;
- Producing aggregate data on national and State estimates of spending on employer-sponsored health insurance for analyzing results of national and State health care policy and providing information to guide future policy;
- Supplying data to model the demand for health insurance; and
- Providing a valuable source of information concerning household responses regarding choices of health plans and costs and benefits of these plans, when pooled with data from the MEPS-HC.

These data provide the basis for researchers to address significant questions for employers and policymakers alike.

Method of Collection

The data will be collected using a combination of modes. AHCPR intends to first contact the employers by telephone. This contact will provide information on the availability of health insurance from the employer and essential persons to contact. Based upon this information, AHCPR will send a mail questionnaire to employers and others identified by employers. In order to assure high response rates, AHCPR will follow-up with a second mailing at an acceptable time interval, followed by a telephone call to collect data from those who have not responded by mail.

Data collected from each employer will include a description of the business (e.g., size, industry) and descriptions of health insurance plans available, plan enrollments, total plan costs and costs to employees.

For employers that can be matched to the MEPS-HC respondents, data will also be collected indicating the actual plan selected by the MEPS-HC respondent and the plan costs.

As part of the process, for larger employers with high burdens, such as State employers and large firms, AHCPR will, if needed, perform personal visits and do customized collection, such as, acceptance of data in computerized formats. Annual burden estimates follow:

Initial Number of Respondents:
40,000.

Number of Surveys Per Respondent: 1.

Average Burden Per Respondent: .5 hour.

Estimated Annual Total Burden:
20,000 hours.

Request for Comments

Comments are invited on: (a) The necessity of the proposed collection; (b) the accuracy of the Agency's estimate of 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 upon the respondents, including 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.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: December 15, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97-33253 Filed 12-19-97; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Assessment of Medical Technology

The Agency for Health Care Policy and Research (AHCPR), through the Center for Practice and Technology Assessment (CPTA), announces that it is initiating an assessment of the effectiveness of Prostate-specific antigen (PSA) testing in patients with benign prostatic hyperplasia (BPH).

The AHCPR is requesting information on the utility, and costs associated with the use of PSA testing and the specific indications for which this testing is appropriate. The AHCPR also requests information on patient selection criteria.

The assessment consists of a synthesis of information found in published literature and obtained from appropriate organizations in the private sector, Public Health Service (PHS) agencies and others in the Federal Government. AHCPR assessments are conducted in accordance with sections 904(b) and (d) of the PHS Act (42 U.S.C. 299a-2(b) and (d)). The assessment is based on the most current knowledge concerning the clinical effectiveness and appropriate uses of the technology being evaluated. The information being sought by this notice is a review and evaluation of past, current, and planned research related to this technology, as well as a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characteristics of the patient population most likely to benefit from PSA testing as well as information on the clinical acceptability, effectiveness, and the extent of use of this technology, is also being sought. Following completion of the assessment, a recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy.

The AHCPR is interested in receiving information which would help in the evaluation or review of the technology as described above. To enable the interested scientific community to evaluate the information and analysis included in the assessment, AHCPR will discuss in the assessment only those

data and analyses for which a source(s) can be cited. Respondents are therefore encouraged to include with their submissions a written consent permitting AHCPR "to cite and make public the sources of the data and the comments provided". Otherwise, in accordance with the confidentiality statute governing information collected by AHCPR, 42 U.S.C. 299a-1(c), no information received will be published or disclosed which could identify an entity or individual supplying the information or any individual or entity described in the information. In addition, clearly market proprietary information may be kept confidential in accordance with the Freedom of Information Act, 5 U.S.C. § 552(b)(4).

Any person or group wishing to provide AHCPR with information relevant to this assessment should do so in writing no later than March 23, 1998 to: Douglas B. Kamerow, M.D., M.P.H., Director, Center for Practice and Technology Assessment, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Suite 310, Rockville, MD 20852, Phone: (301) 594-4015.

Dated: December 15, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97-33252 Filed 12-19-97; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Number 816]

Individual Grants for Extramural Injury Research for Primary Prevention of Unintentional Injuries, Acute Care, Disability Prevention, and Biomechanics; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) announces that applications are being accepted for Injury Prevention and Control Research Grants for fiscal year (FY) 1998.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Unintentional Injuries. (To order a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301, 391-394 of the Public Health Service Act (42 USC 241, 280b-280b-3), as amended. Program regulations are set forth in Title 42 CFR Part 52.

Smoke-Free Workplace

CDC strongly encourages all grant and cooperative agreement recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include all nonprofit and for-profit organizations. Thus State and local health departments and State and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, a grant, contract, loan, or any other form.

Availability of Funds

Approximately \$2.7 million is available for FY 1998 injury research grants that include funding for projects that address primary prevention of unintentional injuries (home and leisure, and motor vehicle related-injuries), acute care, the prevention of secondary conditions in persons with disabilities, and biomechanics.

Approximately \$1,800,000 is available to support 6-8 projects that address primary prevention of unintentional injuries (home and leisure, and motor vehicle related-injuries), acute care, and the prevention of secondary conditions in persons with disabilities. Awards will be made for a 12-month budget period within a project period not to exceed three years. The maximum funding level per year will not exceed \$300,000 (including both direct and indirect costs). Applications that exceed the funding cap of \$300,000 will be excluded from the competition and returned to the applicant.

Approximately \$900,000 is available to support 3-5 projects that address

biomechanics. Awards will be made for a 12-month budget period within a project period not to exceed three years. The maximum funding level per year will not exceed \$300,000 (including both direct and indirect costs). Applications that exceed the funding cap will be excluded from the competition and returned to the applicant.

The specific program priorities for these funding opportunities are outlined with examples in this announcement under the subheading, "Programmatic Priorities."

Continuation awards within the project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one day meeting should be included in the applicant's proposed budget), the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds. In addition, if funds are available, continuation awards may be eligible for increased funding to offset inflationary costs.

Use of Funds-Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352 (which has been in effect since December 23, 1989), recipients (and their sub-tier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the current HHS Appropriations Act expressly prohibits the use of appropriated funds for indirect or "grass roots" lobbying efforts that are designed to support or defeat legislation pending before State legislatures. Section 503 of the law provides as follows:

Section 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in

presentation to the Congress or any State legislature itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Prohibition on Use of CDC Funds for Certain Gun Control Activities

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998, specifies that: "none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control."

Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a Member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence Members of Congress with regard to specific legislation or appropriation by Congress.

In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the language in the CDC's Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

Background and Definitions

A. Background

By nearly every measure, injury ranks as one of the nation's most pressing health problems. More than 150,000 people die each year as a result of motor vehicle crashes, falls, fires, drownings, poisonings, suicides, homicides, and other types of injuries. Each year, 56 million people sustain injuries severe enough to require medical treatment, and for every 100 people injured, the effects are serious enough to require 162 days of restricted activity. Thirty-four million injured persons visit emergency departments and another 2.7 million are hospitalized.

Injury is the leading cause of death for Americans between the ages of one and 44 years, and the leading cause of potential years of life lost. Young children are at the greatest risk from car crashes (both as occupants and pedestrians), drownings, and fires. Adolescents and young adults,

especially males, are at highest risk of death from motor-vehicle crashes and gunshot wounds. For people older than 75, falls are the leading cause of death.

Although the greatest cost of injury is in human suffering and loss, the financial cost of injury is estimated at more than \$224 billion, an increase of 42 percent in the last decade. These costs include direct medical care and rehabilitation costs as well as lost wages of the individual and productivity losses to the nation.

Opportunities to understand and prevent unintentional injuries and reduce their effects are available. Maximizing these opportunities for prevention and control requires a broad approach which will incorporate many disciplines that previously have not been an integral part of public health efforts. Many of these opportunities and research priorities are identified in Healthy People 2000; Injury in America (National Academy Press, 2101 Constitution Avenue, NW, Washington, D.C. 20418—ISBN0-309-03545-7); Injury Prevention: Meeting the Challenge (supplement to the American Journal of Preventive Medicine, (Vol. 5, no. 3, 1989); and Cost of Injury (Dorothy P. Rice, Ellen J. MacKenzie, and Associates, Cost of Injury: A Report to the Congress, San Francisco, California: Institute for Health and Aging, University of California and Injury Prevention Research Center, The Johns Hopkins University, 1989).

B. Definitions

1. Injury is defined as physical damage to an individual that occurs over a short period of time as a result of acute exposure to one of the forms of physical energy in the environment or to chemical agents or the acute lack of oxygen. The three phases of injury control are defined as prevention, acute care, and rehabilitation. Within these phases the major categories of injury are intentional, unintentional, and occupational. Intentional injuries result from interpersonal or self-inflicted violence, and include homicide, assaults, suicide and suicide attempts, elder and child abuse, violence against women, and sexual assault. Unintentional or unintended injuries include those that result from motor vehicle collisions, falls, fires, poisonings, and drownings. Occupational injuries occur at the worksite and include unintentional trauma such as work-related motor-vehicle injuries, drownings, electrocutions, and intentional injuries in the workplace such as homicide. Not included in this definition of occupational injuries are cumulative

trauma disorders, back injuries not caused by acute trauma, and effects of repeated exposures to chemical or physical agents.

2. Individual injury control research projects (R01) are defined as research designed to:

- a. Elucidate the chain of causation—the etiology and mechanisms—of injuries and subsequent disabilities; or
- b. Yield results directly applicable to identifying interventions to prevent injury occurrence or minimize disability; or
- c. Evaluate the effect of known interventions on injury morbidity, mortality, disability, and costs.

Purpose

The purposes of this program are to:

- A. Support injury prevention and control research on priority issues as delineated in Healthy People 2000; Injury in America; Injury Prevention: Meeting the Challenge; and Cost of Injury.
- B. Encourage professionals from a wide spectrum of disciplines such as engineering, medicine, health care, public health, behavioral and social sciences, and others, to undertake research to prevent and control injuries.
- C. Expand the development and evaluation of current or new intervention methods and strategies for preventing unintentional injuries.
- D. Build the scientific base for the prevention of unintentional injuries and deaths.

Program Requirements

The following are applicant requirements:

- A. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.
- B. Demonstrated experience (on the applicant's project team) in conducting, evaluating, and publishing in peer-reviewed journals injury control research (as previously defined).
- C. Effective and well-defined working relationships within the performing organization and with outside entities that will ensure implementation of the proposed activities.
- D. The ability to carry out an injury control research project as previously defined under Background and Definitions, (B.2.a-c).
- E. The overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading "Programmatic Priorities."

Note: Grant funds will not be made available to support the provision of direct

care services. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Priorities

Grant applications for research projects that address primary prevention of unintentional injuries (home and leisure, and motor vehicle related-injuries), acute care, the prevention of secondary conditions in persons with injury-related disabilities, and biomechanics are sought. The focus of grants should reflect the broad-based need to control injury morbidity, mortality, disability, and costs.

Applications must address a programmatic priority area as noted below. Examples of possible projects listed under the priority areas below are not exhaustive. Innovative alternative approaches are encouraged.

For *primary prevention of unintentional injuries*, there is programmatic interest in the areas of home and leisure, and motor vehicle injuries:

- (1) Specifically, there is special programmatic interest in the development and evaluation of unintentional injury prevention strategies that can be applied in inpatient and outpatient clinical and/or managed care settings (e.g., HMOs, PPOs, clinics, clinicians' offices, academic health centers, etc.). For example, health care-based programs that reduce the injury risk to elderly drivers with medical conditions, fall prevention programs among the elderly, and other methods of delivering injury prevention through clinical practice or managed care settings, are acceptable.
- (2) There is interest in applying behavioral research to injury prevention science. That is, the application of behavior change strategies to injury problems. For example, applying "stages-of-change" or the transtheoretical model to modify behaviors that will increase the protection of motor vehicle occupants, testing peer-to-peer and cross-generational counseling approaches, applying elements of social learning theory or social cognitive theory to changing unintentional injury risk behaviors, or implementing interventions that take advantage of several theoretical approaches simultaneously are acceptable.
- (3) There is programmatic interest in research that evaluates the effects of making low-cost safety devices more available and or accessible to special and general populations. There is

interest, as well, in the use of economic incentive systems, such as discounts and rebates, or through insurance programs (health, automobile or life). For example, these approaches could be studied as methods for increasing the use and maintenance of residential smoke detectors or sprinkler systems in high risk or rural neighborhoods, or to promote bicycle helmet ownership and use at the community level.

Community based research is particularly relevant, and studies that replicate successful programs in new settings or with other populations are eligible.

Unintentional injury prevention proposals primarily addressing the epidemiology of unintentional injuries will not be funded under this announcement.

A more thorough discussion of methodologies for conducting prevention effectiveness research is presented in "A Framework for Assessing the Effectiveness of Disease and Injury Prevention," (CDC Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR-3, pp. 5-11) and in "Assessing the Effectiveness of Disease and Injury Prevention Programs: Costs and Consequences"⁵ (CDC Morbidity and Mortality Weekly Report, August 18, 1995, Vol. 44, No. RR10). To receive information on these reports see the section Where to Obtain Additional Information.

In *acute care* there is programmatic interest in intensifying the role of the hospital emergency department and inpatient hospital trauma services in public health surveillance (e.g., emergency department surveillance systems, inpatient trauma registries), clinical prevention services (e.g., protocols, interventions, and referrals for patients injured in interpersonal violence or identified as alcohol drinkers who drink at a hazardous level), evaluation of acute care effectiveness and costs (e.g., studies of trauma care systems in terms of their impact on morbidity and disability, assessments of treatment modalities that are used conventionally or are emerging rapidly in mainstream clinical practice).

(1) There is interest in establishing electronic linkages and common data elements across clinical information and public health surveillance systems (e.g., incorporating NCIPC's Data Elements for Emergency Department Systems, Release 1.0 in distributed record systems) to facilitate reporting of injury incidence and outcome data. There is interest in developing or further refining measures of injury severity (e.g., indices that stratify injuries by anatomic severity to facilitate evaluation of

trauma care processes and outcomes. Acute care-based, public health surveillance systems are most valuable where they provide comprehensive coverage of defined populations, are used to identify injury causes, risk factors, treatments and outcomes, and lend themselves to developing or refining clinical and epidemiologic measures of injuries including their severity and costs. Information on obtaining Data Elements for Emergency Department Systems, Release 1.0, can be found under the section Where to Obtain Additional Information.

(2) There is interest in evaluating the effectiveness and costs of programs that identify patients at high risk for subsequent injury and provide on-site interventions or referrals to further define the role of clinical prevention services in acute care settings. There is interest in research that evaluates ways to overcome barriers to service provision in emergency departments and inpatient trauma services to encourage greater use of clinical prevention services shown to be effective and economical. Acute care practitioners are uniquely positioned to help reduce or eliminate injury risk factors in the patient populations they serve. In emergency departments and inpatient trauma services there are opportunities to introduce or extend clinical prevention services (e.g., screening and brief intervention for patients with mild to moderate alcohol problems and identification and referral of patients with severe alcohol problems to specialized alcohol treatment services).

(3) There is interest in comprehensive evaluations of the effectiveness of trauma care systems (e.g., baseline and follow-up study of State or regional trauma care systems that identifies the system's impact on special populations such as children and the elderly as well as overall system effectiveness). There is interest in systematic studies in people of standard ways of delivering acute care as well as new interventions, particularly where key questions persist about benefits, risks, and costs (e.g., clinical trials of procedures, medications, or protocols used in trauma care). Systematic, empirically-based studies of effectiveness and costs are needed to evaluate poison control systems, trauma care systems, and specific diagnostic and therapeutic interventions currently used or rapidly emerging in acute care of injured persons.

In *disability prevention*, there is programmatic interest in community-based research to prevent the occurrence and reduce the severity of

disabilities or other adverse outcomes among persons with traumatic brain injury (TBI) and spinal cord injury (SCI). Adverse outcomes include secondary conditions such as pressure ulcers and contractures; cognitive, behavioral, or psychological disorders; and other definable conditions associated with TBI or SCI. Research topics relating to TBI or SCI must include any of the following:

(1) Identifying risk factors associated with adverse outcomes following rehabilitation.

(2) Developing or evaluating interventions that are delivered in the community setting or as part of outpatient rehabilitation care to prevent or minimize the impact of adverse outcomes or secondary conditions.

(3) Defining the incidence of and adverse outcomes associated with mild TBI (i.e., nonfatal TBI not resulting in hospitalization) in a defined geopolitical population. Research proposals may address all age groups or may be limited to children and adolescents. Alcohol and drug use or dependence can be among a range of outcomes considered, but should not be the primary focus of the project.

(4) Defining patterns of post acute care among persons with SCI or TBI resulting in hospitalization, using population-based data. The evolving nature of health care delivery may have changed the availability of rehabilitation, the location where rehabilitative services are delivered, the timing of services received, and the length of the rehabilitation period. Research in this area should define the type of facility where rehabilitation services are received, timing of rehabilitation service delivery, length of rehabilitation period, and payment source for services.

Disability prevention proposals primarily addressing alcohol and other drug use or dependence will not be funded under this announcement.

In *biomechanics*, there is programmatic interest in traumatic brain and spinal cord injury (TBI/SCI). This interest includes the biomechanical evaluation of intervention concepts and strategies (e.g., multi-use recreational helmets, mouth and face protection devices for athletes, energy-absorbing playground surfaces, hip pads, motor vehicle side impact and rollover countermeasures, etc.). There is special interest in defining human tolerance limits for injury among very young children, women, and older persons; the development of biofidelic models to elucidate injury physiology and pharmacologic, surgical, rehabilitation, and other interventions; improvements

in injury assessment technology; understanding impact injury mechanisms; and quantifying injury-related biomechanical responses for critical areas of the human body (e.g., brain and vertebral injury with spinal cord involvement). Consideration will also be given to the biomechanics of thoracic and abdominal viscera, musculature and joints including the articular cartilage, tendons and ligaments.

Reporting Requirements

An original and two copies of the financial status and progress reports are due 90 days after the end of each budget period. Final financial status and progress reports are due 90 days after the end of the project period.

Application Content

Applications for injury control research grants should include:

A. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in Healthy People 2000; Injury In America; Injury Prevention: Meeting the Challenge; and Cost of Injury and should seek creative approaches that will contribute to a national program for injury control.

B. Specific, measurable, and time-framed objectives.

C. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

D. A description of the grant's principal investigator's role and responsibilities.

E. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

F. A description of those activities related to, but not supported by the grant.

G. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

H. A detailed first year's budget for the grant with future annual projections, if relevant. Awards will be made for project periods of up to three years.

I. Applicants must identify the principal injury phase (prevention, acute care, rehabilitation) discipline

(biomechanics, epidemiology) or type of injury (intentional, unintentional) upon which their project focuses.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS-398, completed in full, with the salary and fringe amounts shown. This budget page will be reserved for internal staff use only.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading, Program Requirements (A-E). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications that are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Awards will be made based on priority score ranking by the Injury Research Grants Review Committee (IRGRC), programmatic priorities and needs as determined by the Advisory Committee for Injury Prevention and Control, and the availability of funds.

A. The first review will be a peer review conducted by the IRGRC on all applications. Factors to be considered will include:

1. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested.

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the injury control knowledge gaps which the proposal is intended to fill.

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research.

4. For competitive renewal applications, the progress made during the prior project period. For new applications, (optional) the progress of preliminary studies pertinent to the application.

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plan.

6. The extent to which the research findings will lead to feasible, cost-effective injury interventions.

7. The extent to which the evaluation plan will allow the measurement of progress toward the achievement of the stated objectives.

8. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

9. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

10. The reasonableness of the proposed budget to the proposed research and demonstration program.

11. Adequacy of existing and proposed facilities and resources.

B. The second review will be conducted by the Advisory Committee for Injury Prevention and Control. The factors to be considered will include:

1. The results of the peer review.

2. The significance of the proposed activities in relation to the priorities and objectives stated in Healthy People 2000; Injury in America; Injury Prevention; Meeting the Challenge; and Cost of Injury.

3. National needs.

4. Program balance among the three phases of injury control: prevention, acute care, and rehabilitation; the major disciplines of injury control:

biomechanics and epidemiology; target populations (e.g., adolescents, children, racial and ethnic minorities, rural residents, farm families, and people with low incomes); and

5. Budgetary considerations.

C. Continued Funding:

Continuation awards made after FY 1998, but within the project period, will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's

annual workplan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

2. The objectives for the new budget period are realistic, specific, and measurable.

3. The methods described will clearly lead to achievement of these objectives.

4. The evaluation plan will allow management to monitor whether the methods are effective.

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.136.

Other Requirements

A. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

B. Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

C. Women, Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC

supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application.

In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947-47951.

D. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this grant program will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Specialist (whose address is reflected in section B, "Applications"). It should be postmarked no later than two months prior to the planned submission deadline, (e.g., January 26 for February 25 submission). The letter should identify the announcement number, name the principal investigator, and specify the injury phase or discipline addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS-398 and adhere to the ERRATA Instruction

Sheet for Form PHS-398 contained in the Grant Application Kit. Please submit an original and five copies on or before February 25, 1998 to: Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305.

C. Deadlines

1. Applications shall be considered as meeting the deadline if they are either:

- A. Received at the above address on or before the deadline date, or
- B. Sent on or before the deadline date to the above address, and are received in time for the review process.

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Applications that do not meet the criteria above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

Application Packet

To receive additional written information call 1-888-GRANTS4. You will be asked to leave your name, address, and phone number and will need to refer to Announcement #816. CDC will not send application kits by facsimile or express mail. Please refer to Announcement #816 when requesting information and submitting an application.

Internet

This and other CDC announcements are also available through the CDC homepage on the Internet. The address for the CDC homepage is [<http://www.cdc.gov>]. For your convenience, you may be able to retrieve a copy of the PHS Form 398 from [<http://www.nih.gov/80/grants/funding>].

Business Management Technical Information

If you need further assistance after reviewing the contents of the documents business management information may be obtained from Lisa Tamaroff, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E-13, Atlanta, GA 30305, telephone (404) 842-6796 or Internet:lgt1@cdc.gov.

Programmatic Technical Assistance

If you have programmatic question you may obtain information from Ted Jones, Program Manager, Extramural Research Grants Branch, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Mailstop K-58, 4770 Buford Highway, NE., Atlanta, GA 30341-3724, telephone (770) 488-4824, Internet: tmj1@cdc.gov.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800.

The document, "Data Elements for Emergency Department System, Release 1.0", and subsequent revisions can be found at the National Center for Injury Prevention and Control Web site: <http://www.cdc.gov/ncipc/pub-res/deedspage.htm>.

Information for obtaining copies of Injury in America (National Academy Press, 2101 Constitution Avenue, NW, Washington, DC 20418—ISBN0-309-03545-7); Injury Prevention: Meeting the Challenge (supplement to the American Journal of Preventive Medicine, (Vol. 5, no. 3, 1989); Cost of Injury (Dorothy P. Rice, Ellen J. MacKenzie, and Associates, Cost of Injury: A Report to the Congress, San Francisco, California: Institute for Health and Aging, University of California and Injury Prevention Research Center, The Johns Hopkins University, 1989); A Framework for Assessing the Effectiveness of Disease and Injury Prevention," (CDC Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR-3, pp. 5-11); and in "Assessing the Effectiveness of Disease and Injury Prevention Programs: Costs and Consequences" (CDC Morbidity and Mortality Weekly Report, August 18, 1995, Vol. 44, No. RR10) is included on a separate sheet with the application kit.

Dated: December 16, 1997.

Joseph R. Carter,

Acting Associate Director, Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97-33297 Filed 12-19-97; 8:45 am]

BILLING CODE 4160-18-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: The Office of Child Support Enforcement OCSE-156, Child Support

Enforcement Program Quarterly Report and OCSE-158, Child Support Enforcement Program Annual Data Summary Report.

OMB No.: 0970-0057.

Description: The authority to collect and report the information requested on these forms is found in sections 452(a)(4), 452(a)(5), 452(a)(10), 469 of the Social Security Act. These data are highly aggregated and used in a

management function to establish the effectiveness and efficiency of State child support programs. The Federal Office of Child Support Enforcement will use the data to carry out its oversight role and submit the Annual Report to Congress.

Respondents: State governments, District of Columbia, Guam, Virgin Islands and Puerto Rico.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE-156	54	4	3.7	799.2
OCSE-158	54	1	1.2	64.8

Estimated Total Annual Burden Hours: 864.0.

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, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

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, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: December 15, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97-33311 Filed 12-19-97; 8:45 am]

BILLING CODE 4184-01-M

OMB No.: 0970-0057.

Description: The information obtained from this form will be used to report child support enforcement activities to the Congress as required by law, to complete performance indicators utilized in the program, and to assist the Office of Child Support Enforcement in monitoring and evaluation State Child Support Enforcement programs. As of October 1, 1988 this information collection will replace the OCSE-156 and OCSE-158.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: The OCSE-157 Child Support Enforcement Annual Data Report.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE-157	54	1	4	216

Estimated Total Annual Burden Hours: 216.

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, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

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, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: December 16, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97-33312 Filed 12-19-97; 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: Statewide Automated Child Welfare Information System (SACWIS) Assessment Review Guide.

OMB No.: 0970-0159.

Description: HHS cannot fulfill its obligation to effectively serve the nation's Adoption and Foster Care populations, nor report meaningful and reliable information to Congress

(Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act, or CAPTA reporting requirements) about the extent of the problems facing these children or the effectiveness of various methodologies designed to provide assistance to this population, without access to timely and accurate information. Forty-six States and the District of Columbia have developed or have committed to develop a SACWIS system with enhanced (75 percent) Federal financial

participation (FFP). The purpose of these reviews is to ensure that all aspects of the project, as described in the approved Advance Planning Document (APD), have been adequately completed, and conform with applicable regulations and policies.

States will submit the completed SACWIS Assessment Review Questionnaire and other documentation. The additional documents should all be readily available to the State as a result of good project management.

The information collected in the Assessment Review Guide will allow State and Federal officials to determine if the State's SACWIS system meets the requirements for enhanced title IV-E Federal financial participation defined at 45 CFR 1355.50. Additionally, other States will be able to use the documentation provided as part of this review process, in their own system development efforts.

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
Review	10	1	60	600

Estimated Total Annual Burden Hours: 600.

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.

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: December 17, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97-33330 Filed 12-19-97; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National

Advisory bodies scheduled to meet during the month of February, 1998.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: February 12, 1998; 9:00 a.m.-5:00 p.m.; February 13, 1998; 8:30 a.m.-4:00 p.m.

Place: The Westin City Center, 1400 M Street, N.W., Washington, D.C. 20005, (202) 429-1700.

The meeting is open to the public. The Committee provides advice and recommendations to the Secretary of HHS on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; factors determining the length of hospital stay following childbirth; strategies to coordinate the variety of Federal, State, and local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People 2000; National Health Promotion and Disease Prevention Objectives*.

Agenda: Topics that will be discussed include: updates on the Children's Health Initiative and the Children's Health Insurance Program; Discrepancies in Infant Mortality; the Healthy Start Program; Early Postpartum Discharge; Unintended Pregnancies; and Breastfeeding Issues.

Contact: Anyone requiring information regarding the Committee should contact Dr. Peter C. van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18-31, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443-2204.

Persons interested in attending any portion of the meeting or having questions regarding the meeting should contact Ms. Kerry P. Nessler, Health Resources and Services Administration, Maternal and Child Health Bureau, Telephone (301) 443-2204.

Agenda items are subject to change as priorities indicate.

Dated: December 16, 1997.

Jane M. Harrison,

Committee Management Officer, HRSA.

[FR Doc. 97-33295 Filed 12-19-97; 8:45 am]

BILLING CODE 4160-15-P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of Data Content Standard for Facility Location and Identification

ACTION: Notice; Request for comments.

SUMMARY: The FGDC is conducting a public review of the Data Content Standard for Facility Location and Identification. The purpose of this public review is to provide data users and producers with an opportunity to comment on this standard in order to ensure that it meets their needs. Specifically, the FGDC requests responses in three areas: (1) identify any "ad hoc" or "defacto" standards being used that address data content for facility location and identification; (2) identify additional data requirements or concepts not contained in this standard that are necessary to meet a user's requirements; (3) identify any issues that a user may have in implementing the standard in the users information systems.

Participants in the public review are encouraged to provide comments that address specific issues/changes/additions that may result in revisions to the draft facility location and identification standard. All participants who make comments during the public

review period will receive an acknowledgment of the receipt of their comment. After comments have been considered, participants will receive notification of how their comments were addressed. After the formal adoption of the standard by the FGDC, the revised standard and a summary analysis of the changes will be made available.

DATES: Comments must be received on or before April 10, 1998.

CONTACT AND ADDRESSES: The complete proposal is included in this notice. It is also posted at Internet address: http://www.fgdc.gov/Standards/Documents/Standards/Facility_ID/.

Requests for written copies of the standard should be addressed to "Data Content Standard for Facility Location and Identification", FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192; or telephone 703-648-5514; facsimile 703-648-5755; or Internet at gdc@usgs.gov.

Reviewer's comments may be sent to the FGDC via Internet mail to: gdc-fid@www.fgdc.gov.

Reviewer comments may also be sent to the FGDC Secretariat at the above address. Please send one hardcopy version of the comments and a soft copy version, preferably on a 3.5x3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format.

For answers to general questions related to this standard, please contact the Federal Geographic Data Committee (FGDC) Facilities Working Group, U.S. Army Corps of Engineers, General Engineering Branch, 20 Massachusetts Avenue, NW, Washington, DC 20314-1000; voice telephone numbers: Kevin Backe (703) 428-6505, Nancy Blyler (202) 761-8893; facsimile telephone number: (703) 428-6991.

For answer to questions related to the content of this standard, please contact Bruce Bargmeyer, Facility Identification Working Group Chairman, U.S. Environmental Protection Agency (EPA), Office of Information Resources Management (OIRM), Enterprise Information Management Division (EIMD), 401 M Street, S.W., Washington, DC 20460; voice telephone numbers: Bruce Bargmeyer (202) 260-5306, Dave Catlin (202) 260-3069; facsimile telephone number: (202) 401-8390.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the "Data Content Standard for Facility Location and Identification"

Project Title

Development of a Federal Geographic Data Committee (FGDC) Facility ID Data Standard

Submitting Organization

Facilities Working Group (FWG)

Objective

To develop a Facility Identification data standard that supports identification of place-based objects that are generally known as facilities.

Scope

This geospatial standard will consist of a set of standardized data elements which identify and locate place-based facilities. This includes a core set of identifying information such as a standard identifier, latitude longitude, name, and facility type.

The effort will develop a set of "type" categories to classify the type of facility identified and to assist in linking related place-based facility objects such as parts of a facility (e.g., smokestack) to a whole facility. Part of the effort will be to establish what is included within "facility" types and to establish how extensions can be made. The work on a facility typing scheme will consider relationships to typing schemes developed in related standards.

Justification/Benefits

Currently, many organizations maintain facility data utilizing a wide variety of identifiers. The lack of a standard data elements for facility identification and the lack of a core set of locational and identifying information makes sharing data very cumbersome (expensive) and imposes a large reporting burden on regulated/managed facilities.

There is considerable interest, among organizations that share information about facilities, in developing a data standard that supports sharing, reporting, managing, linking and using data about facilities. Development of this standard through the FGDC will ensure broad participation including national, state, and local government and private industry. Several organizations, inside and outside the federal government have indicated an interest in this standard, including EPA, DOD, USACE, FEMA, GSA, Applied Geographics, ASCE, and the New York City Transit Authority.

The Facility Identification Standard will benefit Federal, state and local governments, and companies that use or report facilities information. This Facility Identification Standard may also be used to support the FGDC's integrated standard database project.

This standard will provide new data sharing opportunities for the National Spatial Data Infrastructure.

Approach

The FWG will establish a Facility Identification project team to develop a draft of this Standard. Relevant standards such as ISO/IEC 11179 will serve as input to this work. The FWG or participating agencies may establish and test this data standard based on existing systems and proof of concept efforts. The FWG will package the standard data element definitions as an FGDC standard. The standard may be established to operate in a centralized (automated registration authority), a decentralized or a hybrid fashion.

Related Standards

Related standards, such as ISO/IEC 11179 and the FGDC Utility (and potentially Hazardous Waste) standards, will be identified and reviewed. Many organizations have developed systems that record facility identifiers. There will serve as input to this effort. It is intended for this standard to be compatible with the use of existing facility identifiers. This work is also related to the FGDC framework concept.

Schedule

The FWG will form a Facility Identification project team and begin work on the development of this standard as soon as this project is approved by the FGDC Standards Working Group (SWG). The development of a working draft Facility Identification Standard is expected to take 3-6 months. A proof of concept demonstration may also be conducted in a period of nine months. Once the FWG is satisfied with the content of this Standard it will be forwarded to the SWG for consideration to go out for public review. The FWG expects to accomplish the development of this standard in 18 months.

Resources

The FWG has resources to work on the content development of this Facility Identification Standard. We expect to pursue acquisition of additional resources from the FGDC for coordination of this effort.

Potential Participants

The primary participants will be the members of the FWG which includes representatives from federal agencies, municipalities, private industry, and professional associations.

Target Authorization Body

The FWG proposes pursuing the development of this Facility Identification Standard as an FGDC standard. The FWG may consider pursuing (at a later date) the development of the Integrated Standard as an ANSI (American National Standards Institute) Standard within an ANSI's technical committee. FGDC would serve as the Target Authorization Body until this Facility Identification Standard becomes an ANSI Standard.

Dated: December 15, 1997.

John Fischer,

Acting Chief, National Mapping Division, U.S. Geological Survey.

[FR Doc. 97-33342 Filed 12-19-97; 8:45 am]

BILLING CODE 4310-31-M

Supervisors Chambers, Lake County Courthouse, 255 North Forbes, Lakeport, CA

All meetings will be from 7 to 10 p.m. Written comments can be sent to: Bureau of Land Management, Clear Lake Field Office, 2550 North State St., Ukiah CA 95482, Attention: Rich Burns, Field Manager.

Comments will be accepted until January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Cooper, Outdoor Recreation Planner at the Clear Lake Field Office, or telephone (707) 468-4000.

Philip L. Damon,

Acting Field Manager.

[FR Doc. 97-33341 Filed 12-19-97; 8:45 am]

BILLING CODE 4310-40-P

shelter of natural or synthetic material, or parking a motor vehicle, motor home, or trailer for overnight occupancy.

b. *Occupation* means the taking or holding possession of a camp or residence on public land.

c. *Public land* means any land or interest in land owned by the United States and administered by the BLM.

d. *Authorized Officer* means any employee of the BLM who has been delegated the authority to perform under Title 43 Code of Federal Regulations.

e. *Developed Site* means sites that contain structures or capital improvements primarily used by the public for recreation purposes.

EFFECTIVE DATE: This restriction order will go into effect January 1, 1998, and shall remain in effect unless revised, revoked or amended.

FOR FURTHER INFORMATION CONTACT: District Law Enforcement Ranger, Burns District, Bureau of Land Management, HC 74-12533 Hwy 20 West, Hines, Oregon 97738, Telephone (541) 573-4400.

SUPPLEMENTARY INFORMATION: This restriction order is necessary to:

a. Preclude any individual or group from camping for an excessively long period, thereby denying others recreation opportunities;

b. Prevent or reduce the incidence of unauthorized, long-term occupancy of areas from occurring under the guise of recreational use;

c. Prevent unacceptable sanitary and solid waste disposal conditions;

d. Preserve and protect the natural, cultural, and scenic values of areas that are typically being used for camping purposes; and

e. Provide consistency to visitors moving from one BLM district to another.

Authority for this restriction order is contained in 43 CFR 8364.1. Violations of this restriction order may be punishable as listed in 43 CFR 8360.0-7.

Dated: December 12, 1997.

Michael T. Green,

District Manager.

[FR Doc. 97-33258 Filed 12-19-97; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[CA-340-7123-00-6019]

**Notice of Public Scoping Meetings
South Cow Mountain Recreation Area**

AGENCY: Bureau of Land Management, Interior.

ACTIONS: Notice of intent and scoping period.

SUMMARY: The South Cow Mountain Recreation Area is currently managed under the Management Framework Plan of 1971 (MFP) and the ORV plan of 1982. Due to changing public values and the acquisition of additional parcels, it is necessary to amend the MFP. No major shift in management strategy is anticipated. The aim of the plan amendment is to refine the existing successful policies and address social, economic and environmental issues resulting from the success of the present management strategy. The objectives are to better serve the recreating public in an environmentally sound, socially acceptable manner. A series of scoping meetings will be held to accept public comment on issues that should be addressed in this plan amendment. Written comments will also be accepted.

MEETING DATES:

January 6, 1998:

BLM Clear Lake Field Office, 2550 North State St., Ukiah, CA

January 7, 1998:

Lark Hall, Room 2004, Santa Rosa Junior College, Santa Rosa, CA

January 8, 1998:

Golden Gate Club, East Ballroom, Presidio of San Francisco, San Francisco, CA

Jan. 14, 1998:

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[OR-020-03-1220-00: G8-0063]

Oregon: Camping Stay Limits

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Establish an overnight camping restriction order for areas on BLM land within the BLM, Burns District, Hines, OR.

SUMMARY: Person(s) may camp within designated campgrounds, developed recreation sites or on public land not closed or otherwise restricted to camping within the Burns District for a period of not more than 14 days within any period of 28 consecutive days. The 14-day limit may be reached either through a number of separate visits or through a period of continuous occupation on public land. After the 14th day of camping, person(s) must move outside of a 25-mile radius of the previous location. When the camping limit has been reached, use of a site shall not occur again until at least 14 days have elapsed from the last day of use.

Under special circumstances and upon written request, the authorized officer may give written permission for extensions to the 14-day camping limit. Persons exempt from this restriction order include agency and emergency personnel in the performance of official duties.

Definitions

As used in this restriction order, the term:

a. *Camping* is defined as preparing a sleeping bag or other bedding material for use, or the erecting of a tent or

DEPARTMENT OF THE INTERIOR**National Park Service****National Register of Historic Places;
Notification of Pending Nominations**

Nominations for the following properties being considered for listing

in the National Register were received by the National Park Service before December 13, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by January 6, 1998.

Carol D. Shull,

Keeper of the National Register, Chief of Registration, National Register.

ALASKA

Matanuska-Susitna Borough-Census Area

Kirsch's Place, Mi. 1.5 Sunshine Rd., or mi. 215.3 Alaska Railroad, Talkeetna vicinity, 97001631

CALIFORNIA

Monterey County

Parmelee, Lou Ellen, House, 570 Archer St., Monterey, 97001633

San Bernardino County

San Bernardino County Court House, 351 N. Arrowhead Ave., San Bernardino, 97001632

San Luis Obispo County

Robles, Paso, Carnegie Library (Carnegie Library MPS), City Park, 800 12th St., Paso Robles, 97001635

Santa Cruz County

Robinson, Elias H., House, 363 Ocean St., Santa Cruz, 97001634

FLORIDA

Indian River County

McKee Jungle Gardens, 350 US 1, Vero Beach, 97001636

Pasco County

St Leo Abbey Historic District, 33701 FL 52, St. Leo, 97001637

GEORGIA

De Kalb County

University Park—Emory Highlands—Emory Estates Historic District, Roughly bounded by N. Decatur Rd., Durand Dr., Peavine Cr., and the Druid Hills Historic District, Decatur vicinity, 97001638

MAINE

Sagadahoc County

Manley, Joseph and Susan, Summer Cottage, E side of Club Rd., 0.1 mi. S of jct. of ME 216 and Club Rd., Small Point, 97001642

York County

Badger, Samuel, Monument, Address Restricted, Kittery Foreside, 97001640
Jones, John Paul, Memorial Park, Bounded by Newmarch St. and Hunter Ave., Kittery Foreside, 97001639
Traip, Robert and Louisa, House, 2 Wentworth St., Kittery Foreside, 97001641

Wentworth, Mark F. and Eliza J., House, 9 Wentworth St., Kittery Foreside, 97001643

WISCONSIN

Outagamie County

Osprey Site, Address Restricted, Kaukauna vicinity, 97001644

Vernon County

Lord, Charles, House, 113 South St., Ontario, 97001645

Proposed Move

A move has been proposed for the following:

FLORIDA

Jackson County

Norton, Robert Lee, House 2045 Lee St., Cypress, 96000914

[FR Doc. 97-33296 Filed 12-19-97; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the University Museum, University of Arkansas, Fayetteville, AR

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the University Museum, University of Arkansas which meets the definition of "unassociated funerary objects" under Section 2 of the Act.

The 981 cultural items were recovered from 37 archeological sites located in the Ouachita Mountains and the West Gulf Coastal Plan of southwestern Arkansas, including the counties of Clark, Dallas, Garland, Howard, Hot Springs, Lafayette, Little River, Logan, Miller, Mississippi, Montgomery, Perry, Scott, Sevier, and Yell. These objects include: animal bones, antlers, antler tools, arrowpoints, an awl, axes, a basket, beads, blades, boatstones, bone tools, celts, clay balls and fragments, corn, earplugs, earspools, knives, leather, lithics, mano, modified stones, pigments, pipes and pipe fragments, projectile points and fragments, quartz crystals, seeds, shell (conch, mussel, terrapin, beads, disks, gorget, fragments), sherds, a skewer, stone artifacts, vessels (bottles, bowls, jars, vases, fragments), and mixed wood and copper pieces.

In 1929, 29 cultural items from sites in Garland, Hot Springs, and Yell counties were accessioned into the

University Museum collections. The donors are unknown.

In 1931, four cultural items from Garland County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1931, 85 cultural items from Montgomery, Logan, and Garland counties were accessioned into the University Museum collections. The donors are unknown.

In 1933, 117 cultural items from Yell and Scott counties were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1934, nine cultural items from Clark County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1940, 135 cultural items from Hot Springs, Garland, and Lafayette counties were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1947, four cultural items from Perry and Garland counties were purchased from Fain White King by the University Museum.

In 1951, two cultural items from Dallas County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1955, 317 cultural items from Garland, Miller, Lafayette, and Little River counties were purchased from Pete Miroir by the University Museum.

In 1960, one cultural item from Scott County was donated by Mrs. J.W. Parks to the University Museum.

In 1961, 113 cultural items from Howard County were donated by Dr. Clarence Webb to the University Museum.

In 1962, 40 cultural items from Miller County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1962, nine cultural items from Little River County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1964, 16 cultural items from Sevier County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1970, three cultural items from Scott County were recovered during a University field school and accessioned into University Museum collections.

In 1981, 1982, 1986, 1988, and 1991, 111 cultural items from Miller, Howard,

Sevier, and Mississippi Counties were donated to the University Museum by unknown persons.

The 37 sites from which the cultural items were recovered are associated with the Fourche Maline culture (500 BC—800 AD) and the Caddoan Culture (800—1600 AD) based on material culture and site organization. Based on tools, ceramics, and manner of interments, these sites show continuity of occupations through these periods. Accession information indicates all 981 cultural items were recovered from burial contexts. Archeological, ethnohistoric, and historical document evidence indicates Caddoan affiliation through tools, ceramics, manner of interments, and recorded language terms and cultural characteristics (1542—1543 AD) are correlated to the sites included in the above counties.

Officials of the University of Arkansas have determined that, pursuant to 25 U.S.C. 3001(3)(B), these 981 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the University of Arkansas have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these items and the Caddo Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Michael P. Hoffman, Curator of Anthropology, University Museum, University of Arkansas, Fayetteville, AR 72701, telephone (501) 575-3855 before January 21, 1998. Repatriation of these objects to the Caddo Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: December 15, 1997.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 97-33292 Filed 12-19-97; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby

given that proposed consent decrees in *United States v. Exeter Properties, Inc., et al.*, Civil Action No. 3:97CV141, were lodged on December 2, 1997 with the United States Court for the Eastern District of Virginia.

In February 1997, the United States on behalf of EPA sued Exeter Properties, Inc., Bridgestone/Firestone, Inc. ("BFS"), Perry Realty Investments ("Perry Realty"), and Perry Machinery Corporation ("Perry Machinery") under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607, to recover \$1.7 million in past response costs, alleging that the defendants were liable as past owners/operators and arrangers for disposal under Section 107(a) of CERCLA in connection with a removal action performed at the Exeter Site located in Hopewell, Virginia. These consent decrees represent settlements with three defendants, BFS, Perry Realty, and Perry. The proposed settlements provide for payments of \$495,000 by BFS and \$485,000 by Perry Realty and Perry Machinery for response costs in connection with the removal action.

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 decrees. 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. Exeter Properties, Inc., et al.*, DOJ Ref. # 90-11-2-1218.

The proposed consent decrees may be examined at the office of the United States Attorney, Eastern District of Virginia, Main Street Centre, Suite 1800, 600 East Main Street, Richmond, VA 23219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. Copies of the proposed consent decrees 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 \$11.00, payable to the Consent Decree Library.

Joel M. Gross,

*Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.*

[FR Doc. 97-33344 Filed 12-19-97; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR § 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States v. Haviland Properties, Steven Roberts, Myung Chung, Byung Chung, Raymond Sison, and Ines Sison*, 97 Civ 8164 (BSJ) (S.D.N.Y.), was lodged on November 4, 1997, with the United States District Court for the Southern District of New York. The consent decree provides for payment by the settling defendants toward reimbursement of response costs incurred in connection with the remediation of hazardous waste contamination at the Haviland Complex Superfund Site ("the Site"), which is located in the Town of Hyde Park, Dutchess County, New York. The Consent Decree requires the defendants to pay to total of \$450,000 of the United States and \$50,000 to the State of New York over a three year period. In addition, the defendants have agreed to pay to the United States and the State 15% of the net proceeds upon any sale of the property in exchange for the transfer to the purchaser of the property of all rights, benefits and obligations under the consent decree. In the alternative, if the property is not sold within five years of the date of the entry of the consent decree, the United States, at its option, may elect to require the Defendants to pay the sum \$30,000 in lieu of 15% of the net proceeds.

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. Haviland Properties, Steven Roberts, Myung Chung, Byung Chung, Raymond Sison, and Ines Sison*, DOJ Ref. No. 90-11-2-309.

The proposed consent decree may be examined at the office of the United States Attorney for the Southern District of New York, 100 Church Street, New York, New York 10007 (contact Assistant United States Attorney Kathy S. Marks); the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866 (contact Assistant Regional

Counsel Michael Mintzer); and at the 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 \$12.25 (25 cents per page reproduction costs) for the consent decree, payable to the Consent Decree Library.

Joel M. Gross,

*Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.*

[FR Doc. 97-33345 Filed 12-19-97; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval of a new collection: Drug court grantee data collection survey

The Department of Justice, Office of Justice Programs (OJP), has submitted the following information collection request utilizing emergency review procedures, to OMB for review and clearance in accordance with sections 1320.13(a)(1)(ii) and (a)((2)(iii) of the Paperwork Reduction Act of 1995. The OJP has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by December 31, 1997. If granted the emergency approval is only valid for 180 days. All comments and questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (Ms. Victoria Wassmer), Washington DC, 20503. Comments regarding the emergency submission of this information collection may also be submitted to OMB via facsimile at 202-395-7285.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with

instructions, should be directed to: Office of Justice Programs, Attention: Marilyn Roberts, Director, Drug Courts Program Office, 6th Floor, 810 7th Street NW, Washington, DC, 20531. Comments are encouraged and will be accepted until February 20, 1998. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
12. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected, and
4. Evaluate whether the data collection instrument will minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection.

1. *Type of Information Collection:* New collection.
2. *Title of the Form/Collection:* Drug Court Grantee Data Collection Survey.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Drug Courts Program Office, Office of Justice Programs, United States Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, and Tribal drug courts. Other: None. This survey will assist in the national evaluation of drug courts. The data to be collected will assist in determining the effectiveness of these grants and the information will be shared with the drug court field personnel to improve program quality.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 respondents at one hour per response twice a year.

6. *An estimate of the total public burden (in hours) associated with the collection:* 600 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, Information Management and Security Staff, Justice

Management Division, United States Department of Justice, Suite 850, Washington Center Building, 1001 G Street, NW, Washington, DC, 20530.

Dated: December 16, 1997.

Robert B. Briggs,

Clearance Officer, United States Department of Justice.

[FR Doc. 97-33246 Filed 12-19-97 8:45 am]

BILLING CODE 4410-18-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: January 7-9, 1998: 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 814, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Margrete Klein, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 306-1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review preliminary proposals for the Women and Girls program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 16, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97-33264 Filed 12-19-97; 8:45 am]

BILLING CODE 7555-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Items Added to Meeting Agenda

DATE OF MEETING: December 8, 1997.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 62 FR 63567, December 1, 1997.

CHANGE: At its meeting on December 8, 1997, the Board of Governors of the

United States Postal Service voted unanimously to add two items to the agenda of its closed meeting held on that date:

1. Revisions to Guidelines on Governors' Official Expenses.
2. Compensation Issues.

CONTACT PERSON FOR MORE INFORMATION:

Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260-1000. Telephone (202) 268-4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97-33407 Filed 12-17-97; 4:29 pm]

BILLING CODE 7710-12-M

POSTAL SERVICE

Sunshine Act Meeting

TIME AND DATES: 1:00 p.m., Monday, January 5, 1998; 8:30 a.m., Tuesday, January 6, 1998.

PLACE: Washington, D.C., at the U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: January 5 (Closed); January 6 (Open).

MATTERS TO BE CONSIDERED:

Monday, January 5—1:00 p.m. (Closed)

1. Update on Rate Case, Docket No. R97-1.
2. Inspector General's Strategic Plan.
3. Diversity Study.
4. Government Performance and Results Act.

Tuesday, January 6—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, December 8-9, 1997.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Board Resolution on Capital Funding.
4. Annual Report on Government in the Sunshine Act Compliance.
5. Diversity Study Report.
6. Capital Investments.
 - a. Informational Briefing on Corporate Call Management Prototype.
 - b. Tulsa, Oklahoma, Processing & Distribution Center.
 - c. Inspector General Office Space.
7. Election of Chairman and Vice Chairman of the Board of Governors.
8. Tentative Agenda for the February 2-3, 1998, meeting in Ft. Lauderdale, Florida.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant

Plaza, S.W., Washington, D.C. 20260-1000. Telephone (202) 268-4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97-33479 Filed 12-18-97; 3:06 pm]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (The Ackerley Group, Inc., Common Stock, \$.01 Par Value) File No. 1-10321

December 15, 1997.

The Ackerley Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

Pursuant to a Registration Statement on Form 8-A that became effective on December 3, 1997, the Company's Security will be listed for trading on the New York Stock Exchange ("NYSE"). The Company has represented that trading in its Security is scheduled to commence on the NYSE at the opening of business on December 15, 1997.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail the reasons and facts supporting the proposed withdrawal.

In making the decision to withdraw its Security from listing and registration on the Amex, the Company sought to facilitate and promote trading in its Security, and to enhance the Company's visibility and profile in the capital markets. The Company believes this action is consistent with other changes effected by the Company in recent months, including the changing of the Company's name and the corporate and trade names of various of its subsidiaries, as well as the realignment of its internal operating subdivisions.

By letter dated November 22, 1997, the Amex informed the Company that it

had no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

By reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports with the Commission and the NYSE under Section 13 of the Act.

Any interested person may, on or before January 9, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97-33265 Filed 12-19-97; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice No. 2662]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Thursday, January 29, 1998, at 9:30 a.m. in Conference Room 1406, Department of State Building, 2201 C Street, N.W., Washington, D.C. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and

individual building passes are required for each attendee. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, SA-29, Room 245, Washington, D.C. 20522-2902, telephone 703-875-7800, prior to January 7, 1998. Visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 8, 1997.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 97-33343 Filed 12-19-97; 8:45 am]

BILLING CODE 4710-21-M

DEPARTMENT OF STATE

[Public Notice No. 2663]

Shipping Coordinating Committee Subcommittee on Ship Design and Equipment; Meeting Notice

The Shipping Coordinating Committee will conduct an open meeting at 9:30 am on Thursday, January 8, 1998, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20593-0001. The purpose of the meeting is to prepare for the forty-first session of the Subcommittee on Ship Design and Equipment of the International Maritime Organization (IMO) which is scheduled for March 9-13, 1998, at IMO Headquarters in London, England.

Among other things, items of particular interest are: role of the human element in maritime casualties—guidelines for computer applications; revision of the High Speed Craft Code; matters relating to lifesaving; safety of passenger submersible craft; safe ocean towing guidelines; development of a code on polar navigation; and ship structures matters.

IMO works to develop international agreements, guidelines, and standards for the marine industry. In most cases, these form the basis for class society rules and national standards/regulations. Such an open meeting supports the U.S. Representative to the IMO Subcommittee in developing the U.S. position on those issues raised at the IMO Subcommittee meetings. This open meeting serves as an excellent forum for the U.S. maritime industry to express their ideas and participate in the international rulemaking process. All members of the maritime industry are encouraged to send representatives

to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within the IMO.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Wayne Lundy, U.S. Coast Guard Headquarters, Commandant (G-MSE-3), 2100 2nd Street, SW, Washington, DC 20593-0001 or by calling: (202) 267-2206.

Dated: December 8, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97-33367 Filed 12-19-97; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending December 12, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-97-3211.

Date Filed: December 9, 1997.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 AFR-TC3 0027 dated December 2, 1997

Expedited Africa-TC3 Reso 0027

Intended effective date: January 1, 1998

Docket Number: OST-97-3212.

Date Filed: December 9, 1997.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 ME-TC3 0023 dated December 30, 1997 r1-4

PTC23 ME-TC3 0024 dated December 2, 1997 r5-14

Middle East-TC3 Expedited Resos
Intended effective date: December 30, 1997

Docket Number: OST-97-3213.

Date Filed: December 9, 1997.

Parties: Members of the International Air Transport Association.

Subject:

COMP Telex Reso 024f—Zimbabwe Local Currency Fare Changes

Intended effective date: January 1, 1998

Docket Number: OST-97-3214.

Date Filed: December 9, 1997.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 Telex Mail Vote 899

Fares from Algeria to Western Africa
r1-4

Correction—Telex dated December 5, 1997

Intended effective date: December 18, 1997

Docket Number: OST-97-3215.

Date Filed: December 9, 1997.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 EUR 0128 dated December 5, 1997 r1-2

PTC2 EUR 0129 dated December 5, 1997 r3-21

PTC2 EUR 0130 dated December 5, 1997 r22-36

PTC2 EUR 0131 dated December 5, 1997 r37-40

PTC2 EUR 0132 dated December 5, 1997 r41-43

PTC2 EUR 0133 dated December 5, 1997 r44-46

PTC2 EUR 0134 dated December 5, 1997 r47-49

PTC2 EUR 0135 dated December 5, 1997 r50-51

PTC2 EUR 0136 dated December 5, 1997 r52

PTC2 EUR 0137 dated December 5, 1997 r53

PTC2 EUR 0138 dated December 5, 1997 r54

Minutes—PTC2 EUR 0125 dated December 5, 1997

PTC2 EUR 0126 dated December 5, 1997

Tables—PTC2 EUR Fares 0021 Part I dated December 5, 1997

PTC2 EUR Fares 0021 Part II dated December 5, 1997

PTC2 EUR Fares 00021 Part III dated December 5, 1997

Intended effective date: as early as March 1, 1998

Paulette V. Twine,

Documentary Services.

[FR Doc. 97-33287 Filed 12-19-97; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 12, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following

the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-97-3217.

Date Filed: December 10, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 7, 1998.

Description: Application of JHM Cargo Expresso, S.A., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in nonscheduled, including charter, foreign air transportation of property and mail between points in Costa Rica and Miami, Florida and Los Angeles, California, with all such flights originating or terminating in Costa Rica.

Docket Number: OST-97-3218.

Date Filed: December 10, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 7, 1998.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102, 41108, and Subpart Q of the Regulations, applies for a new or amended Certificate of Public Convenience and Necessity authorizing Delta to engage in scheduled foreign air transportation of persons, property and mail as follows: (i) between Atlanta, Georgia and New York, New York, on the one hand, and—(1) Buenos Aires, Argentina; (2) La Paz, Bolivia; (3) Santiago, Chile; (4) Bogota, Colombia; (5) Guayaquil and Quito, Ecuador; (6) Asuncion, Paraguay; (7) Lima, Peru; (8) Montevideo, Uruguay; and (9) Caracas, Venezuela—on the other hand. (ii) Between a point or points in the United States and a point or points in Belize. Delta further requests route integration authority to permit Delta to combine the authority conferred by the grant of this application with all of Delta's existing certificate and exemption authority, to the extent permitted by applicable international agreements. Finally, Delta requests that the certificate authority requested herein be granted for a term of at least five years.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97-33288 Filed 12-19-97; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Environmental Impact Statement, Miami International Airport, Miami, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is making available the Draft Environmental Impact Statement (DEIS) for the proposed new 8600 feet Runway 8-26 at Miami International Airport, Miami, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812-6331, extension 27.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is making available for review and comment to governmental agencies and the public the DEIS for the proposed new 8600 feet Runway 8-26 at Miami International Airport, Miami, Florida. Any person may review the DEIS at the location listed above under the heading, **FOR FURTHER INFORMATION CONTACT.** A public hearing is scheduled for February 4, 1998 in Miami, Florida. Location and time for the public hearing will be announced at a later date.

Comments may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.** Comment period expires on February 20, 1998.

Issued in Orlando, Florida, December 12, 1997.

John W. Reynolds, Jr.,

Assistant Manager, Orlando Airports District Office.

[FR Doc. 97-33285 Filed 12-19-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (98-05-C-00-PHL) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Philadelphia International Airport, Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). **DATES:** Comments must be received on or before January 21, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Oscar Sanchez, Project Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dennis Bouey, Director of Aviation for the City of Philadelphia at the following address: Philadelphia International Airport, Terminal E, Philadelphia, Pennsylvania 19153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Philadelphia Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Oscar Sanchez, Project Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011. 717-782-4548. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 10, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Philadelphia was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 9, 1998.

The following is a brief overview of the application.

Application number: 98-05-C-00-PHL.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: April 1, 1998.

Proposed charge expiration date: January 1, 1999.

Total estimated PFC revenue: \$26,150,000.

Brief description of proposed projects:
 —Install Security Controlled Access—Phase III
 —Airport Roadway System Modifications
 —Rehabilitate Aircraft Parking Apron on East Side of Terminal E
 —Construct Airport High Speed Line Platforms
 —Install Taxiway Edge Lights
 —Terminal A International Passenger Capacity Enhancements
 —Reconstruct Taxiway J
 —Purchase Passenger Transfer Vehicle
 Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Philadelphia Department of Aviation.

Issued in Jamaica, New York on December 10, 1997.

Thomas Felix,

Manager, Planning & Programming Branch, Airports Division, Eastern Region.

[FR Doc. 97-33286 Filed 12-19-97; 8:45 am]

BILLING CODE 4910-13-M

ACTION: Annual list of defect and noncompliance decisions affecting nonconforming imported vehicles.

SUMMARY: This document contains a list of vehicles recalled by their manufacturers during Fiscal Year 1997 (October 1, 1996 through September 30, 1997) to correct a safety-related defect or a noncompliance with an applicable Federal motor vehicle safety standard (FMVSS). The listed vehicles are those that have been decided by NHTSA to be substantially similar to vehicles imported into the United States that were not originally manufactured to conform to all applicable FMVSS. The registered importers of those nonconforming vehicles are obligated to provide their owners with notification of, and a remedy for, the defects or noncompliances for which the listed vehicles were recalled.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115. Once NHTSA decides that a nonconforming vehicle is eligible for importation, it may be imported by a person who is registered with the agency pursuant to 49 U.S.C. § 30141(c). Before releasing the vehicle for use on public streets, roads, or highways, the registered importer must certify to NHTSA, pursuant to 49 U.S.C. § 30146(a), that the vehicle has been brought into conformity with all applicable FMVSS.

If a vehicle originally manufactured for importation into and sale in the United States is decided to contain a defect related to motor vehicle safety, or not to comply with an applicable FMVSS, 49 U.S.C. § 30147(a)(1)(A) provides that the same defect or noncompliance is deemed to exist in any nonconforming vehicle that NHTSA has decided to be substantially similar and for which a registered importer has submitted a certificate of conformity to the agency. Under 49 U.S.C. § 30147(a)(1)(B), the registered importer is deemed to be the nonconforming vehicle's manufacturer for the purpose of providing notification of, and a remedy for, the defect or noncompliance.

To apprise registered importers of the vehicles for which they must conduct a notification and remedy (i.e., "recall") campaign, 49 U.S.C. § 30147(a)(2) requires NHTSA to publish in the **Federal Register** notice of any defect or noncompliance decision that is made with respect to substantially similar U.S. certified vehicles. Annex A contains a list of all such decisions that were made during Fiscal Year 1997, which ran from October 1, 1996 through September 30, 1997. The list identifies the Recall Number that was assigned to the recall by NHTSA after the agency received the manufacturer's notification of the defect or noncompliance under 49 CFR part 573. After September 30, 1998, NHTSA will publish a comparable list of all defect and noncompliance decisions affecting nonconforming imported vehicles that are made during the current fiscal year.

Authority: 49 U.S.C. § 30147(a)(2); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 16, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A

FISCAL YEAR 97 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS

Make	Model	Model year	Recall No.
BENTLEY	AZURE	1996	97V122000
BENTLEY	CONTINENTAL	1994	97V122000
BMW	318TI	1995	97V131000
BMW	325i	1992	97V131000
BMW	525i	1989	97V131000
BMW	525i	1990	97V131000
BMW	540i	1994	97V131000
BMW	540i	1995	97V131000
BMW	Z3	1996	97V131000
BUICK	PARK AVENUE	1997	97V036000
BUICK	PARK AVENUE	1997	97V064000
BUICK	REGAL	1990	97V058000
BUICK	REGAL	1994	97V017000
CHEVROLET	BLAZER	1995	96V234000

FISCAL YEAR 97 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	Recall No.
CHEVROLET	BLAZER	1995	97V066000
CHEVROLET	BLAZER	1996	96V234000
CHEVROLET	BLAZER	1996	97V066000
CHEVROLET	BLAZER	1996	97V096000
CHEVROLET	BLAZER	1996	97V096001
CHEVROLET	BLAZER	1997	97V066000
CHEVROLET	BLAZER	1997	97V096000
CHEVROLET	BLAZER	1997	97V096001
CHEVROLET	C30	1995	97V037000
CHEVROLET	CAVALIER	1995	96V250000
CHEVROLET	CAVALIER	1996	96V250000
CHEVROLET	CAVALIER	1996	96V257000
CHEVROLET	CORVETTE	1997	97V044000
CHEVROLET	CORVETTE	1997	97V104000
CHEVROLET	CORVETTE	1997	97V105000
CHEVROLET	CORVETTE	1997	97V108000
CHEVROLET	G30	1996	96V186000
CHEVROLET	LUMINA	1990	97V058000
CHEVROLET	LUMINA	1995	97V017000
CHEVROLET	LUMINA	1995	97V065000
CHEVROLET	MALIBU	1997	97V107000
CHEVROLET	MONTE CARLO	1995	97V017000
CHEVROLET	MONTE CARLO	1995	97V065000
CHEVROLET	S10	1989	96V195000
CHEVROLET	S10	1991	96V195000
CHEVROLET	S10	1992	96V195000
CHEVROLET	S10	1993	96V195000
CHEVROLET	S10	1994	96V195000
CHEVROLET	S10	1994	97V096000
CHEVROLET	S10	1994	97V096001
CHEVROLET	S10	1995	96V195000
CHEVROLET	S10	1995	97V096000
CHEVROLET	S10	1995	97V096001
CHEVROLET	S10	1996	97V008000
CHEVROLET	S10	1996	97V008001
CHEVROLET	S10	1996	97V096000
CHEVROLET	S10	1996	97V096001
CHEVROLET	S10	1996	97V146000
CHEVROLET	S10	1996	97V146001
CHEVROLET	SUBURBAN	1991	96V226000
CHEVROLET	SUBURBAN	1995	97V066000
CHEVROLET	SUBURBAN	1996	97V066000
CHEVROLET	SUBURBAN	1997	97V066000
CHRYSLER	TOWN AND COUNTRY	1997	96V215000
DODGE	B250	1996	97V066000
DODGE	CARAVAN	1991	96V229000
DODGE	CARAVAN	1991	97V148000
DODGE	CARAVAN	1991	97V149000
DODGE	CARAVAN	1992	96V229000
DODGE	CARAVAN	1992	97V079000
DODGE	CARAVAN	1992	97V148000
DODGE	CARAVAN	1992	97V149000
DODGE	CARAVAN	1993	97V148000
DODGE	CARAVAN	1993	97V149000
DODGE	CARAVAN	1997	96V215000
DODGE	D250	1996	97V066000
DODGE	DAKOTA	1997	97V080000
DODGE	GRAND CARAVAN	1992	96V229000
DODGE	GRAND CARAVAN	1992	97V079000
DODGE	GRAND CARAVAN	1992	97V148000
DODGE	GRAND CARAVAN	1992	97V149000
DODGE	GRAND CARAVAN	1993	97V148000
DODGE	GRAND CARAVAN	1993	97V149000
DODGE	GRAND CARAVAN	1997	96V215000
DODGE	NEON	1995	96V228000
DODGE	NEON	1997	97V080000
DODGE	RAM	1994	96V230000
DODGE	RAM	1994	97V084000
DODGE	RAM	1995	96V230000
DODGE	RAM	1995	97V068000
DODGE	RAM	1995	97V084000
DODGE	RAM	1996	97V068000

FISCAL YEAR 97 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	Recall No.
DODGE	RAM	1996	97V084000
DODGE	RAM	1997	97V084000
DODGE	RAM	1997	97V126000
DODGE	SHADOW	1992	96V229000
DODGE	SHADOW	1992	97V078000
DODGE	STRATUS	1996	97V095000
DODGE	STRATUS	1997	97V095000
FORD	CONTOUR	1996	97V067000
FORD	CROWN VICTORIA	1992	97V024000
FORD	CROWN VICTORIA	1994	97V024000
FORD	CROWN VICTORIA	1995	97V024000
FORD	CROWN VICTORIA	1996	97V024000
FORD	E150	1995	97V066000
FORD	E150	1996	97V066000
FORD	E150	1997	97V066000
FORD	EXPEDITION	1997	96V252000
FORD	EXPLORER	1993	97V083000
FORD	EXPLORER	1994	97V083000
FORD	EXPLORER	1995	97V136000
FORD	EXPLORER	1996	97V074000
FORD	EXPLORER	1996	97V136000
FORD	EXPLORER	1997	97V074000
FORD	EXPLORER	1997	97V136000
FORD	F150	1995	97V066000
FORD	F150	1996	97V066000
FORD	F150	1997	96V251000
FORD	F150	1997	96V256000
FORD	F150	1997	97V066000
FORD	F150	1997	97V147000
FORD	TAURUS	1992	97V019000
FORD	TAURUS	1992	97V025000
FORD	TAURUS	1993	97V019000
FORD	TAURUS	1993	97V025000
FORD	TAURUS	1994	97V019000
FORD	TAURUS	1994	97V025000
FORD	TAURUS	1995	97V019000
FORD	TAURUS	1995	97V025000
FORD	TAURUS	1996	96V166000
FORD	TAURUS	1996	96V176000
FORD	TAURUS	1997	96V166000
FORD	TAURUS	1997	97V097000
FORD	TEMPO	1992	97V019000
FORD	TEMPO	1993	97V019000
FORD	TEMPO	1994	97V019000
FORD	WINDSTAR	1996	96V166000
FORD	WINDSTAR	1997	97V097000
FORD	WINDSTAR	1998	97V097000
FREIGHTLINER	FL80	1994	97V114001
GMC	JIMMY	1995	96V234000
GMC	JIMMY	1996	96V234000
GMC	JIMMY	1996	97V096000
GMC	JIMMY	1996	97V096001
GMC	JIMMY	1997	97V096000
GMC	JIMMY	1997	97V096001
GMC	S15	1994	97V096000
GMC	S15	1995	97V096000
GMC	SAFARI	1996	97V057000
GMC	SONOMA	1994	97V096001
GMC	SONOMA	1995	97V096001
GMC	SONOMA	1996	97V008000
GMC	SONOMA	1996	97V008001
GMC	SONOMA	1996	97V096001
GMC	SONOMA	1996	97V146000
GMC	SONOMA	1996	97V146001
GMC	SUBURBAN	1991	96V226000
GMC	SUBURBAN	1995	97V066000
GMC	SUBURBAN	1996	97V066000
GMC	SUBURBAN	1997	97V066000
HARLEY DAVIDSON	SOFTAIL	1995	96V204000
HARLEY DAVIDSON	SOFTAIL	1996	96V204000
HONDA	ACCORD	1995	96V217000
ISUZU	RODEO	1994	96V170002

FISCAL YEAR 97 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	Recall No.
ISUZU	RODEO	1995	97V034000
ISUZU	RODEO	1995	97V034001
JEEP	CHEROKEE	1989	96V260000
JEEP	CHEROKEE	1990	96V260000
JEEP	CHEROKEE	1991	96V260000
JEEP	CHEROKEE	1993	97V069000
JEEP	CHEROKEE	1994	97V069000
JEEP	CHEROKEE	1995	97V069000
JEEP	CHEROKEE	1996	97V066000
JEEP	CHEROKEE	1996	97V069000
JEEP	GRAND CHEROKEE	1996	97V039000
JEEP	GRAND CHEROKEE	1997	97V080000
JEEP	WRANGLER	1997	97V080000
KENWORTH	T800	1997	97V139000
LINCOLN	CONTINENTAL	1992	97V019000
LINCOLN	CONTINENTAL	1992	97V025000
LINCOLN	CONTINENTAL	1993	97V019000
LINCOLN	CONTINENTAL	1993	97V025000
LINCOLN	CONTINENTAL	1994	97V019000
LINCOLN	CONTINENTAL	1994	97V025000
MCI	102D3	1997	97V053000
MERCURY	SABLE	1992	97V019000
MERCURY	SABLE	1992	97V025000
MERCURY	SABLE	1993	97V019000
MERCURY	SABLE	1993	97V025000
MERCURY	SABLE	1994	97V019000
MERCURY	SABLE	1994	97V025000
MERCURY	SABLE	1995	97V019000
MERCURY	SABLE	1995	97V025000
MERCURY	SABLE	1996	96V166000
MERCURY	SABLE	1996	96V176000
MERCURY	SABLE	1997	96V166000
MERCURY	TOPAZ	1993	97V019000
MERCURY	TOPAZ	1994	97V019000
MERCURY	VILLAGER	1995	96V253000
MERCURY	VILLAGER	1995	96V253001
NISSAN	PATHFINDER	1994	96V170001
OLDSMOBILE	CUTLASS	1990	97V058000
OLDSMOBILE	CUTLASS	1994	97V017000
PLYMOUTH	BREEZE	1996	97V095000
PLYMOUTH	BREEZE	1997	97V095000
PLYMOUTH	GRAND VOYAGER	1991	96V229000
PLYMOUTH	GRAND VOYAGER	1991	97V148000
PLYMOUTH	GRAND VOYAGER	1991	97V149000
PLYMOUTH	GRAND VOYAGER	1992	96V229000
PLYMOUTH	GRAND VOYAGER	1992	96V229000
PLYMOUTH	GRAND VOYAGER	1992	97V079000
PLYMOUTH	GRAND VOYAGER	1992	97V148000
PLYMOUTH	GRAND VOYAGER	1992	97V149000
PLYMOUTH	GRAND VOYAGER	1993	97V148000
PLYMOUTH	GRAND VOYAGER	1993	97V149000
PLYMOUTH	NEON	1995	96V228000
PLYMOUTH	VOYAGER	1991	96V229000
PLYMOUTH	VOYAGER	1991	97V148000
PLYMOUTH	VOYAGER	1991	97V149000
PLYMOUTH	VOYAGER	1992	96V229000
PLYMOUTH	VOYAGER	1992	97V079000
PLYMOUTH	VOYAGER	1992	97V148000
PLYMOUTH	VOYAGER	1992	97V149000
PLYMOUTH	VOYAGER	1993	97V148000
PLYMOUTH	VOYAGER	1993	97V149000
PONTIAC	GRAND PRIX	1994	97V017000
PONTIAC	GRAND PRIX	1995	97V065000
PONTIAC	GRAND AM	1996	96V250000
PONTIAC	GRAND AM	1996	96V257000
PONTIAC	GRAND AM	1997	97V059000
PONTIAC	SUNFIRE	1995	96V250000
PONTIAC	SUNFIRE	1996	96V250000
PONTIAC	SUNFIRE	1996	96V257000
ROLLS ROYCE	FLYING SPUR	1995	97V122000
ROLLS ROYCE	SILVER SPUR	1996	97V122000

FISCAL YEAR 97 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	Recall No.
TOYOTA	CAMRY	1997	97V156000

[FR Doc. 97-33251 Filed 12-19-97; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Finance Docket No. 33515]

Connecticut Central Railroad Company, Inc.—Modified Rail Certificate

On November 14, 1997, Connecticut Central Railroad Company, Inc. (CCCL), a class III shortline railroad, filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C—*Modified Certificate of Public Convenience and Necessity* to operate approximately 4.0 miles of abandoned rail line between milepost 3.0 in Hartford, CT, and milepost 7.0 in Wethersfield, CT (the Wethersfield Secondary Track), owned by the Connecticut Department of Transportation (C-DOT).

The involved rail line was abandoned by Boston and Maine Corporation pursuant to Board authorization granted in *Boston and Maine Corporation—Abandonment Exemption—in Hartford County, CT*, STB Docket No. AB-32 (Sub-No. 80X) (STB served Sept. 17, 1997). C-DOT acquired the rail line on October 28, 1997.

Pursuant to a supplement to the agreement dated March 28, 1996, between C-DOT and CCCL,¹ which is scheduled to terminate on May 17, 2017, operations over the 4-mile segment of the Wethersfield Secondary Track were scheduled to commence no sooner than November 17, 1997.

The rail segment qualifies for a modified certificate of public convenience and necessity. See *Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

No subsidy is involved. There may be preconditions for shippers to meet in order to receive rail service. CCCL indicates that in order for potential shippers to receive service, they may be required to enter into a contractual agreement with it, and may be subject to a special train charge as set forth in CCCL's tariff.

¹ The original notice of lease/operating agreement, dated June 24, 1987, governs CCCL's operations over other rail lines owned by C-DOT.

The segment represents a connecting piece of trackage linking lines over which CCCL has already obtained a modified rail certificate. Northerly, the line will form a link with other CCCL-operated trackage, and will connect with Consolidated Rail Corporation (Conrail) at Hartford, at or near milepost 2.6. Southerly, the line will connect with other CCCL-operated trackage and with a larger portion of CCCL's system. By this southerly connection, the line will enjoy interline connections already established by CCCL with the Providence and Worcester Railroad Company at Middlefield, CT, and with Conrail at Cedar Hill Yard in New Haven, CT.

This notice must be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F St., NW, Washington, DC 20001; and on the American Short Line Railroad Association: American Short Line Railroad Association, 1120 G St., NW, Suite 520, Washington, DC 20005.

Decided: December 15, 1997.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97-33337 Filed 12-19-97; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY**Customs Service****Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Textile Costumes****AGENCY:** Customs Service, Treasury.**ACTION:** Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party requesting the reclassification of certain imported textile costumes. The petitioner contends that Customs is incorrect in classifying textile costumes which are flimsy, not durable, and not normal articles of wearing apparel, under subheading 9505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), as "Festive, carnival or other

entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof; Other: Other." The provision is duty free under the general column one rate and costumes classifiable under this provision are not subject to quota or visa restraints. The petitioner contends that all imported textile costumes should be classified in Chapters 61 or 62, HTSUS, asserting that textile costumes are excluded from classification under subheading 9505.90.6090, HTSUS, pursuant to Note 1(e), Chapter 95, which states that the chapter does not cover sports clothing or fancy dress, of textiles, of chapter 61 or 62. If classified under Chapter 61 or 62 of the HTSUS, the costumes would be dutiable and may be subject to quota and visa restraints. This document invites comments with regard to the correctness of the current classification.

DATES: Comments must be received on or before February 20, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at 1300 Pennsylvania Avenue., NW., 3rd Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textiles Branch, (202-927-1368).

SUPPLEMENTARY INFORMATION:**Background**

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of an American manufacturer of textile costumes. The petitioner contends that virtually identical costumes to those manufactured by petitioner are being imported into the U.S. and some of these textile costumes are being erroneously classified by Customs under subheading 9505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), as "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof; Other: Other." The provision is duty free under the general column one rate and costumes classified under this provision are not subject to quota or visa

restraints. The petitioner claims that all imported textile costumes should be classified in Chapters 61 or 62, HTSUS, asserting that textile costumes are excluded from classification under subheading 9505.90.6090, HTSUS, pursuant to Note 1(e), Chapter 95. If classified under Chapters 61 or 62, the costumes would be dutiable and may be subject to quota and visa restraints.

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Heading 9505, HTSUS, includes articles which are for "Festive, carnival, or other entertainment." However, Note 1(e), chapter 95, HTSUS, excludes articles of "fancy dress, of textiles, of chapter 61 or 62" from chapter 95. The ENs to 9505, state, among other things, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

* * * * *

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche-heading 67.04), and paper hats. However, the heading excludes fancy dress of textile materials, of chapter 61 or 62.

In interpreting the phrase "fancy dress, of textiles, of chapter 61 or 62," Customs initially took the view that fancy dress included "all" costumes regardless of quality, durability, or nature of the item. However, Customs has reexamined its view regarding the scope of the term "fancy dress" as it relates to costumes. On November 15, 1994, Customs issued Headquarters Ruling Letter (HQ) 957318, which referred to the settlement agreement of October 18, 1994, reached by the United States and Traveler Trading in the case of *Traveler Trading Co. v. United States*, Civil Action, #91-02-00084. In HQ 957318, Customs stated that it had agreed to classify as festive articles in

subheading 9505.90.6090, HTSUS, costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel.

Description of Merchandise

The imported costumes which are the subject of HQ 957318 are of the same class or kind of merchandise as the costumes manufactured by petitioner. Costumes, whether imported or domestically manufactured, are traditionally worn in conjunction with the celebration of the Halloween festival or to costume parties. The costumes at issue are constructed of fabric comprised of man-made or natural fibers, but not of paper. The costumes usually depict a character, creature, or professional person, and often include accessories.

Issues Raised

Petitioner asserts that Customs interpretation of the term "fancy dress" is incorrect since the term "fancy dress" is synonymous with the word "costume." In support of this assertion, petitioner cites the "Cambridge International Dictionary of English" (1995) as stating that the word "costume" is American for the British and Australian term "fancy dress." In addition, petitioner cites the "Oxford English Dictionary" (2d ed. 1989) as stating that the definition of the term "fancy dress" is "[a] costume arranged according to the wearer's fancy, usually representing some fictitious or historical character."

The petitioner states that the Nomenclature Committee of the Customs Cooperation Council (predecessor to the World Customs Organization) considered the scope of the term "fancy dress" and determined that the proper classification for costumes was in Section XI. Further, a recent decision by the Canadian International Trade Tribunal held that the language of Note 1(e) regarding "fancy dress, of textiles" included the inexpensive costumes before the Tribunal because the costumes were "arranged or made to suit the wearer's fancy to represent fictitious characters" and that subheading 9505, HTSUS, covered "goods [that] are more indicative of face disguises than of actual clothing."

In citing the ENs to Chapter 95, petitioner argues that the examples set forth as "articles of fancy dress" in the ENs include only items that act as accessories to the fancy dress but are not themselves "fancy dress" because they do not clothe the body. Further, petitioner claims that the phrase in the

ENs, "articles of fancy dress", does not include those articles made of textile material and that an item of "fancy dress" is the actual costume, not the accessories.

Petitioner states that the durability of the costume is irrelevant to the determination of whether a costume is an item of apparel. Petitioner cites the case of *Admiral Craft Equip Corp. v. United States*, 82 Cust. Ct. 162, 164, C.D. 4796 (1979), in support of their position that Customs should apply a "use" test in classifying textile costumes and the case of *Dynamics Classics, Ltd. v. United States*, 10 CIT 666 (1986), as setting forth factors to be considered in applying the "use" test. In the *Dynamics* case the court cited *United States v. Carborundum Co.*, 63 C.F.P.A. 98, 102, C.A.D. 1172, 536 F.2d 373 (1976), for stating the elements used to establish the chief use of a class or kind of merchandise: "(1) the general physical characteristics of the merchandise; (2) the expectations of the ultimate purchaser, (3) the channels of trade, and (4) how it is advertised and used." According to the petitioner, application of these factors would require that a Halloween costume be classified as an article of apparel in Chapter 61 or 62.

Finally, petitioner states that Court of International Trade (CIT) decisions interpreting the Tariff Schedules of the United States (TSUS), are inapplicable when classifying costumes under the HTSUS. Petitioner argues that Customs should not consider the CIT's decisions in *Traveler Trading Co. v. United States*, 713 F.Supp. 409 (CIT 1989), and *I.C.I. Worldwide, Inc. v. United States*, 14 CIT 201 (1990), because both were decided under the TSUS. Specifically, it is petitioner's contention that the courts' decisions in those cases rested on the " * * * very broad and preclusive nature of the TSUS's definition of 'toys'." Petitioner further asserts that the classification of costumes under the HTSUS is very different from the TSUS because costumes are never classifiable as toys under the HTSUS and costumes are specifically excluded from classification as articles of fancy dress of textiles pursuant to Note 1(e) to Chapter 95.

Comments

Pursuant to Section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on the matter, Customs invites written comments on the petition from interested parties.

The domestic party petition, as well as all comments received in response to this notice will be available for public inspection in accordance with the

Freedom of Information Act (5 U.S.C. 552), 1.4, Treasury Department Regulations (31 CFR 1.4), and Section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on regular business days, at the: U.S. Customs Service, Office of Regulations and Rulings, Commercial Rulings Division, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Authority

This notice is published in accordance with Section 175.21(a), Customs Regulations (19 CFR 175.21(a)), 19 U.S.C. 1516.

Drafting information: The principal author of this document was Ann Segura Minardi, Textiles Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Approved: December 5, 1997.

William F. Riley,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 97-33291 Filed 12-19-97; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2758

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, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2758, Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns.

DATES: Written comments should be received on or before February 20, 1998 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: Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns.

OMB Number: 1545-0148.

Form Number: 2758.

Abstract: Internal Revenue Code section 6081 allows a reasonable extension of time for filing any return, declaration, statement, or other document. Form 2758 is used by fiduciaries, trustees, and certain tax-exempt organizations to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 300,000.

Estimated Time Per Respondent: 3 hr., 51 min.

Estimated Total Annual Burden Hours: 1,155,000.

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: December 16, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97-33358 Filed 12-19-97; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8038-T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8038-T, Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

DATES: Written comments should be received on or before February 20, 1998 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: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

OMB Number: 1545-1219.

Form Number: 8038-T.

Abstract: Form 8038-T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 24 hr., 22 min.

Estimated Total Annual Burden Hours: 60,925.

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: December 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97-33359 Filed 12-19-97; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5306-SEP

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, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Form 5306-SEP, Application for Approval of Prototype Simplified Employee Pension-SEP.

DATES: Written comments should be received on or before February 20, 1998 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: Application for Approval of Prototype Simplified Employee Pension-SEP.

OMB Number: 1545-0199.

Form Number: 5306-SEP.

Abstract: This form is used by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a simplified employee pension plan (SEP) to be used by more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.

Current Actions: The following changes are being made:

Line 2 has been re-aligned on the revised form, eliminating line 2b(1), Latest letter serial number. This information is no longer needed to process an application.

Line 3 has been revised to eliminate the concept of "long" and "short" amendments because this information is no longer important in processing the application.

Lines 6 and 7 have been added to the revised form. This information is important in helping the person reviewing the application to know the type of submission and the name of the mass submitter, if applicable.

Line 8d has been deleted because this item is no longer appropriate.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 650.

Estimated Time Per Respondent: 11 hr., 38 min.

Estimated Total Annual Burden Hours: 7,566.

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: December 16, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97-33360 Filed 12-19-97; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Forms 4804 and 4802

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, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4804, Transmittal of Information Returns Reported Magnetically/Electronically, and Form 4802, Transmittal of Information Returns Reported Magnetically/Electronically (Continuation of Form 4804).

DATES: Written comments should be received on or before February 20, 1998 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 information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 4804, Transmittal of Information Returns Reported Magnetically/Electronically, and Form 4802, Transmittal of Information Returns Reported Magnetically/Electronically (Continuation of Form 4804).

OMB Number: 1545-0367.

Form Number: Forms 4804 and 4802.

Abstract: Under Internal Revenue Code sections 6041 and 6042, all persons engaged in a trade or business and making payments of taxable income must file reports of this income with the IRS. In certain cases, this information must be filed on magnetic media. Forms 4804 and 4802 are transmittal forms for the magnetic media and indicate the payer, type of document, and total payee records.

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: Individuals, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Responses: 138,343.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 45,406.

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: December 17, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97-33361 Filed 12-19-97; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8716

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, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8716,

Election To Have a Tax Year Other Than a Required Tax Year.

DATES: Written comments should be received on or before February 20, 1998 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 Have a Tax Year Other Than a Required Tax Year.

OMB Number: 1545-1036.

Form Number: 8716.

Abstract: Form 8716 is filed by partnerships, S corporations, and personal service corporations under Internal Revenue Code section 444(a) to elect to retain or to adopt a tax year that is not a required tax year. The form provides IRS with information to determine that the section 444(a) election is properly made and identifies the tax year to be retained, changed, or adopted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 40,000.

Estimated Time Per Respondent: 4 hr., 54 min.

Estimated Total Annual Burden Hours: 196,000.

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.

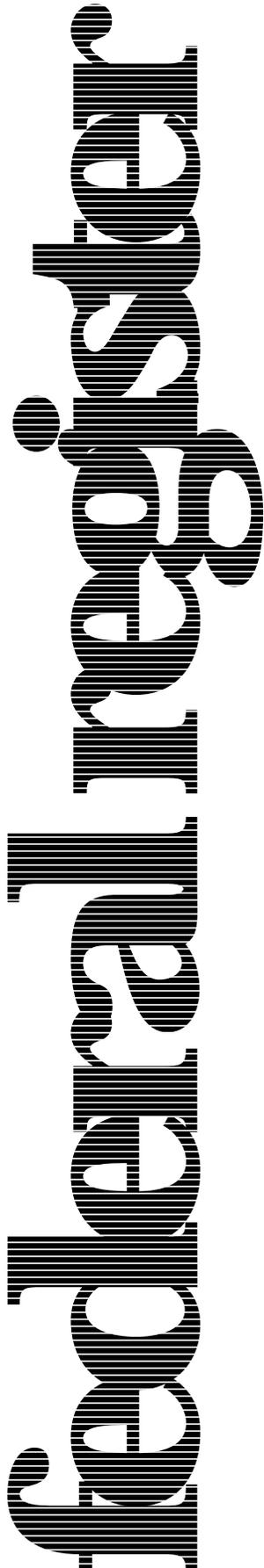
Approved: December 16, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97-33362 Filed 12-19-97; 8:45 am]

BILLING CODE 4830-01-U



Monday
December 22, 1997

Part II

**Department of
Transportation**

**Research and Special Programs
Administration**

**49 CFR Part 172 et al.
Hazardous Materials: Radiation Protection
Program Requirement; Final Rules**

**49 CFR Part 172 et al.
Hazardous Materials: Withdrawal of
Radiation Protection Program; Proposed
Rule**

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration49 CFR Parts 172, 174, 175, 176, and
177

[Docket No. RSPA-97-2850 (HM-169B)]

RIN 2137-AD14

Hazardous Materials: Radiation
Protection Program RequirementAGENCY: Research and Special Programs
Administration (RSPA), DOT.ACTION: Revocation of direct final rule;
Reinstatement of regulations.

SUMMARY: This action restores regulatory text that was removed by a September 2, 1997 direct final rule because interested parties submitted adverse comments on it. In the direct final rule, RSPA removed regulations that require persons who offer, accept for transportation, or transport radioactive materials to develop and maintain written radiation protection programs. The effect of this action is that the radiation protection program requirements issued on September 28, 1995 remain in effect. RSPA is publishing a notice of proposed rulemaking elsewhere in this issue of the **Federal Register** inviting further comments on the need to withdraw or revise the radiation protection program requirements.

DATES: The direct final rule published at 62 FR 46214 is revoked and the text of affected provisions in Subpart I of Part 172 and §§ 174.705, 175.706, 176.703 and 177.827 are reinstated as of September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Fred D. Ferate II, Office of Hazardous Materials Technology, (202) 366-4545 or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366-8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 28, 1995, RSPA published a final rule in the **Federal Register** under Docket No. HM-169A (60 FR 50292). The changes made in Docket HM-169A were part of RSPA's ongoing effort to harmonize the Hazardous Materials Regulations (HMR; 49 CFR 171-180) with international standards and to improve radiation safety for workers and the public during the transportation of radioactive materials.

One of the substantive regulatory changes under Docket HM-169A is a requirement to develop and maintain a written radiation protection program (RPP). The RPP requirements are found in Subpart I of Part 172 of the HMR. Implementation provisions for rail, air, vessel and highway are found in §§ 174.705, 175.706, 176.703, and 177.827, respectively. The RPP requirements apply, with certain exceptions, to each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials. Compliance with the RPP requirements was required after October 1, 1997.

Following publication of the September 28, 1995 final rule, many comments were received concerning technical difficulties in implementing the RPP requirements. Subsequently, on April 19, 1996, RSPA published in the **Federal Register** a request for comments on the implementation of the RPP requirements (Notice 96-7; 61 FR 17349). In Notice 96-7, RSPA stated its intention to develop guidance for the radioactive material industry to facilitate compliance with the RPP requirements.

RSPA received 23 comments in response to Notice 96-7. After considering these comments, RSPA decided that the concerns expressed could not all be resolved through guidance; new rulemaking was required in order to adequately address many of the issues raised in the comments. RSPA determined that the current RPP requirements in Subpart I of Part 172, and §§ 174.705, 175.706, 176.703 and 177.827 should be withdrawn, because they could not be corrected through rulemaking action prior to the October 1, 1997 compliance date. Accordingly, RSPA published a direct final rule on September 2, 1997 [62 FR 46214], withdrawing the RPP requirements effective September 30, 1997, unless an adverse comment or notice of intent to file an adverse comment was received by September 30, 1997. The preamble to the direct final rule discussed the concerns expressed in response to Notice 96-7.

II. Revocation of Direct Final Rule

The procedures governing issuance of direct final rules are in 49 CFR 106.39. These procedures provide for public notice and opportunity for comment subsequent to publication of a direct final rule. They also provide that if an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely document in the **Federal Register** to confirm that fact and withdraw the direct final rule in

whole or in part. Under the procedures, RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

Two persons submitted adverse comments on the direct final rule: Caliber System, Inc. and Davis Transport Inc. In summary, these parties asserted that RSPA did not adequately consider worker safety, but had overemphasized the comments on economic ability to comply and overstated the inconsistency and compliance assurance issues associated with the rule.

In this document, RSPA is providing notice that the provisions removed by the September 2, 1997 direct final rule are reinstated because two adverse comments were submitted.

RSPA is publishing a notice of proposed rulemaking (NPRM) elsewhere in this issue of the **Federal Register** to address the merits of the adverse comments and to request additional comments concerning the need to revoke or revise the RPP requirements.

III. Paperwork Reduction Act of 1995

Under regulations implementing the Paperwork Reduction Act of 1995, “* * * 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.” 5 CFR 1320.8(b)(iii)(6). RSPA has reviewed the HM-169A final rule and the information collection approval for radioactive materials transportation requirements. (OMB control number 2137-0510 was issued in January 1995 in anticipation of the final rule to be issued under Docket HM-169A. That approval expires on January 31, 1998, unless renewed.) Based on that review, RSPA concludes that the OMB approval is limited to information collection requirements other than the RPP requirements contained in Subpart I of Part 172.

In the NPRM, which RSPA is publishing concerning the need to withdraw or revise the RPP requirements, RSPA is requesting comments concerning the annual information collection burden attributable to those requirements, and RSPA will seek OMB approval if the RPP requirements are retained.

IV. 1997 Edition of 49 CFR Parts 100-185

Title 49 of the Code of Federal Regulations (CFR) was revised effective October 1, 1997. Because of the lateness of this document, Subpart I of Part 172 and §§ 174.705, 175.706, 176.703 and 177.827, do not appear in the 1997

edition of the CFR. RSPA is publishing the full text of the affected regulations in this document, as follows.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, the following provisions in 49 CFR parts 172, 174, 175, 176, and 177 are reinstated to read as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In Part 172, Subpart I is reinstated to read as follows:

Subpart I—Radiation Protection Program

Sec.

172.801 Applicability of the radiation protection program.

172.803 Radiation protection program.

172.805 Recordkeeping and notifications.

172.807 Transitional provisions.

Subpart I—Radiation Protection Program

§ 172.801 Applicability of the radiation protection program.

(a) *Scope.* This subpart prescribes requirements for developing and maintaining a radiation protection program.

(b) *Applicability.* This subpart applies to persons who offer for transportation, accept for transportation, or transport Class 7 (radioactive) materials.

§ 172.803 Radiation protection program.

Each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials must develop, implement and maintain a written radiation protection program in accordance with the following:

(a) Radiation exposures must be kept as low as reasonably achievable (ALARA), with economic and social factors being taken into account.

(b) Radiation exposures must be controlled such that:

(1) An occupationally exposed hazmat employee's annual effective dose equivalent for occupational radiation exposure will not exceed 12.5 mSv (1.25 rem) in any 3 month period or 50 mSv (5 rem) in any 12 month period. For workers under the age of eighteen, the radiation dose will not exceed 1.250 mSv (0.125 rem) in any 3 month period or 5.0 mSv (0.5 rem) in any 12 month period;

(2) Radiation exposures to members of the general public must be less than 0.02 mSv (2 mrem) per hour. This level will be measured as if an individual were present for an hour in any area where the general public could be exposed to radiation during the course of transportation, except that, if there is an occurrence where the dose to a member of the general public equals or exceeds 0.02 mSv (2 mrem) in one hour, the program must provide limits that will prevent an individual from receiving cumulative doses totaling 1.0 mSv (100 mrem) in any week or 5.0 mSv (500 mrem) in any twelve-month period;

(3) The radiation dose to an embryo-fetus in a pregnant female occupationally exposed hazmat employee, who has declared her pregnancy to her employer, must not exceed 5.0 mSv (500 mrem) during the pregnancy. This limit is to be achieved by limiting the radiation dose of the declared pregnant worker to not more than 5.0 mSv (500 mrem) during the nine months and not greater than 0.5 mSv (50 mrem) in any one month; and

(4) The radiation doses received by occupationally exposed hazmat employees must be monitored by radiation dosimetry devices.

(c) The Environmental Protection Agency report entitled "Radiation Protection Guidance to Federal Agencies for Occupational Exposure (January 1987)". This document is available from the U.S. Environmental

Protection Agency, Washington, DC 20460.

(d) *Exceptions.* (1) The requirements of this subpart do not apply to:

(i) Persons who offer for transportation or transport less than 200 TI, not including TI calculated for criticality control purposes, of packages in a 12-month period; or

(ii) Those persons whose operations will not result in a hazmat employee receiving an exposure of 5 mSv (500 mrem) or more per year. This evaluation must consider the hazmat employers Class 7 (radioactive) materials transportation activities for a period of at least 12 months. An evaluation must be conducted by a person experienced with radiation protection programs and transportation regulations and programs. The evaluator's competency may be evidenced by being certified by the American Board of Health Physics, or by a letter of recommendation from a State Radiation Official listed in the most current issue of the "Directory of Personnel Responsible For Radiological Health Programs" published annually by the Conference of Radiation Control Program Directors, Frankfort, KY.

(2) The requirements of this subpart may be satisfied by any radiation protection program that has been approved by an appropriate federal or state agency.

(e) *Guidance.* (1) Each hazmat employer should review and follow the guidance provided in the following documents when establishing and maintaining their radiation protection program:

(i) National Council on Radiation Protection and Measurements (NCRP) Report No. 59, "Operational Radiation Safety Program (1978)". The guidance in this report should be tailored to the practical needs and operations of the hazmat employer and their occupationally exposed hazmat employees.

(ii) NCRP Report No. 116, "Limitation of Exposure to Ionizing Radiation (1993)".

(2) The reports referenced in paragraph (e)(1) of this section are available from NCRP Publications, 7910 Woodmont Avenue, Bethesda, MD 20814.

§ 172.805 Recordkeeping and notifications.

(a) A hazmat employer must document their radiation protection program and maintain written records of the radiation protection program activities, including dosimetry records, described in this subpart. These records must be made available to the Associate Administrator for Hazardous Materials

Safety or other authorized officials in written form within seven days of a written request.

(b) A hazmat employer must keep a record of the radiation dose that each hazmat employee has received and provide it to the employee in reasonable time following a request during employment and no more than three months after end of employment.

(c) Each hazmat employer must notify the Associate Administrator for Hazardous Materials Safety, in writing, if a hazmat employee receives a dose exceeding 12.5 mSv (1250 mrem) in any calendar quarter or 50 mSv (5,000 mrem) in one year, or if a member of the general public is likely to receive a dose exceeding 5 mSv (500 mrem) in one year as a result of the hazmat employer's transportation activities. Such a notification must be made as soon as practicable following awareness of the occurrence.

(d) If an offeror or carrier of Class 7 (radioactive) materials is not required to establish a radiation protection program, they must develop and keep records which demonstrate why a program is not required (i.e., either the total TI of packages transported in any 12 month period is less than 200, or that the current Class 7 (radioactive) materials transport activities are the same as the activities that were reviewed by a competent radiation protection specialist whose evaluation demonstrated that no worker will receive a dose exceeding 5 mSv (500 mrem) in one year).

§ 172.807 Transitional provisions.

Compliance with the requirements of this subpart is required after October 1, 1997.

PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. Section 174.705 is reinstated to read as follows:

§ 174.705 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by rail unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 175—CARRIAGE BY AIRCRAFT

5. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

6. Section 175.706 is reinstated to read as follows:

§ 175.706 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by aircraft unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 176—CARRIAGE BY VESSEL

7. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. Section 176.703 is reinstated to read as follows:

§ 176.703 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by vessel unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

9. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

10. Section 177.827 is reinstated to read as follows:

§ 177.827 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by motor vehicle unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

Issued in Washington, DC on December 12, 1997, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97–33031 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–97–2850 (HM–169B)]

RIN 2137–AD14

Hazardous Materials: Radiation Protection Program Requirement

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule; extension of compliance date.

SUMMARY: RSPA is extending until October 1, 1999, the date for mandatory compliance with the Radiation Protection Program (RPP) requirements adopted in the final rule issued September 28, 1995. During this period, RSPA intends to consider in a separate rulemaking whether the RPP requirements should be withdrawn or revised because of the difficulties and complexities concerning implementation of and compliance with the RPP requirements. RSPA believes that compliance should not be required with requirements that may be withdrawn or substantially revised, and that overall safety in the transportation of radioactive materials will be advanced by reexamining the RPP requirements before requiring compliance with the current requirements.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Ferate II, Office of Hazardous Materials Technology, 202–366–4545, or Charles E. Betts, Office of Hazardous Materials Standards, 202–366–8553, RSPA, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On September 28, 1995, RSPA published a final rule in the *Federal Register* in this docket as part of RSPA's ongoing effort to harmonize the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, with international standards and to improve safety for workers and the public during the transportation of radioactive materials. (60 FR 50292). One of the substantive regulatory changes in the September 28, 1995 final rule is the requirement to develop and maintain a written radiation protection program (RPP).

The RPP requirements apply, with certain exceptions, to each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials. The RPP

requirements are set forth in Subpart I of Part 172 of the HMR. Implementation provisions for rail, air, vessel, and highway are contained in §§ 174.705, 175.706, 176.703, and 177.827, respectively. Compliance with the RPP requirements has been required since October 1, 1997.

RSPA's regulatory evaluation prepared in support of the September 28, 1995 final rule considered that carriers would be primarily affected by the RPP requirements. (Some carriers of radioactive materials are already covered by monitoring requirements contained in exemptions from quantity limitations in the HMR.) Many shippers of radioactive material, especially those who are Department of Energy contractors, or Nuclear Regulatory Commission or Agreement State licensees, are already subject to RPP requirements, and the September 28, 1995 final rule provides that the RPP requirements are satisfied by any radiation protection program that has been approved by an appropriate Federal or State agency. 49 CFR 172.803(d)(2).

On May 8, 1996, RSPA published in the **Federal Register** editorial corrections to the September 28, 1995 final rule and a denial of the one petition for reconsideration (from the Radiopharmaceutical Shippers and Carriers Conference [RSCC]) that had been timely filed. [61 FR 20747]. The editorial corrections included changes to § 172.803.

In addition, on April 19, 1996, RSPA published in the **Federal Register** a request for comments on the implementation of the RPP requirements, in response to questions or comments expressing difficulties in implementing or complying with the RPP requirements. Notice 96-7 (61 FR 17349). In Notice 96-7, RSPA stated its intention to develop guidance for the radioactive material industry to facilitate compliance with the RPP requirements.

In response to Notice 96-7, RSPA received numerous comments, a new petition for rulemaking from RSCC (that expanded upon its denied petition for reconsideration), and three additional documents purporting to be "petitions for reconsideration" of the September 28, 1995 final rule (which were treated as comments in response to Notice 96-7, rather than petitions for reconsideration, because they were not submitted within 30 days after publication of the September 28, 1995 final rule). After considering these comments and petitions, RSPA decided that the concerns expressed could not all be resolved through guidance. The

concerns were significant enough that RSPA determined it would be preferable to withdraw the RPP requirements completely, and reconsider this matter from the beginning, rather than try to amend Subpart I before the upcoming October 1, 1997 compliance date.

For this reason, RSPA published a direct final rule on September 2, 1997, withdrawing the RPP requirements effective September 30, 1997, unless (in accordance with RSPA's procedural rules at 49 CFR 106.39) an adverse comment or notice of intent to file an adverse comment was received by September 30, 1997. [62 FR 46214]. Because two persons submitted adverse comments on the direct final rule, RSPA is publishing a separate document, revoking the direct final rule and leaving the RPP requirements in effect.

As noted above and in the direct final rule, many shippers of radioactive materials are already subject to an RPP requirement. RSPA considers that it may also be appropriate to establish in the HMR some form of RPP requirement for carriers and any shippers not already covered by other existing requirements, to provide a formal and structured framework for ensuring safety during radioactive material transportation activities. However, RSPA has also concluded that the problems with the current RPP requirements in Subpart I of 49 CFR Part 172 are sufficiently great that compliance with them should not be required while RSPA reconsiders this entire matter.

As a first step, RSPA intends to publish a notice of proposed rulemaking (NPRM) in the near future to address the merits of all the comments and petitions directed to the RPP requirements and to request additional comments concerning the need to withdraw or revise the RPP requirements. To allow this separate rulemaking to proceed in an orderly fashion, without the threat of enforcement or liability based on noncompliance, and in response to a request for a stay of the compliance date from RSCC, RSPA is extending the date for mandatory compliance with the RPP requirements until October 1, 1999. As also discussed below, RSPA has concluded that a lack of approval by the Office of Management and Budget (OMB) for information collection requirements precludes Federal enforcement of the RPP requirements at this time.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule provides relief to persons who offer for transportation, accept for

transportation, or transport Class 7 (radioactive) materials by extending until October 1, 1999, the requirement to develop and maintain a radiation protection program. The effect of this rule is not considered a significant regulatory action under Section 3(f) of Executive Order 12866, and this rule was not reviewed by the Office of Management and Budget. This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation. [44 FR 11034 (February 26, 1979)].

RSPA has not prepared a regulatory evaluation that specifically addresses the issue of extending the date for developing and maintaining a radiation protection program. The regulatory evaluation prepared in support of the September 28, 1995 final rule considered that the health benefits to the transportation community of limiting radiation exposures, through a radiation protection program, would be significant. That regulatory evaluation also estimated that the benefits of making U.S. regulations for the transportation of radioactive materials consistent with international standards would exceed the total estimated costs of the September 28, 1995 final rule involved in converting to the international system of units (SI) and meeting the RPP requirements. However, the costs of implementing the RPP requirements will be greatly increased (and overall safety will likely be reduced) if compliance with the current regulations is required, then if these requirements are withdrawn or significantly revised. RSPA, in support of the NPRM, will be preparing a regulatory evaluation to address the issue of removing the radiation protection program requirement from the HMR.

B. Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous material transportation law contains express preemption provisions at 49 U.S.C. 5125 that preempt State, local, and Indian tribe requirements if

(1) Complying with a requirement of the State, political subdivision, or Indian tribe and Federal hazardous material transportation law or regulations is not possible;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out Federal hazardous material transportation law or regulations; or

(3) The requirement of the State, political subdivision, or Indian tribe concerns any of the following "covered subjects" and is not substantially the same as a provision of Federal hazardous material transportation law or regulations:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(E) The design, manufacture, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance.

RSPA is not aware of any State, local, or Indian tribe requirement that would be preempted by an extension of the date for compliance with the RPP requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, directs agencies to consider the potential impact of regulations on small business and other small entities. In the regulatory evaluation originally prepared to consider RPP requirements, RSPA estimated a total of 497 carriers (primarily motor carriers) would be

subject to these requirements. All but a few of these carriers are thought to meet criteria of the Small Business Administration as "small business," e.g., motor freight carriers with annual revenue less than \$18.5 million.

Extending the date for compliance with the RPP requirements will allow those carriers to continue to transport radioactive materials, until October 1, 1999, without having to develop and implement a written plan (or for those carriers transporting radioactive materials under an exemption, a plan that goes beyond what is now required). Based on the above, I certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative that achieves the objective of the rule.

E. Paperwork Reduction Act

This rule does not impose any information collection burdens. RSPA has concluded that the information collection approval under OMB control number 2137-0510 (which expires January 31, 1998, unless renewed) does not cover the information collection requirements in the RPP requirements. Because Subpart I of 49 CFR Part 172 does not display a valid OMB control number, no person is required to respond to its RPP requirements.

If RSPA decides to retain the RPP requirements, in the form of Subpart I of 49 CFR Part 172 or otherwise, RSPA will submit this information collection and recordkeeping requirement to OMB for approval. As part of that process, RSPA will provide interested members of the public and affected agencies an

opportunity to comment on information collection and recordkeeping requests, as provided in OMB's regulations.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda. The September 28, 1995 final rule and the May 8, 1996 final rule were published under RIN 2037-AB60.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, the following provisions in 49 CFR part 172 is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101-5127, 49 CFR 1.53.

2. Section 172.807 is revised to read as follows:

§ 172.807 Transitional provisions.

Compliance with the requirements of this subpart is required after October 1, 1999.

Issued in Washington, DC on December 12, 1997, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97-33030 Filed 12-19-97; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 174, 175, 176, and 177

[Docket No. RSPA-97-2850 (HM-169B)]

RIN 2137-AD14

Hazardous Materials: Withdrawal of Radiation Protection Program Requirement

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing to amend the Hazardous Materials Regulations (HMR) to remove Subpart I of 49 CFR Part 172, "Radiation Protection Program" and related modal provisions that require persons who offer, accept for transportation, or transport radioactive materials to develop and maintain a written radiation protection program. This action is necessary to address difficulties and complexities concerning implementation of and compliance with the requirements for a radiation protection program, as evidenced by comments received from the radioactive material transportation industry and other interested parties.

DATES: Comments must be received on or before February 13, 1998.

ADDRESSES: Address comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590-0001. Comments should identify the Docket No. [RSPA-97-2850 (HM-169B)] and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Management System is located on the Plaza level of the Nassif Building at the above address. Public dockets may be reviewed between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Comments may also be submitted by E-mail to "rules@rspa.dot.gov." In every case, the comment should refer to the Docket Number set forth above.

FOR FURTHER INFORMATION CONTACT: Dr. Fred D. Ferate II, Office of Hazardous Materials Technology, (202) 366-4545 or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366-8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: On September 28, 1995, RSPA published a final rule in the **Federal Register** under Docket No. HM-169A (60 FR 50292). The changes made in Docket No. HM-169A were part of RSPA's ongoing effort to harmonize the Hazardous Materials Regulations (HMR; 49 CFR 171-180) with international standards and to improve radiation safety for workers and the public during the transportation of radioactive materials.

One of the substantive regulatory changes under Docket No. HM-169A is a requirement to develop and maintain a written radiation protection program (RPP). The RPP requirements are found in Subpart I of Part 172 of the HMR. Implementation provisions for rail, air, vessel and highway are found in §§ 174.705, 175.706, 176.703, and 177.827, respectively. The RPP requirements apply, with certain exceptions, to each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials. Compliance with the RPP requirements was required after October 1, 1997.

Following publication of the September 28, 1995 final rule, many comments were received concerning technical difficulties in implementing the RPP requirements. Subsequently, on April 19, 1996, RSPA published in the **Federal Register** a request for comments on the implementation of the RPP requirements (Notice 96-7; 61 FR 17349). In Notice 96-7, RSPA stated its intention to develop guidance for the radioactive material industry to facilitate compliance with the RPP requirements.

RSPA received 23 comments in response to Notice 96-7. After considering these comments, RSPA decided that the concerns expressed could not all be resolved through guidance; new rulemaking was required in order to adequately address many of the issues raised in the comments. RSPA determined that the current RPP requirements in Subpart I of Part 172, and §§ 174.705, 175.706, 176.703, and 177.827 should be withdrawn, because it did not believe they could be corrected without significant review and a further rulemaking action. Accordingly, RSPA published a direct final rule on September 2, 1997 (62 FR 46214), withdrawing the RPP requirements effective September 30, 1997, unless an adverse comment or notice of intent to file an adverse comment was received by September 30, 1997. Because RSPA received two adverse comments it is revoking the direct final rule in a separate document. In a final rule published in Docket No.

HM-169B, RSPA is also extending until October 1, 1999, the date for compliance with the RPP requirements, because it does not believe it would be appropriate to require compliance with requirements which it is proposing to withdraw in this NPRM.

Several commenters to Notice 96-7 cited modal differences as a factor which makes application of the RPP requirements difficult. Examples given include difficulties in tracking doses to workers involved in shipping radioactive material by rail because of multiple transfers from one company to another of rail cars during transport, or to ship crews because of ships being registered under foreign flags, or because often their operations are carried out in foreign ports. Several commenters stated that dose to personnel involved in bulk or containerized transport of radioactive material by highway, rail, or vessel is usually much lower than for non-bulk shipments.

Additional comments pointed to ambiguities in the regulations. Some of the ambiguities cited are that the regulations do not make clear whether the 200 transport index (TI) threshold to qualify for an exception is to be applied over an entire company or at each site; that concepts such as "approved by a Federal or state agency" and "occupationally exposed hazmat worker" are vague; and that the requirement to monitor occupationally exposed hazmat workers appears to be too inclusive and may be interpreted to extend even to those workers whose doses would be expected to be below the limit of detection of the dosimeters. Most commenters noted the practical impossibility of being able to assure compliance with the requirements cited in the regulations for dose and dose rate limits for members of the general public, and the uncertainty as to which persons are included in the category of "general public."

Several commenters cited inconsistencies with other regulations. For example, in contrast to the HMR, the Nuclear Regulatory Commission (NRC) regulations and Environmental Protection Agency (EPA) guidelines do not include a quarterly occupational dose limit, or a weekly dose or a dose rate limit for members of the public; the HMR criteria for determining whether monitoring is required differ appreciably from those in the International Atomic Energy Agency (IAEA) regulations; the HMR annual limit for members of the public is different from that of the NRC and the IAEA regulations; the HMR recordkeeping requirements are

different from the NRC's; and the HMR require monitoring of occupationally exposed hazmat workers, while the NRC requires monitoring adult workers with personal dosimetry only if their annual dose is likely to exceed 5 mSv.

Commenters stated that there are also internal inconsistencies in the present RPP requirements. For example, one commenter noted that entities with an RPP are required to comply with the stated limits for dose to members of the general public, while entities which qualify for an exception are not.

Another commenter indicated that the monthly limit of 0.5 mSv for a declared pregnant worker renders irrelevant the additional stated limit of 5 mSv during the term of pregnancy. Commenters also stated that implementation of the RPP requirements would force affected shippers and carriers to adopt the most conservative approach, leading to unnecessarily high costs and potentially serious disruption of the market.

In addition to the comments received, RSPA also received six petitions. The first was a petition for reconsideration received from the Radiopharmaceutical Shippers and Carriers Conference (RSCC) in response to publication of Docket No. HM-169A as a final rule. This petition was considered and denied in a May 8, 1996 **Federal Register** notice (61 FR 20748). Three documents purporting to be "petitions for reconsideration" of the September 28, 1995 final rule received during the comment period established in Notice 96-7, were treated as comments rather than petitions for reconsideration because they were received after the thirty day period in the September 28, 1995 final rule. Petitions for rulemaking were received from the RSCC and the Nuclear Energy Institute (NEI). A discussion of these remaining five petitions follows.

Lockheed Martin (Energy Research Corporation and Energy Systems, Inc.), Los Alamos National Laboratories, and the Oak Ridge Operations Office of the Department of Energy requested that implementation of the RPP requirements be postponed, and that an exception to the RPP requirements be allowed for less-than-truckload (LTL) non-exclusive use shipments of radioactive material.

RSCC requested amendments to various paragraphs of the RPP requirements. These included restricting the 0.02 mSv/hour (2 mrem/hour) limit to members of the public and other non-occupationally exposed individuals to those radioactive material transportation activities which occur at fixed facilities; changing the threshold to qualify for an exception from 200 TI to 1000 TI; and

applying the 1000 TI threshold exception for each fixed facility. It was requested, also, that regulations be clarified by specifically stating that certification by the American Board of Health Physics is not the only acceptable criterion as evidence of competency of the evaluator referred to in 49 CFR 172.803(d)(ii). Finally, it was requested that the wording "200 TI" be changed to "1000 TI" and "worker" changed to "occupationally exposed hazmat employee" in 49 CFR 172.805(d); and that the effective date of October 1, 1997 be postponed until appropriate guidance is available.

The NEI petitioned RSPA to rescind the public radiation measurement requirement in 49 CFR 172.803(b)(2).

The arguments presented in these petitions have been considered along with the other comments received. However, the disposition of the petitions for rulemaking will be decided at a later date.

Two persons submitted adverse comments on the direct final rule: Caliber System, Inc. and Davis Transport Inc. Caliber System, Inc., believes that the concerns raised through public comments can be addressed through guidance and other means. It contends that all shippers and consignees of radioactive materials already have formal, approved, written procedures for the handling of radioactive material and exposure monitoring for their personnel and as a result, all shippers and consignees are already in compliance with HM-169A. In addition, it argues that carriers who regularly engage in transporting radioactive materials in the course of their main business also have formal, written and approved programs. Davis Transport, Inc., argues that RSPA did not adequately consider worker safety, overemphasized the comments on economic ability to comply, and overstated the inconsistency and compliance assurance issues associated with the rule.

Before the September 28, 1995 final rule under Docket No. HM-169A, the HMR had not contained a performance standard requiring hazmat employers to minimize radiation exposure to the lowest level possible through a RPP. In the past, the HMR have sought to minimize radiation hazards to workers and the public by including requirements on: (1) packagings designed and tested to contain Type A quantities of RAM under normal conditions, and Type B quantities of radioactive materials under both normal and accident conditions during transportation; (2) hazard communication, such as shipping paper

information, labels, and markings; (3) limitations on permissible rates of external radiation and package contamination; and (4) segregation and separation of packages from passengers and hazmat employees. This system has worked well, but it can be improved.

RSPA believes that some form of an RPP requirement may be appropriate in the HMR, to provide a formal and structured framework for ensuring radiation safety during radioactive material transportation activities. RSPA notes that many shippers of radioactive material, specifically those who are Department of Energy contractors or NRC or Agreement State licensees, are already subject to RPP requirements. RSPA will continue to review criteria, such as those adopted by the IAEA Safety Series Standards Series No. ST-1, that could form the basis of revised RPP requirements in the HMR. As a result, RSPA may propose in a future rulemaking the establishment of revised RPP requirements, to provide such a formal and structured framework.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule provides relief to persons who offer for transportation, accept for transportation, or transport Class 7 (radioactive) materials by eliminating the need to develop and maintain a radiation protection program. The effect of this rule, as proposed, is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

RSPA has prepared a regulatory evaluation that specifically addresses the issue of withdrawing requirements for a radiation protection program. The regulatory evaluation prepared in support of the final rule issued under Docket No. HM-169A (60 FR 50292; September 28, 1995) estimated annual costs attributed to radiation protection program requirements in the amount of \$6.6 million. At that time, RSPA did not have sufficient data to quantitatively assess benefits to be derived from the radiation protection program requirements. However, the regulatory evaluation considered the health benefits to the transportation community of limiting radiation exposures to be significant.

The benefits of removing the radiation protection program are, at a minimum, the \$6.6 million RSPA estimated that the RPP requirements would cost to implement. However, RSPA believes that the RPP requirements are so overly restrictive, ambiguous, and inconsistent with the requirements of other Federal agencies that they would tend to cause affected parties to adopt the most conservative approach, leading to unnecessarily high costs in order to assure compliance. Therefore, RSPA believes that the health benefits in implementing these requirements would be much lower than originally anticipated. Also, because of the problems with the RPP requirements which have been identified, RSPA believes that any improvements to safety through implementation of the current RPP requirements would be much less than anticipated and their value would be less than the costs of implementation. Therefore, RSPA believe that the costs of implementation of RPP requirements will exceed their benefits and that withdrawing the requirements is cost-effective.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous material transportation law contains express preemption provisions at 49 U.S.C. 5125 that preempt State, local, and Indian tribe requirements if

(1) Complying with a requirement of the State, political subdivision, or Indian tribe and Federal hazardous material transportation law or regulations is not possible;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out Federal hazardous material transportation law or regulations; or

(3) The requirement of the State, political subdivision, or Indian tribe concerns any of the following "covered subjects" and is not substantially the same as a provision of Federal hazardous material transportation law or regulations:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the

unintentional release in transportation of hazardous material; and

(E) The design, manufacture, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance.

RSPA is not aware of any State, local, or Indian tribe requirements that would be preempted by a withdrawal of the RPP requirements, as proposed herein. RSPA invites comments on this subject and, if any person believes that this proposed rule concerns a covered subject, what the effective date of Federal preemption should be.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601-612, directs agencies to consider the potential impact of regulations on small business and other small entities. In the regulatory evaluation originally prepared to consider requirements for a radiation protection program, RSPA estimated a total of 497 carriers (primarily motor carriers) would be subject to those requirements. All but a certain few of those carriers are thought to meet criteria of the Small Business Administration as "small business," e.g., motor freight carriers with annual revenue of less than \$18.5 million. The effect of withdrawing requirements for a radiation protection program is to allow those carriers to continue to transport radioactive materials without having to develop and implement a written plan that goes beyond what is now required of them by the HMR, by a RSPA exemption, or by other Federal departments and agencies.

Based upon the above, I certify that this proposed rule will not have a significant adverse economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least

burdensome alternative that achieves the objective of the rule.

E. Paperwork Reduction Act

Under regulations implementing the Paperwork Reduction Act of 1995, "* * * 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." 5 CFR

1320.8(b)(iii)(6). RSPA has reviewed the HM-169A final rule and the information collection approval for radioactive materials transportation requirements. (OMB control number 2137-0510 was issued in January 1995 in anticipation of the final rule to be issued under Docket No. HM-169A. That approval expires on January 31, 1998, unless renewed.) Based on that review, RSPA concludes that the OMB approval is limited to information collection requirements for radioactive materials transportation other than the RPP requirements contained in Subpart I of Part 172.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. RSPA estimates that the total information collection and recordkeeping burden for a Radiation Protection Program is:

Number of Respondents: 497.

Total Annual Responses: 497.

Total Annual Burden Hours: 94,286.

Total Annual Burden Cost: \$6.6 million.

These figures are based on RSPA's estimates from the regulatory evaluation under HM-169A. As previously indicated, the estimate of total annual burden cost may be higher than this estimate. However, RSPA estimates that approximately 497 (50%) of these carriers will be required to implement and maintain a full radiation protection program. The cost of a radiation protection program was considered in two parts. First, RSPA considered the cost of monitoring those workers who are not currently required to be monitored by the existing regulations of the Occupational Safety and Health Administration or the Nuclear Regulatory Commission. The second cost considered was that of the hourly wages of technical and managerial workers to implement the radiation protection program. Other costs of a radiation protection program are already accounted for in the requirements of the HMR for a HAZMAT employer to give their HAZMAT employees safety training relative to the risks associated with the material a person transports.

Requests for a copy of this information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590-0001. Telephone (202) 366-8553.

RSPA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing and maintaining a radiation protection program. Written comments should be addressed to the Dockets Unit as identified in the ADDRESSES section of this rulemaking. Comments should be received prior to the close of comment period identified in the DATES section of this rulemaking. If a decision is made to retain the RPP requirements, RSPA will submit this information collection and recordkeeping requirement to the Office of Management and Budget for approval.

F. Regulation Identifier Number (RIN)

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

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 172, 174, 175, 176, and 177 is proposed to be amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

Subpart I—[Removed]

2. In Part 172, Subpart I would be removed.

PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 would continue to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

§ 174.705 [Removed]

4. Section 174.705 would be removed.

PART 175—CARRIAGE BY AIRCRAFT

5. The authority citation for part 175 would continue to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

§ 175.706 [Removed]

6. Section 175.706 would be removed.

PART 176—CARRIAGE BY VESSEL

7. The authority citation for part 176 would continue to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

§ 176.703 [Removed]

8. Section 176.703 would be removed.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

9. The authority citation for part 177 would continue to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

§ 177.827 [Removed]

10. Section 177.827 would be removed.

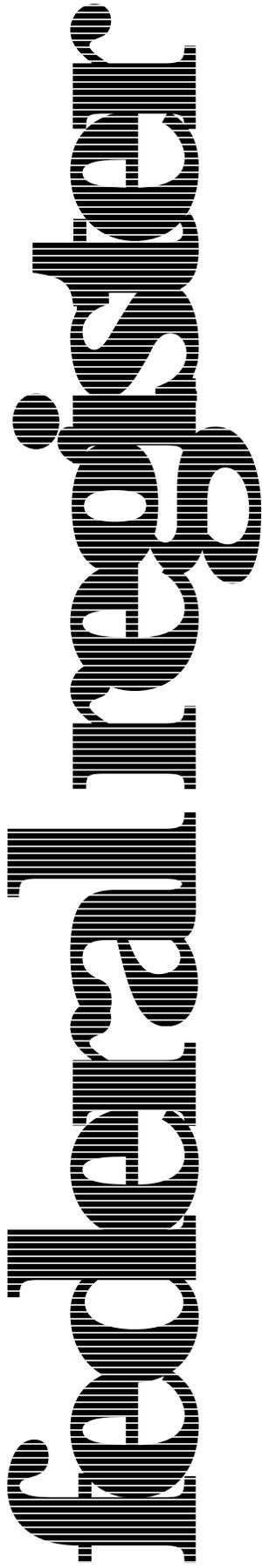
Issued in Washington, DC on December 12, 1997 under authority delegated in 49 CFR Part 1.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97-33029 Filed 12-19-97; 8:45 am]

BILLING CODE 4910-60-P



Monday
December 22, 1997

Part III

Department of Labor

**Pension and Welfare Benefits
Administration**

**29 CFR Part 2550
Insurance Company General Accounts;
Proposed Rule**

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration****29 CFR Part 2550**

RIN 1210-AA58

Insurance Company General Accounts

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation which clarifies the application of the Employee Retirement Income Security Act of 1974 as amended (ERISA or the Act) to insurance company general accounts. Pursuant to section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104-188), section 401 of ERISA has been amended. Section 401 now provides that the Department must issue proposed regulations to: Provide guidance for the purpose of determining, where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of the insurer's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute assets of the plan for purposes of part 4 of Title I of ERISA and section 4975 of the Internal Revenue Code of 1986 (the Code); and provide guidance with respect to the application of Title I to the general account assets of insurers. If adopted, the regulation will affect participants and beneficiaries of employee benefit plans, plan fiduciaries and insurance company general accounts.

DATES: Written comments and requests for a hearing (preferably at least three copies) concerning the proposed regulation must be received by March 23, 1998.

ADDRESSES: Interested persons are invited to submit written comments (preferably, at least three copies) concerning the proposed rule to: Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, 200 Constitution Ave., N.W., Washington, DC 20210. Attention: "General Account Contracts". Written comments may also be sent by the Internet to the following address: cmpad@jpwba.dol.gov.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5649, 200 Constitution Avenue, N.W.,

Washington, D.C. 20210, (202) 219-8194, or Timothy Hauser, Plan Benefits Security Division, Office of the Solicitor, (202) 219-8637. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:**A. Background**

Life insurance companies issue a variety of group contracts for use in connection with employee pension benefit plans, some of which provide benefits the amount of which is guaranteed, some of which provide benefits that may fluctuate with the investment performance of the insurance company, and some of which offer elements of both. Under section 401(b)(2) of ERISA, if an insurance company issues a "guaranteed benefit policy" to a plan, the assets of the plan are deemed to include the policy, but do not, solely by reason of the issuance of the policy, include any of the assets of the insurance company. Section 401(b)(2)(B) defines the term "guaranteed benefit policy" to mean an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. In addition, in paragraph (b) of ERISA Interpretive Bulletin 75-2, 29 CFR 2509.75-2 (1975), the Department stated that if an insurance company issues a contract or policy of insurance to a plan and places the consideration for such contract or policy in its general asset account, the assets in such account shall not be considered to be plan assets.¹

On December 13, 1993, the Supreme Court rendered its decision in *John Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank*, 510 U.S. 86 (1993) (Harris Trust) which interpreted the meaning of "guaranteed benefit policy". In its decision, the Court held that a contract qualifies as a guaranteed benefit policy only to the extent it allocates investment risk to the insurer:

[w]e hold that to determine whether a contract qualifies as a guaranteed benefit policy, each component of the contract bears examination. A component fits within the guaranteed benefit policy exclusion only if it allocates investment risk to the insurer. Such an allocation is present when the insurer provides a genuine guarantee of an aggregate amount of benefits payable to retirement plan participants and their beneficiaries.

Therefore, under the Supreme Court's decision, an insurer's general account includes plan assets to the extent it contains funds which are attributable to

any nonguaranteed components of contracts with employee benefit plans. Because John Hancock's contract provided for a return that varied with the insurer's investment performance, the Court concluded that John Hancock held plan assets, and was, therefore, a fiduciary with respect to the management and disposition of those assets. Under the Court's reasoning, a broad range of activities involving insurance company general accounts are subject to ERISA's fiduciary standards.

Because of the retroactive effect of the Supreme Court decision, numerous transactions engaged in by insurance company general accounts may have violated ERISA's prohibited transaction and general fiduciary responsibility provisions. If the underlying assets of a general account include plan assets, persons who have engaged in transactions with such general account may be viewed as parties in interest under section 3(14) of ERISA and disqualified persons under section 4975 of the Code, including fiduciaries with respect to plans which have interests as policyholders in the general account. For example, insurance companies are a source of loans for smaller and mid-sized companies. Many of these companies have party in interest relationships with plans that have purchased general account contracts. Application of the prohibited transaction rules to the general account of an insurance company as a result of the Harris Trust decision could call such loans into question under ERISA. Lastly, the underlying assets of an entity in which a general account acquired an equity interest may include plan assets as a result of the Harris Trust decision.

The insurance industry believed that, absent legislative or administrative action, it would be subject to significant additional litigation and potential liability with respect to the operation of its general accounts. On March 25, 1994, the American Council of Life Insurance (ACLI) submitted an application for a class exemption from certain of the restrictions of sections 406 and 407 of ERISA and from certain excise taxes imposed by section 4975(a) and (b) of the Code. The ACLI requested broad exemptive relief for transactions which included the following: all internal operations of general accounts, all investment transactions involving general account assets, including transactions with parties in interest with respect to plans that have purchased general account contracts, and the purchase by the general account of securities issued by, and real property leased to, employers of employees

¹ Paragraph (b) of 29 CFR 2509.75-2 was removed effective July 1, 1996, 61 FR 33847, 33849 (July 1, 1996).

covered by plans that have purchased general account contracts.

On August 22, 1994, the Department published a notice of proposed Class Exemption for Certain Transactions Involving Insurance Company General Accounts. (59 FR 43134). Although the ACLI requested exemptive relief for activities in connection with the internal operation of general accounts, the Department determined that it did not have sufficient information regarding the operation of such accounts to make the findings required by section 408(a) of ERISA. Accordingly, the proposed class exemption did not provide relief for transactions involving the internal operation of an insurance company general account. The final exemption (Prohibited Transaction Exemption (PTE) 95-60, 60 FR 35925), was published in the **Federal Register** on July 12, 1995.

B. Public Law 104-188

In response to the Supreme Court decision in *Harris Trust*, Congress amended section 401 of ERISA by adding a new subsection 401(c) which clarifies the application of ERISA to insurance company general accounts. Pub. L. 104-188, § 1460. This statutory provision provides that the Secretary shall issue proposed regulations to provide guidance for the purpose of determining, in cases where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by the assets of such insurer's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute assets of the plan for purposes of part 4 of Title I and section 4975 of the Code and to provide guidance with respect to the application of Title I to an insurer's general account assets. The final regulations shall be issued not later than December 31, 1997.

The regulations will only apply to those general account policies which are issued by an insurer on or before December 31, 1998. In the case of such policies, the regulations will take effect at the end of the 18 month period following the date on which the regulations become final. Pub. L. 104-188, however, authorizes the Secretary to issue additional regulations designed to prevent avoidance of the regulations described above. These additional regulations, if issued, may have an earlier effective date.

The Department must ensure that the regulations issued under Pub. L. 104-188 are administratively feasible, and protect the interests and rights of the plan and of its participants and beneficiaries. In addition, the

regulations must require, in connection with any policy (other than a guaranteed benefit policy) issued by an insurer to or for the benefit of an employee benefit plan, that: (1) An independent plan fiduciary authorize the purchase of the policy (unless the purchase is exempt under ERISA section 408(b)(5)); (2) the insurer provide information in policies issued and on an annual basis to policyholders (as prescribed in such regulations) disclosing the methods by which any income and expenses of the insurer's general account are allocated to the policy and the actual return to the plan under the policy and such other financial information as the Department determines is appropriate; (3) the insurer disclose to the plan fiduciary the extent to which alternative arrangements supported by the assets of the insurer's separate accounts are available, whether there is a right under the policy to transfer funds to a separate account and the terms governing any such right, and the extent to which support by assets of the insurer's general account and support by assets of the insurer's separate accounts might pose differing risks to the plan; and (4) the insurer manage general account assets prudently, taking into account all obligations supported by such general account.

Compliance with the regulations issued by the Department will be deemed compliance by such insurer with sections 404, 406 and 407 of ERISA. In addition, under this statutory provision, no person will be liable under part 4 of Title I or Code section 4975 for conduct which occurred before the date which is 18 months following the issuance of the final regulation on the basis of a claim that the assets of an insurer (other than plan assets held in a separate account) constitute plan assets. The limitation on liability is subject to three exceptions: (1) The Department may circumscribe this limitation on liability in regulations intended to prevent avoidance of the regulations which it is required to issue under the statutory amendment; (2) the Department may bring actions pursuant to paragraph (2) or (5) of section 502(a) of ERISA for breaches of fiduciary responsibility which also constitute violations of Federal or State criminal law; and (3) civil actions commenced before November 7, 1995 are exempt from the amendment's coverage.

On November 25, 1996, the Department published a Request for Information (RFI) to solicit information and comments from the public to be considered by the Department in developing the regulations mandated by Pub. L. 104-188. The RFI contained a

list of questions designed to elicit information that would be helpful to the Department in developing this notice of proposed rulemaking.

Discussion of the Comments

The questions asked by the Department in the RFI requested information regarding disclosures to contractholders, market value adjustments, unilateral contract amendments, state regulatory requirements and guaranteed benefit policies.

A total of eight substantive responses to the RFI were received: one was from the ACLI itself; the remaining comments were from a law firm representing a group of major life insurance companies, an organization representing insurance regulators, two law firms representing plans which have invested in insurance company general account contracts, an insurance company, an association representing senior financial executives and an advocacy organization representing senior citizens.

Disclosures

Many of the comments addressed the need for insurance companies to provide adequate and meaningful disclosure regarding the financial soundness of the insurance company, the nature of the insurer's general account assets, transactions with affiliates and the investment policies/objectives of the insurer as well as contract specific information regarding fees, commissions, expenses, termination requirements, and allocation methodologies.

Several of the commenters stressed that such information must be presented in "plain English" using a format which would be understood by lay persons. Two commenters suggested that the Department require that information be supplied in standardized form. Another commenter stated that the information in the Statutory Annual Statement could be adapted to provide appropriate disclosures.

A commenter noted that, in order for a plan fiduciary to make a prudent decision regarding the investment of plan assets in an insurance company general account contract, the insurance company must provide the fiduciary with sufficient information. In this regard, another commenter stated that many general account investments are tantamount to an illiquid investment in a corporate bond; thus, the general level of disclosure required should be comparable to that made available to investors of other illiquid investments. A number of commenters agreed that

the items of information identified in the RFI should be disclosed to plan investors on an annual basis. In addition to those items, a commenter suggested that the disclosure requirements should recognize the fact that the general account supports products not covered by ERISA. Another stated that information regarding the current value of the investment compared to the purchase price of the contract should be provided annually. Finally, a commenter noted that gross and net returns on the contract before and after adjustments should be reported.

With respect to the effective date of the disclosure provisions in the regulation, one commenter stated that the disclosure provisions should become effective prior to the end of the 18th month following publication of the final regulation.

Market Value Adjustments (MVAs)

Two commenters expressed concern that MVAs may operate as penalties imposed on plans which terminate or withdraw funds from general account contracts. They represent that MVAs should not be used to enrich the insurer, but should be fair to terminating contractholders as well as remaining contractholders. One commenter suggested that MVAs should "cut both ways," i.e., if market value is above book value, the terminating policyholders should receive the difference between book and market value as the adjustment. This commenter stated that MVAs should be based on regularly published indices that reflect the categories of investments in the insurer's general account. To the extent that such adjustments represent lost opportunity costs, the insurer should be required to articulate a justification for its estimate of the lost opportunity.

Finally, one commenter stated that MVAs should not be circumscribed by the Department since they protect remaining contractholders.

Unilateral Contract Amendments

Three commenters either opposed an insurer's ability to unilaterally amend contract terms or believed that the Department should impose limits on such amendments. In the alternative, two commenters suggested that if unilateral amendments are made and the parties cannot agree on such changes, the matter should be referred to binding arbitration. Another commenter suggested that the account holder be permitted to exit the arrangement if the unilateral change was not satisfactory.

State Regulatory Requirements

Two commenters stated that the Department should not take state insurance requirements into account in drafting the regulation either because ERISA should govern employee benefit plans or consideration of state regulatory requirements would dilute the strength of ERISA. Another commenter noted that state regulatory requirements either overlap or address each of the requirements imposed by section 1460 of Pub. L. 104-188.

Guaranteed Benefit Policies

Two commenters urged the Department to issue a regulation defining guaranteed benefit policy under section 401(b)(2) of the Act concurrently with the regulations the Department is required to issue under section 401(c).²

Description of Proposal

The proposal amends 29 CFR Part 2550 by adding a new section, 2550.401c-1. This new section is divided into ten major parts. Paragraph (a) of the proposal describes the scope of the regulation and the general rule. Proposed paragraphs (b) through (f) contain conditions which must be met in order for the general rule to apply. Specifically, paragraph (b) addresses the requirement that an independent fiduciary expressly authorize the acquisition or purchase of a Transition Policy. Paragraph (c) describes the disclosures that an insurer must make both prior to the issuance of a Transition Policy to a plan and on an annual basis. Paragraph (d) provides for additional disclosures regarding separate account contracts. Paragraph (e) contains the procedures that apply to the termination or discontinuance of a Transition Policy by a policyholder. Paragraph (f) contains notice provisions regarding contract terminations and withdrawals in connection with insurer-initiated amendments. Proposed paragraph (g) sets forth a prudence standard for the management of general account assets by insurers. The definitions of certain terms used in the proposed regulation are contained in paragraph (h). Proposed paragraph (i) describes the effect of compliance with the regulation and proposed paragraph

(j) contains the effective dates of the regulation.

1. Scope and General Rule

Proposed § 2550.401c-1(a) and (b) essentially follow the language of section 401(c) of ERISA. Paragraph (a) describes, in cases where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of an insurance company's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute plan assets for purposes of Subtitle A, and Parts 1 and 4 of Subtitle B, of Title I of the Act and section 4975 of the Internal Revenue Code, and provides guidance with respect to the application of Title I and section 4975 of the Code to the general account assets of insurers.

Proposed paragraph (a)(2) states the general rule that when a plan acquires a policy issued by an insurer on or before December 31, 1998 (Transition Policy), which is supported by assets of the insurer's general account, the plan's assets include the policy, but do not include any of the underlying assets of the insurer's general account if the insurer satisfies the requirements of paragraphs (b) through (f) of the regulation. The term Transition Policy is defined in paragraph (h)(6) as a policy or contract of insurance (other than a guaranteed benefit policy) that is issued by an insurer to, or on behalf of, an employee benefit plan on or before December 31, 1998, and which is supported by the assets of the insurer's general account. A policy will not fail to be a Transition Policy if it is amended solely for the purposes of complying with the provisions of this regulation.

2. Authorization by an Independent Fiduciary

Proposed paragraph (b)(1) states the general requirement that an independent fiduciary who has the authority to manage and control the assets of the plan must expressly authorize the acquisition or purchase of the Transition Policy. In order to be independent, the fiduciary may not be an affiliate of the insurer issuing the policy.

Paragraph (b)(2) of the proposed regulation contains an exception to the requirement of independent plan fiduciary authorization if the insurer is the employer maintaining the plan, or a party in interest which is wholly-owned by the employer maintaining the plan,

²The Department notes that the statute requires the promulgation of regulations under section 401(c) but does not require the Department to promulgate regulations defining guaranteed benefit policies. At this time, the Department has not made a decision regarding whether to initiate a regulatory project on this matter. Therefore, this proposed regulation does not address the definition of guaranteed benefit policy.

and the requirements of section 408(b)(5) of ERISA are met.³

3. Disclosure

Section 401(c)(3)(B) of the Act, as added by Pub. L. 104-188, provides that the regulations prescribed by the Secretary shall require in connection with any policy issued by an insurer to or for the benefit of an employee benefit plan to the extent the policy is not a guaranteed benefit policy * * * (B) that the insurer describe (in such form and manner as shall be prescribed in such regulations), in annual reports and in policies issued to the policyholder after the date on which such regulations are issued in final form * * * (i) a description of the method by which any income and expenses of the insurer's general account are allocated to the policy during the term of the policy and upon termination of the policy, and (ii) for each report, the actual return to the plan under the policy and such other financial information as the Secretary may deem appropriate for the period covered by each such annual report.

Proposed paragraph (c)(1) similarly imposes a duty on the insurer to disclose specific information to plan fiduciaries prior to the issuance of a Transition Policy and at least annually for as long as the policy is outstanding. Proposed paragraph (c)(2) requires that the disclosures be clear and concise and written in a manner calculated to be understood by a plan fiduciary. Although the Department has not mandated a specific format, the information should be presented in a manner which facilitates the fiduciary's understanding of the operation of the policy. The Department expects that, following disclosure of the required information and any other information requested by the fiduciary pursuant to paragraph (c)(4)(xii), the plan fiduciary, with independent professional assistance, if necessary, will be able to ascertain how various values or amounts relevant to the plan's policy such as, the actual return to be credited to any accumulation fund under the policy, will be determined.

Paragraph (c)(3) sets forth the content requirement for the information which must be provided to the plan either as part of the Transition Policy, or as a separate written document which

accompanies the Transition Policy. For Transition Policies issued before the date which is 90 days after the date of publication of the final regulation, the insurer must provide the information identified in paragraph (c)(3)(i) through (iv) no later than 90 days after publication of the final regulation. For Transition Policies issued 90 days after the date of publication of the final regulation, the insurer must provide the information to a plan before the plan makes a binding commitment to acquire the policy.

Under paragraph (c)(3), an insurer must provide a description of the method by which any income and expenses of the insurer's general account are allocated to the policy during the term of the policy and upon its termination. The initial disclosure under this paragraph must include, among other things, a statement of the method used to determine ongoing fees and expenses that may be assessed against the policy or deducted from any accumulation fund under the policy. The term "accumulation fund" is defined in paragraph (h)(5) as the aggregate net consideration (i.e., gross considerations less all deductions from such considerations) credited to the Transition Policy plus all additional amounts, including interest and dividends, credited to the contract, less partial withdrawals and benefit payments and less charges and fees imposed against this accumulated amount under the Transition Policy other than surrender charges and market value adjustments.⁴

The insurer must also include, in its description of the method used to allocate income and expenses to the Transition Policy, an explanation of the method used to determine the return to be credited to any accumulation fund under the policy, a description of the policyholder's rights to transfer or withdraw all or a portion of any fund under the policy, or to apply such amounts to the purchase of benefits, and a statement of the precise method used to calculate the charges, fees or market value adjustments that may be imposed in connection with the policyholder's right to withdraw or transfer amounts under any accumulation fund. Upon request, the insurer must provide the information necessary to independently calculate the exact dollar amounts of charges, fees or market value adjustments.

In developing the proposed regulation, the Department reviewed the disclosure requirements imposed by New York insurance regulations, and incorporated several provisions which we believe would be helpful to plan fiduciaries prior to their commitment to purchase a Transition Policy. The information disclosed pursuant to this paragraph will address many of the concerns expressed by the commenters in response to the RFI regarding the lack of contract-level disclosure by insurers. The information disclosed pursuant to this paragraph should enable plan fiduciaries to adequately evaluate the suitability of a particular policy for a plan.

Proposed paragraph (c)(4) describes the information which must be provided at least annually to each plan to which a Transition Policy has been issued. In general, the information is intended to provide the policyholder with an overview of all the activity that has occurred in the accumulation fund during the applicable period. These disclosures should enable the policyholder to evaluate the insurer's performance under the policy. In this regard, the insurer must provide the following information to each plan regarding the applicable reporting period: the balance in the accumulation fund on the first and last day of the period; any deposits made to the accumulation fund; all income attributed to the policy or added to the accumulation fund; the actual rate of return credited to the accumulation fund; any other additions to the accumulation fund; a statement of all fees, charges or expenses assessed against the policy or deducted from the accumulation fund; and the dates on which the additions or subtractions were credited to, or deleted from, the accumulation fund.

In addition, insurers must annually disclose all transactions with affiliates which exceed 1 percent of group annuity reserves of the general account for the prior reporting year. The annual disclosure must also include a description of any guarantees under the policy and the amount that would be payable in a lump sum pursuant to the request of a policyholder for payment of amounts in the accumulation fund under the policy after deduction of any charges and any deductions or additions resulting from market value adjustments.

As part of the annual disclosure, an insurer must inform policyholders that it will make available upon request certain publicly-available financial information relating to the financial condition of the insurer. Such

³This exception for in-house plans of the insurer under section 401(c)(3) of ERISA is similar to the statutory exemption contained in section 408(b)(5) of ERISA which provides relief from the prohibitions of section 406 for purchases of life insurance, health insurance or annuities from an insurer if the plan pays no more than adequate consideration and if the insurer is the employer maintaining the plan.

⁴This definition is substantially similar to the definition contained in New York insurance regulations. In this regard, see 11 NYCRR 40.2 (1996).

information would include rating agency reports on the insurer's financial strength, the risk adjusted capital ratio, an actuarial opinion certifying to the adequacy of the insurer's reserves and the insurer's most recent SEC Form 10K and Form 10Q (if a stock company).

The Department believes that the annual disclosures required under paragraph (c)(4) will provide sufficient information to the plan fiduciaries to enable them to assess the appropriateness of continuing the plan's investment in the Transition Policy. The Department's primary intent in mandating the disclosures under paragraphs (c)(3) and (4) is to ensure that plan fiduciaries are provided with relevant information, including the financial strength of the insurer, in an understandable form in order to make a meaningful, informed decision regarding both the initial investment in a Transition Policy, and the advisability of leaving the accumulation fund with the insurer. Lastly, the information provided by the insurance company with respect to its allocation methodologies must be in sufficient detail to enable the policyholder to calculate the expenses charged against the Transition Policy as well as the income credited to the policy. This information will allow plan fiduciaries to monitor the actions of the insurer with respect to the Transition Policy.

The Department solicits comments on the proposed disclosure requirements and procedures, both as to their usefulness for plans and the impact on plans and insurers.

It was Congressional intent under section 401(c) of ERISA to require substantive disclosure from insurance companies in order to enable plans to effectively monitor the performance of insurance company general account contracts. In this regard, the Department does not intend to promulgate regulations which require the disclosure of proprietary information if Congressional intent for meaningful disclosure can otherwise be effectuated. Accordingly, the Department requests comments from interested persons on whether any of the items of disclosure specified in the proposed regulation would place an insurer at a competitive disadvantage by giving other insurance companies access to their proprietary information. In responding to this request, please specify which items of information would be considered proprietary and the rationale for that conclusion.

Proposed paragraph (d)(1) contains an additional disclosure requirement regarding the availability of separate account contracts. Under this paragraph,

the insurer must explain the extent to which alternative contract arrangements supported by assets of separate accounts of the insurer are available to plans; whether there is a right under the policy to transfer funds to a separate account; and the terms governing any such right. An insurer also must disclose the extent to which general account contracts and separate account contracts pose differing risks to the plan. Proposed paragraph (d)(2) contains a standardized statement describing the relative risks of separate accounts and general account contracts which, if provided to policyholders, will be deemed to comply with paragraph (d)(1)(iii) of the regulation.

4. Termination Procedures

Paragraph (e)(1) of the proposed regulation provides that a policyholder must be able to terminate or discontinue a policy upon 90 days notice to an insurer. The policyholder must have the option to select one of two payout alternatives, both of which must be made available by the insurer.

Under the first alternative, an insurer must permit the policyholder to receive, without penalty, a lump sum payment representing all unallocated amounts in the accumulation fund after deduction of unrecovered expenses and adjustment of the book value of the policy to its market value equivalency. The Department notes that for purposes of paragraph (e), the term penalty does not include a market value adjustment (as defined in proposed paragraph (h)(7)) or the recovery of costs actually incurred including unliquidated acquisition expenses, to the extent not previously recovered by the insurer.

In response to the concerns expressed by some commenters regarding an insurer's use of market value adjustments as a penalty to a withdrawing policyholder, the Department has defined the term market value adjustment to reflect the economic effect on a Transition Policy of an early termination or withdrawal in the current market. Since the purpose of the adjustment is to protect the remaining policyholders, it should represent the economic effect on the policy of a termination under current economic conditions and not penalize the withdrawing policyholder.

Under the second alternative, proposed paragraph (e)(2), an insurer must permit the policyholder to receive a book value payment of all unallocated amounts in the accumulation fund under the policy in approximately equal annual installments, over a period of no longer than five years, with interest.

These termination provisions are designed, in part, "to protect the interests and rights of plan[s] * * *" (See ERISA § 401(c)(2)(B)) by ensuring that plans are not locked into economically disadvantageous relationships.⁵ Under the terms of the proposed regulation, plan fiduciaries will receive full disclosure of the general account contract's investment performance, and have the ability to transfer plan assets from the general account to other investments. In this manner, the regulation enables plans to rationally protect their own economic interests without imposing detailed federal regulations on the day-to-day operation of general accounts.

The Department recognizes, however, that insurers have a legitimate interest in avoiding adverse selection and excessive liquidity demands by plan contractholders. Accordingly, the regulation permits insurers to impose a market value adjustment on lump sum withdrawals, and authorizes insurers to spread book value withdrawals over a five-year period at a rate of interest as much as one percentage point below the rate credited to the contract's accumulation fund on the date of termination. Many general account contracts already permit a ten-year book value withdrawal in accordance with provisions of state law. See, e.g., 11 NYCRR § 40.5 (1997) (giving contractholders the right to a ten-year book value withdrawal under specified contracts with interest at a rate not less than 1.5 percent below the rate credited at the time of termination). In proposing a five-year period and a one percent interest adjustment for book value withdrawals, the Department has sought to balance plans' interest in a meaningful right to book value withdrawals with insurers' interest in maintaining balanced and stable portfolios of investments with varying maturities. Neither the book value option nor the market value option should require any fundamental changes in current investment practices or strain the cash flows of well-managed insurers.

The Department solicits comments from interested persons on: (1) The effect on insurers and non-terminating plan policyholders of allowing terminating plans to choose either a

⁵The proposal is similar to the Department's rule governing contracts between plans and service providers. See 29 CFR § 2550.408b-2(c) (providing that "[n]o contract or arrangement is reasonable within the meaning of section 408(b)(2) of the Act * * * if it does not permit termination by the plan without penalty to the plan on reasonably short notice under the circumstances to prevent the plan from becoming locked into an arrangement that has become disadvantageous").

book value payment or market value adjustment on termination of the contract; (2) the benefit to plans of the proposed termination option and; (3) the accuracy and burden of the proposed market value adjustment.

5. Insurer Initiated Amendments

Paragraph (f) describes the notice requirements and payout provisions governing insurer-initiated amendments. Under paragraph (f), if an insurer makes an insurer-initiated amendment, the insurer must provide written notice to the plan at least 60 days prior to the effective date of the amendment. The notice must contain a complete description of the amendment and must inform the policyholder of its right to terminate or discontinue the policy and withdraw all unallocated funds in accordance with paragraph (e)(1) or (e)(2) by sending a written request to the name and address contained in the notice. Proposed paragraph (f), unlike the more general termination provisions set forth in paragraph (e), is effective upon publication of the final regulation in the **Federal Register**.

An insurer-initiated amendment is defined in paragraph (h)(8) as: (1) An amendment to a policy made by an insurer pursuant to a unilateral right to amend the policy terms that would have a material adverse effect on the policyholder; or (2) certain unilateral enumerated changes that result in a reduction of existing or future benefits under the policy, a reduction in the value of the policy or an increase in the cost of financing the plan or plan benefits, if such change has more than a *de minimis* effect.

It is the Department's view that section 401(c) is similar to a statutory exemption to the general fiduciary responsibility provisions of ERISA and, accordingly, an insurer will have the burden of proving that such changes will not have more than a *de minimis* effect on the policy. The regulation's insurer-initiated amendment provisions ensure that a plan fiduciary can terminate or discontinue a contract that has become disadvantageous as a result of unilateral action on the part of the insurer.

The Department solicits comments on the effect of the insurer-initiated amendment provisions in the proposed regulation.

6. Prudence

Proposed paragraph (g) sets forth the prudence standard applicable to insurance company general accounts. Unlike the prudence standard provided in section 404(a)(1)(B) of ERISA,

prudence for purposes of section 401(c)(3)(D) of ERISA is determined by reference to all of the obligations supported by the general account, not just the obligations owed to plan policyholders. In this regard, the Department notes that nothing contained in the proposal modifies the application of the more stringent standard of prudence set forth in section 404(a)(1)(B) of ERISA as applicable to fiduciaries, including insurers, who manage plan assets maintained in separate accounts, as well as to assets of the general account which support policies issued after December 31, 1998.

7. Definitions

Proposed paragraph (h) contains definitions of certain terms used in the proposed regulation.

8. Limitation on Liability

Proposed paragraph (i)(1) provides that no person shall be liable under parts 1 and 4 of Title I of the Act or section 4975 of the Code for conduct which occurred prior to the effective dates of the regulation on the basis of a claim that the assets of an insurer (other than plan assets held in a separate account) constitute plan assets. Paragraph (i)(1) further provides that the above limitation on liability does not apply in the following three circumstances: (1) An action brought by the Secretary of Labor pursuant to paragraph (2) or (5) of section 502(a) of the Act for a breach of fiduciary responsibility which would also constitute a violation of Federal or State criminal law; (2) the application of any Federal criminal law; or (3) any civil action commenced before November 7, 1995.

Proposed paragraph (i)(2) states that the regulation does not relieve any person from any State law regulating insurance which imposes additional obligations upon insurers to the extent not inconsistent with this regulation. Thus, for example, nothing in this regulation would preclude a state from requiring an insurer to make additional disclosures to policyholders, including plans.

Proposed paragraph (i)(3) of the regulation makes clear that neither ERISA nor the regulations promulgated thereunder precludes a claim against an insurer or others for a violation of the Act which is not contingent upon the assertion that the insurer's general account assets are plan assets, regardless of whether the violation relates to a Transition Policy. Thus, for example, a Transition Policy may give rise to fiduciary status on the part of the insurer based upon the insurer's

discretionary authority over the administration or management of the plan, rather than its authority over the management of general account assets. See section 3(21) of the Act. Nothing in ERISA or this regulation would preclude a finding that an insurer is liable under ERISA for breaches of its fiduciary responsibility in connection with plan management or administration prior to the effective dates of the regulation. Similarly, neither ERISA nor the regulation precludes a finding that an insurer is a fiduciary by reason of its discretionary authority or control over plan assets other than the insurer's general account assets. If the insurer breaches its fiduciary responsibility with respect to plan assets, it may be liable under ERISA regardless of whether the insurer has issued a Transition Policy to a plan or ultimately placed the plan's assets in its general account.

Paragraph (i)(4) of the proposed regulation provides that if an insurer fails to meet the requirements of paragraphs (b) through (f) of the regulation with respect to a specific plan policyholder the result of such failure would be that the general account would be subject to ERISA's fiduciary responsibility provisions with respect to the specific plan for that period of time during which the requirement of the regulation was not met. Once back in compliance with the regulation, the insurer would no longer be subject to ERISA or have potential liability for subsequent periods of time when the requirements of the regulation are met. In addition, the regulation makes clear that the underlying assets of the general account would not constitute plan assets for other Transition Policies to the extent that the insurer was in compliance with the requirements of the regulation.

9. Effective Date

Proposed paragraph (j)(1) states the general rule that the regulation is effective 18 months after its publication in the **Federal Register**.

Paragraph (j)(2), (3) and (4) of the proposed regulation provide earlier effective dates for paragraph (b) relating to independent fiduciary approval, paragraphs (c) and (d) relating to disclosures, and paragraph (f) relating to insurer initiated amendments.

Paragraph (j)(2) of the proposed regulation states that if a Transition Policy is issued before the date which is 90 days after the date of publication of the final regulation, the disclosure provisions in paragraphs (c) and (d) shall take effect 90 days after the publication of the final regulation.

Paragraph (j)(3) of the proposed regulation provides that paragraphs (c) and (d) are effective 90 days after the date of publication of the regulation for a Transition Policy issued after such date. In this regard, the Department believes that the earlier effective dates are consistent with section 401(c)(3)(B) of the Act, as added by Pub. L. 104-188, which states that the disclosures required by the regulation be provided after the date that the regulations are issued in final form.

Proposed paragraph (j)(4) provides that the effective date for paragraphs (b) and (f) of the proposed regulation is the date of publication of the final regulation in the **Federal Register**. In addition, this paragraph provides special rules for insurer-initiated amendments which become effective during the period between the dates of publication of the proposed and final regulations. For example, assume that an insurer makes an insurer-initiated amendment to a Transition Policy after publication of the proposed regulations in the **Federal Register** but prior to the issuance of the final regulations. If adopted as proposed, the insurer would have 30 days to notify the plan of the amendment. The notice must contain a complete description of the amendment and must inform the plan of its right to terminate the contract and withdraw all unallocated funds. If the plan elects to receive a lump sum payment, the insurer must calculate such amount using the more favorable (to the plan) of the market value adjustments determined as of: (1) The effective date of the amendment; or (2) the date upon which the insurer received written notice from the plan requesting a lump sum payment. Specifically, the insurer must provide notice of the amendment to the plan within 30 days of publication of the final regulation. The notice must contain, among other things, a complete description of the amendment and must inform the plan of its right to terminate or discontinue the policy and withdraw all unallocated funds in accordance with the requirements of paragraph (e) and this paragraph. If the policyholder elects to receive a lump sum payment on termination or discontinuance of the policy, the insurer must use the more favorable (to the plan) of the market value adjustments determined on either the effective date of the amendment or determined upon receipt of the written request from the plan.

Section 401(c)(5)(B)(i) of the Act, as added by Pub. L. 104-188, provides an exception to the general 18-month effective date for regulations intended to prevent the avoidance of the regulations

set forth herein. The Department is proposing an earlier effective date for the provisions relating to the independent fiduciary approval, disclosures and insurer-initiated amendments. The Department believes that the earlier effective dates protect the interests and rights of a plan and its participants and beneficiaries by minimizing the potential for insurers to change their conduct in ways which are disadvantageous to plan policyholders without compliance with the terms and conditions of the regulation. The Department notes that compliance with the specific requirements of the regulation must occur as of the date that such requirement becomes effective. Failure to comply with any of the requirements listed in paragraphs (b) through (f) of this regulation after the effective date of such paragraphs will result in the general account of the insurer holding plan assets as provided in paragraph (i)(4).

Economic Analysis Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Department must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) under the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in, among other things, a rule raising novel policy issues arising out of the President's priorities. Pursuant to the terms of the Executive Order, the Department has determined that this regulatory action is a "significant regulatory action" as that term is used in Executive Order 12866 because the action would raise novel policy issues arising out of the President's priorities. Thus, the Department believes this notice is "significant," and subject to OMB review on that basis.

The Office of Management and Budget has determined that this regulatory action is economically significant because it may adversely affect in a material way a sector of the economy. The Department therefore solicits additional information from the interested public regarding the economic impact of the proposed regulation. Specifically, the Department requests current data on the number and characteristics of potentially affected insurance contracts that would provide the basis for a more extensive analysis of the costs and benefits of the proposed regulation.

These regulations mitigate the constraints imposed by ERISA on the

operation of insurance company general accounts. The Department believes that insurers are likely in nearly all circumstances to avail themselves of the relief provided under the proposed regulation. The consequences for an insurer, of not complying with the safe harbor afforded by the regulation, would subject the insurer's general account to potential liability under part 4 of Title I of ERISA. Because the statute simply directs the Department to issue a regulation and specifies much of the regulation's content, its costs and benefits may be estimated simply by analyzing the regulation. The Department is not aware of any published analysis of the nature or level of the costs the statute will not impose.

The Department has endeavored to control the compliance costs associated with the regulation by providing model language, by requiring disclosures at the outset of the contract or no more than annually, and by allowing disclosure materials to be based on materials prepared for other reasons. The Department's analysis of the impact of the regulation has concluded that it will provide greater protections for 130,000 pension plans holding contracts with 110 insurers. The net cost of these protections is estimated to be no more than \$2 to \$5 million per year. This estimate of the potential impact of the proposed regulation is based on the Department's estimates of assets held in life insurers' general accounts and the proportion of these that might be deemed to be holding ERISA plan assets. The total of all assets held by life insurers in their general accounts amounts to approximately \$1.7 trillion. Based on data reported on Schedule A available from Form 5500 series reports, the Department estimates that the assets of contracts potentially directly affected by the regulation have a current value of approximately \$40 billion or slightly less than 3 percent of general account assets. This estimate of \$40 billion represents the amount reported by plans to be held in contracts categorized as unallocated general account contracts whose performance is linked with that of the general accounts in the annual financial reports filed by plans. As such it represents an upper bound of the value of the contracts potentially affected by the regulation because some portion of these contracts may in fact already meet the conditions specified in the regulation. The Department solicits additional data which would permit a further delineation of the affected assets.

It is estimated that the costs of this regulation will primarily arise from the cost of compliance with its disclosure requirements. The benefits to plans,

participants and beneficiaries arise from the improved understanding of their investment that comes from the disclosure, and from the limits on the calculation of the market value adjustment by the insurer at the time of termination of the contract.

The insurance contracts affected by this regulation have a wide range of characteristics that cannot in a comprehensive way be precisely defined. They may differ widely, in particular with respect to the conditions associated with their termination provisions. However, the regulation's disclosure and termination provisions establish minimum standards, which may be more favorable to plans than their terms absent the regulation. As a result, some plans that have been unable to terminate, or might not have terminated, their contractual arrangements may now terminate those arrangements. The Department does not believe, however, that the regulation will have a significant adverse financial impact on other general account policyholders or insurers. As the American Council of Life Insurance has noted in various submissions, the relevant contracts typically already permit the termination and withdrawal of plan assets in a lump sum (subject to a market value adjustment) or in installments over a period of years at book value with interest. Although the regulation protects plans by permitting them to withdraw plan assets in a lump sum without penalty, it also protects the legitimate interests of insurers by permitting them to recover incurred costs and to impose a market value adjustment designed to "accurately reflect the effect on the value of the accumulation fund of its liquidation in the prevailing market for fixed income obligations." Similarly, the regulation mitigates any adverse economic impact by permitting insurers to spread book value withdrawals over a five-year period at a reduced rate of interest (assuming the relevant contract does not give the plan more favorable termination and withdrawal rights). The Department believes that these provisions adequately protect the insurers from the risks of "adverse selection" or disintermediation, while providing significant protection to plan policyholders. In many respects, the regulation simply parallels the pre-existing rule under ERISA that a contract between a plan and party in interest is impermissible unless it permits termination without penalty so as to "prevent the plan from becoming locked into an arrangement that has

become disadvantageous." 29 CFR 2550.408b-2(c).

A portion of the estimated costs of the regulation is attributed to the termination of some contracts which, absent the regulation, would have remained in force. Some of the costs that the insurers may incur are offset, however, by commensurate benefits to plans. The only net costs of the regulation therefore, are the cost of supplying the disclosure information and transaction costs for plans terminating their insurance contracts. In the view of the Department, these costs must be weighed against the benefits that accrue to plans and the economy in general from the enhanced transparency of general account products, and the resulting increased ability plans will have to rationally manage their portfolios and allocate assets more efficiently. The regulation is designed to ensure that a plan fiduciary will have access to all the information necessary to assess the potential and actual performance of a general account contract both before and after entering into the initial agreement with the insurer. The regulation's termination and withdrawal provisions additionally ensure that the plan fiduciary can act on the information disclosed by withdrawing the plan's assets in favor of other investment vehicles or expenditures if it is prudent or economically advantageous to do so. The net result is to safeguard plans' ability to allocate their resources in the most economically rational manner possible.

The analysis of the impact of the regulation does not attribute any cost to the possible effect of the regulation on the management or composition of insurers' general account portfolios. This is because the total value of the contracts potentially affected represent less than 3 percent of general account assets. According to data published by the American Council of Life Insurance, general account reserves are primarily invested in fixed income securities of relatively short maturities. The maximum liquidity requirement imposed by the regulation in the highly unlikely event that all of the affected plans chose to terminate the contracts would be less than 6-tenths percent of the general accounts (this reflects the distribution of 3 percent of general assets over 5 years). This should be readily available from the cash flow derived from the current distribution of investments. The Department therefore has not assigned any cost of the regulation to other general account policyholders.

The insurance industry has not provided the Department with any information regarding the magnitude of their costs. Accordingly, the Department solicits additional information from the interested public regarding the economic analysis in the proposed regulation. Specifically, the Department requests comments and supporting data on the costs and benefits of the proposed regulation, as well as information on whether more frequent contract terminations which may result from enhanced opportunities provided by the proposed regulation will result in an increase in brokerage, appraisal and/or other transactions costs.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform an Initial Regulatory Flexibility Analysis for all rules that are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. The Pension and Welfare Benefits Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities. A summary for the basis of that conclusion follows:

(1) PWBA is promulgating this regulation because it is required to do so under section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104-188).

(2) The objective of the proposed regulation is to provide guidance on the application of ERISA to policies held in insurance company general accounts. The legal basis for the proposed regulation is found in new ERISA section 401(c); an extensive list of authorities may be found in the Statutory Authority section, below.

(3) The direct cost of compliance will be born by insurance companies; the Department estimates that no "small" insurance companies (as defined by the Small Business Administration at 61 FR 3280, Jan 31, 1996) offer the type of policies regulated here. No small governmental jurisdictions will be affected. It is estimated that 121,000 small employee benefit plans (those with fewer than 100 participants) purchase the regulated policies, and will therefore receive the benefit of the enhanced disclosure provided by the regulation. Some of the costs of disclosure may be passed on to the plans by the insurers.

(4) No federal reporting is required under the proposed rule. It is anticipated that the majority of the disclosure requirements may be handled by clerical staff; however, there will be

a need for professional staff involvement.

(5) No federal rules have been identified that duplicate, overlap or conflict with the proposed rule. To the extent possible, the overlap in disclosures between this rule and state and SEC reporting requirements have been designed to allow the same materials to meet both requirements while providing the necessary protections for employee benefit plans.

(6) No significant alternatives which would minimize the impact on small entities have been identified. It would be inappropriate to create an alternative with lower compliance criteria, or an exemption under the proposed regulation, for small plans because those are the entities that have the greatest need for the disclosures and other protections offered by the regulation.

Paperwork Reduction Act

The proposed regulation contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, summary, description of need, respondents description, and estimated reporting and recordkeeping burden are shown below.

Title: Disclosure Regarding Plan Assets in Insurance Company General Accounts.

Summary/Description of Need: Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104-188) amended ERISA by adding new Section 401(c), which requires that certain steps be taken by insurance companies which offer and maintain policies for private sector employee benefit plans where the assets are held in the insurer's general account. Pursuant to the authority given to the Secretary under the statute, the regulation requires certain disclosures be provided at the outset of the contract and annually, and other disclosures be provided upon request.

Respondents Description: Individuals or households; Business or other for-profit institutions; Not-for-profit institutions.

Estimated Reporting and Recordkeeping Burden: Based upon Form 5500 filing data, an estimated 134,000 plans, primarily pension plans, have invested in 138,000 policies offered by approximately 110 insurance companies. Because insurers must already assemble much of the information to be disclosed for purposes of state disclosure requirements and their own administration of the contracts, the Department does not believe the additional disclosure obligations imposed by the regulation

will be unduly burdensome. The additional costs can be divided into start-up expenses incurred immediately after the regulation takes effect, and a yearly expense thereafter. Initially insurers will be required to modify disclosure forms and computer programs to comply with the new obligations imposed by the regulation. In total, the Department estimates that this initial expense will cost no more than \$2 to \$5 million. Thereafter, the Department estimates that insurers will generally incur disclosure and reproduction expenses of between \$100 and \$200 for each contract to which the regulation applies.

The Department of Labor has submitted a copy of the proposed information collection to the Office of Management and Budget in accordance with 44 U.S.C. § 3507(d) of the Paperwork Reduction Act of 1995 for its review of its information collections. Interested persons are invited to submit comments regarding this proposed new collection of information.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking.

Statutory Authority

The proposed regulation set forth herein is issued pursuant to the authority contained in sections 401(c)

and 505 of ERISA (Pub. L. 93-406, Pub. L. 104-188, 88 Stat. 894; 29 U.S.C. 1101(c), 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332, and under Secretary of Labor's Order No. 1-87, 52 FR 13139 (April 21, 1987).

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Insurance Companies, Investments, Investment foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and trustees.

For the reasons discussed in the preamble, it is proposed to amend 29 CFR part 2550 as follows:

PART 2550—[AMENDED]

1. The authority for Part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135. Section 2550.401b-1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332. Section 2550.401c-1 also issued under 29 U.S.C. 1101. Section 2550.404c-1 also issued under 29 U.S.C. 1104. Section 2550.407c-3 also issued under 29 U.S.C. 1107. Section 2550.408b-1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332, and 29 U.S.C. 1108(b)(1). Section 2550.412-1 also issued under 29 U.S.C. 1112. Secretary of Labor's Order No. 1-87 (52 FR 13139).

2. New section 2550.401c-1 is added to read as follows:

§ 2550.401c-1 Definition of "plan assets"—insurance company general accounts.

(a) *In general.* (1) This section describes, in the case where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of an insurance company's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute plan assets for purposes of Subtitle A, and Parts 1 and 4 of Subtitle B, of Title I of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975 of the Internal Revenue Code (the Code), and provides guidance with respect to the application of Title I of the Act and section 4975 of the Code to the general account assets of insurers.

(2) Generally, when a plan acquires a policy issued by an insurer on or before

December 31, 1998 (Transition Policy), which is supported by assets of the insurer's general account, the plan's assets include the policy, but do not include any of the underlying assets of the insurer's general account if the insurer satisfies the requirements of paragraphs (b) through (f) of this section.

(b) *Approval by fiduciary independent of the issuer.*—(1) In general. An independent plan fiduciary who has the authority to manage and control the assets of the plan must expressly authorize the acquisition or purchase of the Transition Policy. For purposes of this subparagraph, a fiduciary is not independent if the fiduciary is an affiliate of the insurer issuing the policy.

(2) Notwithstanding paragraph (b)(1) of this section, the authorization by an independent plan fiduciary is not required if:

(i) The insurer is the employer maintaining the plan, or a party in interest which is wholly owned by the employer maintaining the plan; and

(ii) The requirements of section 408(b)(5) of the Act are met.

(c) *Duty of Disclosure.*—(1) *In general.* An insurer shall furnish the following information to a plan fiduciary acting on behalf of a plan to which a Transition Policy has been issued. Paragraph (c)(2) of this section describes the style and format of such disclosure. Paragraph (c)(3) of this section describes the content of the initial disclosure.

Paragraph (c)(4) of this section describes the information that must be disclosed by the insurer at least once per year for as long as the

Transition Policy remains outstanding.

(2) *Style and format.* The disclosure required by this paragraph should be clear and concise and written in a manner calculated to be understood by a plan fiduciary, without relinquishing any of the substantive detail required by paragraphs (c)(3) and (c)(4) of this section. The information does not have to be organized in any particular order but should be presented in a manner which makes it easy to understand the operation of the policy. To the extent paragraphs (c)(3) and (c)(4) of this section require the disclosure of the insurer's methods or methodologies for determining various values or amounts relevant to the plan's policy, the disclosure must be made in sufficient detail and with such clarity that the plan fiduciary, with relevant data from the insurer and appropriate professional assistance, can determine the values or amounts applicable to the plan's policy. The insurer must disclose any data necessary for application of the methods

or methodologies without unreasonable delay upon the request of the plan fiduciary.

(3) *Initial Disclosure.* Prior to obtaining a binding commitment from a plan to acquire a Transition Policy, the insurer must provide to the plan, either as part of the policy, or as a separate written document which accompanies the policy, the disclosure information set forth in paragraph (c)(3)(i) through (iv) of this section. In the case of a Transition Policy that has been issued before the date which is 90 days after the date of publication of the final regulation, the insurer must provide the disclosure information no later than 90 days after publication. The disclosure must include all of the following information which is applicable to the Transition Policy:

(i) A description of the method by which any income and expenses of the insurer's general account are allocated to the policy during the term of the policy and upon its termination, including:

(A) A statement of the method used by the insurer to determine the fees, charges, expenses or other amounts that are or may be assessed against the policyholder or deducted by the insurer from any accumulation fund under the policy, including the extent and frequency with which such fees, charges, expenses or other amounts may be modified by the insurance company;

(B) A statement of the method by which the insurer determines the return to be credited to any accumulation fund under the policy, including a statement of the method used to allocate income and expenses to lines of business, business segments, and policies within such lines of business and business segments, and a description of how any withdrawals, transfers, or payments will affect the amount of the return credited;

(C) A description of the rights which the policyholder or plan participant has to withdraw or transfer all or a portion of any fund under the policy, or to apply the amount of a withdrawal to the purchase of or payment of benefits, and the terms on which such withdrawals or other use of funds may be made, including a description of any expense charges, fees, experience rating charges or credits, market value adjustments, or any other charges or adjustments, both positive and negative;

(D) A statement of the method used to calculate the charges, fees, credits or market value adjustments described in paragraph (i)(C) of this section, and, upon the request of a plan fiduciary, the information necessary to independently calculate the exact dollar amounts of the charges, fees or adjustments. The initial

disclosure provided to the plan must set forth and describe each of the provisions and elements of the formula for making the market value adjustment in sufficient detail and with such clarity that the plan fiduciary, with relevant data from the insurer and with professional assistance, if necessary, can replicate any adjustment proposed by the insurer. If the formula is based on interest rate guarantees applicable to new contracts of the same class or classes, and the duration of the assets underlying the accumulation fund, the contract must describe the process by which those components are ascertained or obtained. If the formula is based on an interest rate implicit in an index of publicly traded obligations, the identity of the index, the manner in which it is used, and identification of the source or publication where any data used in the formula can be found, must be disclosed;

(ii) A statement describing the expense, income and benefit guarantees under the policy, including a description of the length of such guarantees, and of the insurer's right, if any, to modify or eliminate such guarantees; and

(iii) A description of the rights of the parties to make or discontinue contributions under the policy, and of any restrictions (such as timing, minimum or maximum amounts, and penalties and grace periods for late payments) on the making of contributions under the policy, and the consequences of the discontinuance of contributions under the policy.

(iv) A statement of how any policyholder or participant-initiated withdrawals are to be made: first-in, first-out (FIFO) basis, last-in, first-out (LIFO) basis, pro rata or another basis.

(4) *Annual disclosure.* At least annually and not later than 90 days following the period to which it relates, an insurer shall provide the following information to each plan to which a Transition Policy has been issued:

(i) The balance of any accumulation fund on the first day and last day of the period covered by the annual report;

(ii) Any deposits made to the accumulation fund during such annual period;

(iii) An itemized statement of all income attributed to the policy or added to the accumulation fund during the period, and a description of the method used by the insurer to determine the precise amount of income;

(iv) The actual rate of return credited to the accumulation fund under the policy during such period, stating whether the rate of return was calculated before or after deduction of

expenses charged to the accumulation fund;

(v) Any other additions to the accumulation fund during such period;

(vi) An itemized statement of all fees, charges, expenses or other amounts assessed against the policy or deducted from the accumulation fund during the reporting year, and a description of the method used by the insurer to determine the precise amount of the fees, charges and other expenses;

(vii) An itemized statement of all benefits paid, including annuity purchases, to participants and beneficiaries from the accumulation fund;

(viii) The dates on which the additions or subtractions were credited to, or deleted from, the accumulation fund during such period;

(ix) A description, if applicable, of all transactions with affiliates which exceed 1 percent of group annuity reserves of the general account for the prior reporting year;

(x) A statement describing any expense, income and benefit guarantees under the policy, including a description of the length of such guarantees, and of the insurer's right, if any, to modify or eliminate such guarantees;

(xi) The amount that would be payable in a lump sum at the end of such period pursuant to the request of a policyholder for payment or transfer of amounts in the accumulation fund under the policy after the insurer deducts any applicable charges and makes any appropriate market value adjustments, upward or downward, under the terms of the policy; and

(xii) An explanation that the insurer promptly will make available upon request of a plan, copies of the following publicly-available financial data or other publicly available reports relating to the financial condition of the insurer:

(A) National Association of Insurance Commissioners (NAIC) Statutory Annual Statement, with Exhibits, General Interrogatories, and Schedule D, Part 1A, Secs 1 and 2 and Schedule S-Part 3E;

(B) Rating agency reports on the financial strength and claims-paying ability of the insurer;

(C) Risk adjusted capital ratio, with a brief description of its derivation and significance, referring to the risk characteristics of both the assets and the liabilities of the insurer;

(D) Actuarial opinion (with supporting documents) of the insurer's Appointed Actuary certifying the adequacy of the insurer's reserves as required by New York State Insurance Department Regulation 126 and

comparable regulations of other states; and

(E) The insurer's most recent SEC Form 10K and Form 10Q (stock companies only).

(d) Alternative separate account arrangements.—(1) *In general.* An insurer must provide the plan fiduciary with the following additional information at the same time as the disclosure required under paragraph (c) of this section:

(i) A statement explaining the extent to which alternative contract arrangements supported by assets of separate accounts of insurers are available to plans;

(ii) A statement as to whether there is a right under the policy to transfer funds to a separate account and the terms governing any such right; and

(iii) A statement explaining the extent to which general account contracts and separate account contracts of the insurer may pose differing risks to the plan.

(2) An insurer will be deemed to comply with the requirements of paragraph (d)(1)(iii) of this section if the disclosure provided to the plan includes the following statement:

a. Contractual arrangements supported by assets of separate accounts may pose differing risks to plans from contractual arrangements supported by assets of general accounts. Under a general account contract, the plan's contributions or premiums are placed in the insurer's general account and commingled with the insurer's corporate funds and assets (excluding separate accounts and special deposit funds). The insurance company combines in its general account premiums received from all its lines of business. These premiums are pooled and invested by the insurer. General account assets in the aggregate support the insurer's obligations under all of its insurance contracts, including (but not limited to) its individual and group life, health, disability, and annuity contracts. Experience rated general account policies may share in the experience of the general account through interest credits, dividends, or rate adjustments, but assets in the general account are not segregated for the exclusive benefit of any particular policy or obligation. General account assets are also available to the insurer for the conduct of its routine business activities, such as the payment of salaries, rent, other ordinary business expenses and dividends.

b. An insurance company separate account is a segregated fund which is not commingled with the insurer's general assets. Depending on the particular terms of the separate account contract, income, expenses, gains and losses associated with the assets allocated to a separate account may be credited to or charged against the separate account without regard to other income, expenses, gains, or losses of the insurance company, and the investment results passed through directly to the policyholders. While

most, if not all, general account investments are maintained at book value, separate account investments are normally maintained at market value, which can fluctuate according to market conditions. In large measure, the risks associated with a separate account contract depend on the particular assets in the separate account.

c. The plan's legal rights vary under general and separate account contracts. In general, an insurer is subject to ERISA's fiduciary responsibility provisions with respect to the assets of a separate account (other than a separate account registered under the Investment Company Act of 1940) to the extent that the investment performance of such assets is passed directly through to the plan policyholders. ERISA requires insurers, in administering separate account assets, to act solely in the interest of the plan's participants and beneficiaries; precludes self-dealing and conflicts of interest; and requires insurers to adhere to a prudent standard of care. In contrast, ERISA generally imposes less stringent standards in the administration of general account contracts which were issued on or before December 31, 1998.

d. On the other hand, state insurance regulation is typically more restrictive with respect to general accounts than separate accounts. In addition, insurance company general account policies often include various guarantees under which the insurer assumes risks relating to the funding and distribution of benefits. Insurers do not usually provide any guarantees with respect to the investment returns on assets held in separate accounts. Of course, the extent of any guarantees from any general account or separate account contract will depend upon the specific policy terms.

e. Finally, separate accounts and general accounts pose differing risks in the event of the insurer's insolvency. In the event of insolvency, funds in the general account are available to meet the claims of the insurer's general creditors, after payment of amounts due under certain priority claims, including amounts owed to its policyholders. Funds held in a separate account as reserves for its policy obligations, however, may be protected from the claims of creditors other than the policyholders participating in the separate account. Whether separate account funds will be granted this protection will depend upon the terms of the applicable policies and the provisions of any applicable laws in effect at the time of insolvency.

(e) *Termination procedures.* Within 90 days of written notice by a policyholder to an insurer, the insurer must permit the policyholder to exercise the right to terminate or discontinue the policy and to receive without penalty either:

(1) a lump sum payment representing all unallocated amounts in the accumulation fund. For purposes of this paragraph (e), the term penalty does not include a market value adjustment (as defined in paragraph (h)(7) of this section) or the recovery of costs actually incurred which would have been

recovered by the insurer but for the termination or discontinuance of the policy, including any unliquidated acquisition expenses, to the extent not previously recovered by the insurer; or

(2) a book value payment of all unallocated amounts in the accumulation fund under the policy in approximately equal annual installments, over a period of no longer than five years, together with interest computed at an annual rate which is no less than the annual rate which was credited to the accumulation fund under the policy as of the date of the contract termination or discontinuance, minus 1 percentage point.

(f) *Insurer-initiated amendments.* In the event the insurer makes an insurer-initiated amendment (as defined in paragraph (h)(8) of this section), the insurer must provide written notice to the plan at least sixty days prior to the effective date of the insurer-initiated amendment. The notice must contain a complete description of the amendment and must inform the plan of its right to terminate or discontinue the policy and withdraw all unallocated funds without penalty by sending a written request within such sixty day period to the name and address contained in the notice. The plan must be offered the right to receive a lump sum or installment payment described in paragraph (e)(1) or (e)(2) of this section. An insurer-initiated amendment shall not apply to a contract if the plan fiduciary exercises its right to terminate or discontinue the contract within such sixty day period and to receive a lump sum or installment payment.

(g) *Prudence.* An insurer shall manage those assets of the insurer which are assets of such insurer's general account (irrespective of whether any such assets are plan assets) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, taking into account all obligations supported by such enterprise. This prudence standard applies to the conduct of all insurers with respect to policies issued to plans on or before December 31, 1998, and differs from the prudence standard set forth in section 404(a)(1)(B) of ERISA. Under the prudence standard provided in this paragraph, prudence must be determined by reference to all of the obligations supported by the general account, not just the obligations owed to plan policyholders. The more stringent standard of prudence set forth in section 404(a)(1)(B) of ERISA continues to apply to any obligations

which insurers may have as fiduciaries which do not arise from the management of general account assets, as well as to insurers' management of plan assets maintained in separate accounts. The terms of the regulation do not modify or reduce the fiduciary obligations applicable to insurers in connection with policies issued after December 31, 1998, which are supported by general account assets, including the standard of prudence under section 404(a)(1)(B) of the Act.

(h) *Definitions.* For purposes of this section:

(1) an *affiliate* of an insurer means:

(i) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the insurer,

(ii) Any officer, director, partner or employee of such insurer or of a person described in paragraph (i) of this definition including in the case of an insurer, an insurance agent or broker thereof, whether or not such person is a common law employee, and

(iii) Any corporation, partnership, or unincorporated enterprise of which a person described in paragraph (ii) of this definition is an officer, director, partner or employee.

(2) The term *control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(3) The term *guaranteed benefit policy* means a policy described in section 401(b)(2)(B) of the Act and any regulations promulgated thereunder.

(4) The term *insurer* means an insurer as described in section 401(b)(2)(A) of the Act.

(5) The term *accumulation fund* means the aggregate net consideration (i.e., gross considerations less all deductions from such considerations) credited to the Transition Policy plus all additional amounts, including interest and dividends, credited to such Transition Policy less partial withdrawals, benefit payments and less all charges and fees imposed against this accumulated amount under the Transition Policy other than surrender charges and market value adjustments.

(6) The term *Transition Policy* means:

(i) a policy or contract of insurance (other than a guaranteed benefit policy) that is issued by an insurer to, or on behalf of, an employee benefit plan on or before December 31, 1998, and which is supported by the assets of the insurer's general account.

(ii) A policy will not fail to be a Transition Policy merely because the policy is amended or modified to comply with the requirements of section 401(c) of the Act and this section.

(7) For purposes of this regulation, the term *market value adjustment* means an adjustment to the book value of the accumulation fund to accurately reflect the effect on the value of the accumulation fund of its liquidation in the prevailing market for fixed income obligations, taking into account the future cash flows that were anticipated under the policy. An adjustment is a *market value adjustment* within the meaning of this definition only if the insurer has determined the amount of the adjustment pursuant to a method which was previously disclosed to the policyholder in accordance with paragraph (c)(3)(i)(D) of this section, and the method permits both upward and downward adjustments to the book value of the accumulation fund.

(8) The term *insurer-initiated amendment* is defined in paragraphs (h)(8) (i) and (ii) of this section:

(i) An amendment to a policy made by an insurer pursuant to a unilateral right to amend the policy terms that would have a material adverse effect on the policyholder; or

(ii) Any of the following unilateral changes in the insurer's conduct or practices with respect to the policyholder or the accumulation fund under the policy that result in a reduction of existing or future benefits under the policy, a reduction in the value of the policy or an increase in the cost of financing the plan or plan benefits, if such changes have more than a *de minimis* effect on the policy:

(A) A change in the methodology for assessing fees, expenses, or other charges against the accumulation fund or the policyholder;

(B) A change in the methodology used for allocating income between lines of business, or product classes within a line of business;

(C) A change in the methodology used for determining the rate of return to be credited to the accumulation fund under the policy;

(D) A change in the methodology used for determining the amount of any fees, charges, or market value adjustments applicable to the accumulation fund under the policy in connection with the termination of the contract or withdrawal from the accumulation fund;

(E) A change in the dividend class to which the policy or contract is assigned;

(F) A change in the policyholder's rights in connection with the termination of the contract, withdrawal of funds or the purchase of annuities for plan participants; and

(G) A change in the annuity purchase rates.

(iii) For purposes of this definition, any amendment or change which is made with the affirmative consent of the policyholder is not an insurer-initiated amendment.

(i) *Limitation on liability.* (1) No person shall be subject to liability under Parts 1 and 4 of Title I of the Act or section 4975 of the Code for conduct which occurred prior to the effective dates of the regulation on the basis of a claim that the assets of an insurer (other than plan assets held in a separate account) constitute plan assets. Notwithstanding the foregoing, this section shall not:

(i) Apply to an action brought by the Secretary of Labor pursuant to paragraphs (2) or (5) of section 502(a) of ERISA for a breach of fiduciary responsibility which would also constitute a violation of Federal or State criminal law;

(ii) Preclude the application of any Federal criminal law; or

(iii) Apply to any civil action commenced before November 7, 1995.

(2) Nothing in this section relieves any person from any State law regulating insurance which imposes additional obligations or duties upon insurers to the extent not inconsistent with the provisions of this section. Therefore, nothing in this section should be construed to preclude a State from requiring insurers to make additional disclosures to policyholders, including plans. Nor does this section prohibit a State from imposing additional substantive requirements with respect to the management of general accounts or from otherwise regulating the relationship between the policyholder and the insurer to the extent not inconsistent with the provisions of this section;

(3) Nothing in this section precludes any claim against an insurer or other person for violations of the Act which do not require a finding that the underlying assets of a general account constitute plan assets, regardless of whether the violation relates to a Transition Policy; and

(4) If the requirements in paragraphs (b) through (f) of this section of the regulation are not met with respect to a plan that has purchased or acquired a Transition Policy, the plan's assets include an undivided interest in the underlying assets of the insurer's general account for that period of time for which the requirements are not met. However, an insurer's failure to comply with the requirements of this section with respect to any particular Transition Policy will not result in the underlying assets of the general account constituting plan assets with respect to other Transition Policies if the insurer is otherwise in compliance with the requirements contained in the section.

(j) *Effective date.* (1) *In general.* Except as provided below, this section is effective from the date which is 18 months after its publication in the **Federal Register**.

(2) With respect to a Transition Policy issued before the date which is 90 days after the date of publication of the final regulation, paragraphs (c) and (d) of this section shall apply to the policy 90 days after the date of such publication.

(3) With respect to a Transition Policy issued 90 days after the date of publication of the final regulation, paragraphs (c) and (d) of this section shall apply to the policy as of the date of such publication.

(4) Paragraph (b) of this section, relating to independent fiduciary approval, and paragraph (f) of this section, relating to insurer-initiated

amendments, are effective on the date of publication of the final regulation in the **Federal Register**. In the event an insurer makes an insurer-initiated amendment to a Transition Policy during the period between the dates of publication of the proposed and final regulations, the insurer must provide written notice to the plan within 30 days of publication of the final regulation. The document must contain a complete description of the amendment; inform the plan of its right to terminate or discontinue the policy and withdraw all unallocated funds without penalty in accordance with the requirements of paragraph (e) of this section and this paragraph; and provide that the plan may exercise its right by sending a written request to the name and address contained in the notice within sixty days of its receipt of the notice from the insurer. In the event that the plan exercises its right to terminate or discontinue the policy, the insurer must disregard the effect of any insurer-initiated amendment which would have the effect of decreasing the amount distributed to the plan. In the case of a plan electing a lump sum payment, the insurer must use the more favorable (to the plan) of the market value adjustments determined on either the effective date of the amendment or determined upon receipt of the written request from the plan in calculating the lump sum representing the unallocated funds in the accumulation fund.

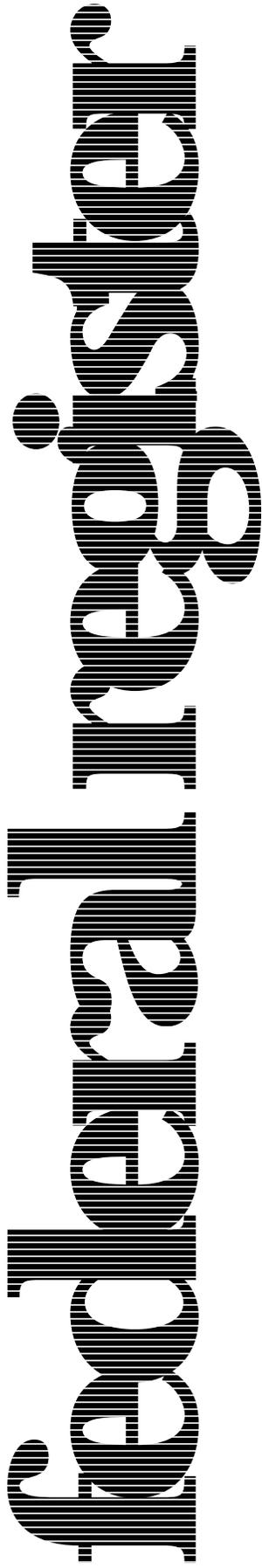
Signed at Washington, DC this 15th day of December, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97-33088 Filed 12-19-97; 8:45 am]

BILLING CODE 4510-29-P



Monday
December 22, 1997

Part IV

**Department of
Education**

**National Institute on Disability and
Rehabilitation Research; Proposed
Funding Priorities for Fiscal Years 1998–
1999 for Certain Centers and Projects;
Notice**

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priorities for Fiscal Years 1998–1999 for Certain Centers and Projects

SUMMARY: The Secretary proposes funding priorities for four Rehabilitation Research and Training Centers (RRTCs) and two Disability and Rehabilitation Research Projects (DRRPs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998–1999. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before January 21, 1998.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Comments may also be sent through the Internet: comment@ed.gov

You must include the term Disability and Rehabilitation Research Projects and Centers in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna_Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities under the Disability and Rehabilitation Research Projects and Centers Program for four RRTCs related to: secondary conditions of spinal cord injuries (SCI); neuromuscular diseases (NMD); multiple sclerosis (MS); and community integration for persons with traumatic brain injury (TBI). The notice also contains proposed priorities for two Disability and Rehabilitation Research Projects related to: dissemination and utilization of research information to promote independent living; and supported living and choice for persons with mental retardation.

These proposed priorities support the National Education Goal that calls for every adult American to possess the

skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priorities.

Rehabilitation Research and Training Centers

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or

providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Proposed General Requirements

The Secretary proposes that the following requirements apply to these RRTCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these

proposed requirements will be assessed using applicable selection criteria in the peer review process. The Secretary is interested in receiving comments on these proposed requirements:

Each RRTC must provide: (1) Training on research methodology and applied research experience; and (2) training on knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other appropriate parties.

Each RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

Each RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities.

Proposed Priority 1: Secondary Conditions of Spinal Cord Injuries

Background

There are approximately 10,000 new cases of SCI each year and the prevalence of SCI is estimated between 183,000 and 230,000 persons (University of Alabama-Birmingham, "Facts and Figures at a Glance," *Spinal Cord Injury Factsheet*, August, 1997). The etiology of SCI has been very well documented and the medical characterization of this condition is well established (Maynard, F. M., et al., "International Standards for Neurological and Functional Classification of Spinal Cord Injury—American Spinal Cord Injury Association" *Spinal Cord*, 35(5), pgs. 266–274, May, 1997). Past medical advances have improved the probability of surviving SCI, and ongoing developments and improvements in clinical care have increased the life expectancy and quality of life of persons with SCI (Ditunno, J. F. and Formal,

C. S., "Chronic Spinal Cord Injury," *New England Journal of Medicine*, 330(8), pgs. 550–556, February, 1994). However, the life expectancy of individuals with SCI is still lower than the general population, and people who are living with SCI continue to be at higher risk than the general population for a number of secondary conditions. For the purposes of this priority, a secondary condition is a condition that is causally related to a disabling condition (i.e., occurs as a result of the primary disabling condition) and that can be pathological, an impairment, a functional limitation, or an additional disability (Pope, A. M. and Tarlov, A. R., "Prevention of Secondary Conditions," *Disability in America*, pgs. 214–241, 1991).

Pressure ulcers, respiratory complications, urinary tract infections (UTIs), pain, and obesity are commonly reported secondary conditions of SCI (Lemons, V. R. and Wagner, F. C., Jr., "Respiratory Complications After Cervical Spinal Cord Injury," *Spine*, 9(20), pgs. 2315–2320, 1994; Anson, C. A. and Shepherd, C., "Incidence of Secondary Complication in Spinal Cord Injury," *International Journal of Rehabilitation Research*, 19(1), pgs. 55–66, March, 1996). Depression in SCI is also often identified as a secondary condition (Elliott, T. R. and Frank, R. G., "Depression Following Spinal Cord Injury," *Archives of Physical Medicine and Rehabilitation*, Vol. 77, pgs. 816–823, 1996). Continued research efforts directed toward the prevention and treatment of secondary conditions of persons with SCI will improve their health and well-being.

Despite past efforts, pressure ulcers remain a daunting problem with respect to both prevention and treatment. Most approaches to pressure ulcer management emphasize prevention (Ditunno, J. F., op. cit.). There is little systematic evidence on how individuals with SCI manage a pressure ulcer once one develops (Fuhrer, M. J., et al., "Pressure Ulcers in Community-Resident Persons with Spinal Cord Injury: Prevalence and Risk Factors," *Archives of Physical Medicine and Rehabilitation*, 74, pgs. 1172–1177, 1993).

Respiratory-related conditions have now replaced UTIs as the major cause of death in the SCI population, particularly among individuals with cervical level injuries (University of Alabama-Birmingham, op. cit.). Pneumonia continues to be one of the most common secondary conditions. Secretion management is often problematic due to impaired cough (Ditunno, J. F. and Formal, C. S., op.

cit.). The effectiveness of current therapeutic interventions to reduce the incidence of respiratory conditions appears to be marginal (Lemons, V. R. and Wagner, F. C., Jr., op. cit.).

Urinary tract infections are a common secondary condition in SCI. Antibiotic prophylaxis is not generally recommended. Other possible strategies, such as vaccination, immunotherapy, and the use of receptor analogs have been suggested, but there is not yet sufficient data on the effectiveness (Galloway, A., "Prevention of Urinary Tract Infection in Patients with Spinal Cord Injury—A Microbiological Review," *Spinal Cord*, 35(4), pgs. 198–204, April, 1997). There are possible psycho-social-vocational factors that impact bladder management programs (NIDRR 1992 Consensus Statement, "The Prevention and Management of Urinary Tract Infections Among People with Spinal Cord Injuries," *Journal of American Paraplegia Society*, 15(3), pgs. 194–204, July, 1992).

Pain is a secondary condition that affects a significant number of persons with SCI (Yeziarski, R. P., "Pain Following Spinal Cord Injury: the Clinical Problem and Experimental Studies," *Pain*, 68(2–3), pgs. 185–194, 1996). Previous research has resulted in a number of classification schemes for SCI pain; however, there is no standardized classification system, limiting comparability of findings from the literature. The numerous individual variations in pain as a secondary condition accompanying SCI impede research progress in the alleviation of pain (Stover, S. L., et al., "Management of Neuromusculoskeletal System," *Spinal Cord Injury: Clinical Outcomes from Model Systems*, Chapter 8, pgs. 154–155, 1995).

Obesity can contribute to health-related problems in the general population. Obesity in SCI, particularly morbid obesity, is more likely to contribute to health-related problems. This condition is closely tied to nutritional status and the ability to engage in physical activity or exercise. Limitations on the latter are likely to contribute significantly to the problems stemming from this secondary condition (Blackmer, J. and Marshall, S., "Obesity and Spinal Cord Injury: An Observational Study," *Spinal Cord*, 35(4), pgs. 245–247, April, 1997).

Depression is more common among persons with SCI than among the general population. There is some evidence that depression is higher among persons whose SCI is of relatively short duration compared to others who have had a longer time to

adjust (Steins, S. A., et al., "Spinal Cord Injury Rehabilitation: Individual Experience, Personal Adaptation, and Social Perspectives," *Archives of Physical Medicine and Rehabilitation*, Vol. 78, March, 1997). Proper diagnosis and treatment of depression in persons with SCI has not yet been well established (Elliott, T. R. and Frank, R. G., op. cit.). Prevention and treatment for depression and other psychosocial adjustment problems may include increasing opportunities for social interactions through community participation (Rintala, D. H., et al., "The Relationship Between the Extent of Reciprocity with Social Supporters and Measures of Depressive Symptomatology, Impairment, Disability, and Handicap in Persons with Spinal Cord Injury," *Rehabilitation Psychology*, 39(1), pgs. 15-27, 1994).

There is a linkage between maintaining the health of persons with SCI and the prevention of secondary conditions. Health maintenance activities may include, but are not limited to, following accepted medical protocols, proper diet, weight control, and exercise. Persons with SCI are increasingly realizing the importance of and seeking access to health maintenance activities (Edwards, P., "Health Promotion Through Fitness for Adolescents and Young Adults Following Spinal Cord Injury," *SCI Nursing*, 13(3), pgs. 69-73, September, 1996).

Because of the differences in exercise tolerance among different levels of SCI, one uniform exercise protocol can not be applied to all individuals. Exercise options for persons with SCI will be expanded when appropriate exercise protocols are developed for the different levels of injury (Rimmer, J. H., "Fitness and Rehabilitation Programs for Special Populations," Brown & Benchmark, Madison, WI, Chapter 7, 1994). Little is known about the synergistic effects of exercise, diet, and nutrition. Questions remain as to whether and how these lifestyle factors work together to promote health and prevent secondary conditions.

The availability and dissemination of information about this injury tends to be concentrated in speciality areas. This problem can be frustrating to newly-injured individuals and their family members. Rapidly accessing the most up-to-date clinical information can also be problematic for non-specialty health professionals.

Proposed Priority 1

The Secretary proposes to establish an RRTC on Secondary Conditions of Spinal Cord Injuries to improve general

health, well-being, and community integration of persons with spinal cord injury. The RRTC shall:

(1) Investigate and evaluate interventions to prevent and treat secondary medical conditions, including but not necessarily limited to pressure ulcers, respiratory complications, UTIs, pain, and obesity;

(2) Investigate and evaluate interventions to prevent and treat depression; and

(3) Develop and evaluate exercise protocols, stress management techniques and diet and nutrition regimens.

In carrying out the purposes of the priority, the RRTC must coordinate with all other relevant SCI research activities, including the NIDRR-sponsored Model SCI Systems, those sponsored by the National Center for Medical Rehabilitation Research, the Centers for Disease Control, and NIDRR's RRTCs on Aging with A Disability, Personal Assistance Services, and Managed Care.

Proposed Priority 2: Neuromuscular Diseases

Background

Neuromuscular disease is a taxonomic category that describes diseases of the peripheral neuromuscular system, both acquired and hereditary. This category encompasses diseases such as amyotrophic lateral sclerosis, post-polio, Guillan-Barre, muscular dystrophy, myasthenia gravis, and other muscular atrophies and myopathies. NMDs affect approximately 400,000 children and adults in the United States (LaPlante, M., et al., *Disability in the United States: Prevalence and Causes*, 1992). Conditions associated with these disorders include progressive weakness, limb contractures, spine deformity, and impaired pulmonary function. Cardiac involvement and intellectual impairment occur with some NMDs. The progression of these degenerative diseases takes three stages: ambulatory, wheelchair, and prolonged survival (Bach, J. R. and Lieberman, J. S., "Rehabilitation of the Patient with Disease Affecting the Motor Unit," *Rehabilitation Medicine: Principles and Practice*, pg. 1099, 1993). Past research efforts have focused on documenting the impairment and disability profiles of neuromuscular disease as well as on mitigating the functional consequences of NMD. Functional independence and community integration continue to challenge persons with NMDs.

Among the functional independence issues that affect persons with NMD are preserving respiratory function, maintaining muscle strength, assuring

good nutrition, and combating muscle fatigue. Respiratory insufficiency due to progressive muscle wasting is one of the leading causes of illness and death among persons with NMDs (Bates, D., *Respiratory Function in Disease*, pgs. 371-379, 1989). For persons with NMDs, maintaining or improving muscle strength is a major functional concern. The relationships among conditioning exercise, functional strength, and fatigue is not well understood in this population. For example, exercise has been shown to be effective in improving strength and endurance at particular points in the disease progress, but many questions remain and the optimal use of exercise across different NMD categories is not known (Brinkmann, J. R., and Ringel, S. P., "Effectiveness of Exercise in Progressive Neuromuscular Disease," *Journal of Neurological Rehabilitation*, Vol. 5, pgs. 195-199, 1991). Finally, feeding problems in patients with NMDs are frequently underestimated and poorly analyzed (Willig, T. N., et al., "Swallowing Problems in Neuromuscular Disorders," *Archives of Physical Medicine and Rehabilitation*, Vol. 75, No. 11, pgs. 1175-1181, 1994).

Persons with NMDs must maintain functional independence to maximize their ability to participate in home, work, educational, recreational, and other community activities. For instance, respiratory problems often require mechanical ventilation. Home ventilation has been shown to be useful for a growing number of patients with NMDs (Winterholler, M., et al., "Recommendation of Bavarian Muscle Centers of the German Neuromuscular Disease Society for Home Ventilation of Neuromuscular Diseases of Adult Patients," *Nervenarzt*, Vol. 68, No. 4, pgs. 351-357, 1997). Despite its technical simplicity, home ventilation leads to a number of social, medical and infrastructural problems (*Paraplegia*, Vol. 31, pgs. 93-101, 1993).

Many persons with NMDs have had limited opportunity for educational and work experiences. Research has demonstrated the "alteration of cognitive functions" in some NMD diagnoses, creating special challenges to pursuing education (Fardeau-Gautier, M. and Fardeau, M., "Socioeconomic Aspects of Neuromuscular Diseases," *Myology: Basic and Clinical*, 1994). Previous research found a significant relationship between psychosocial adjustment and unemployment for some persons with NMD (Fowler, W. M., Jr., "Employment Profiles in Neuromuscular Diseases," *American Journal of Physical Medicine &*

Rehabilitation, Vol. 76, No. 1, pgs. 26–37, 1997).

In addition to issues of functional capacity and community integration, there is an emerging policy issue related to diagnosis of NMDs. Rapid development in genetic knowledge and technologies has increased the ability to test asymptomatic NMD individuals for late-onset diseases, disease susceptibilities, and carrier status. Genetic criteria may be replacing diagnostic and clinical classification systems as a method of identifying NMDs (Fowler, W. M., Jr., "Impairment and Disability Profiles of Neuromuscular Diseases," *American Journal of Physical Medicine & Rehabilitation*, Vol. 74, No. 5, pg. S61, 1995). These developments raise ethical, legal and financial issues related to appropriate timing for tests and communication of results ("American Society of Human Genetics and American College of Medical Genetics Report—Points to Consider: Ethical, Legal, and Psychosocial Implications of Genetic Testing in Children and Adolescents," *American Journal of Human Genetics*, Vol. 57, pgs. 1233–1241, 1995).

Because of the number of very rare diseases that are included in the proposed World Federation of Neurology Classifications of NMD and the low incidence and prevalence of the more well-known NMDs, the availability and dissemination of information about these diseases is problematic. This difficulty is characteristic of cases where there is both a limited amount of information and a very small audience. This problem can be frustrating to newly-diagnosed individuals and their family members. Rapidly accessing the most up-to-date clinical information can also be problematic for the non-specialist physicians, as evidenced by the well-known difficulty in diagnosing these diseases (Swash, M. and Schwartz, M. S., *Neuromuscular Diseases: A Practical Approach to Diagnosis and Management*, pg. 3, 1988).

Proposed Priority 2

The Secretary proposes to establish an RRTC on NMDs to promote the functional independence and community integration of persons with NMDs. The RRTC shall:

- (1) Investigate and evaluate interventions to preserve functional capacity;
- (2) Investigate and evaluate techniques for enhancing community integration;
- (3) Examine the risks and benefits related to the use of genetic testing; and

(4) Establish and maintain a clearinghouse on NMDs.

In carrying out the purposes of the priority, the RRTC shall coordinate with research activities by the National Institute on Neurological Disorders and Stroke, and other related NIDRR-funded projects relevant to the priority.

Proposed Priority 3: Multiple Sclerosis Background

Multiple sclerosis is a disease capable of producing significant disability, particularly in the young adult population. The most frequent age of onset is between 20 and 45 years, with a mean onset age of 33. The female to male ratio is nearly 2:1 and the white to non-white ratio is also nearly 2:1. The total population of individuals with MS in the United States is estimated at 250,000–350,000. The causes of MS are unknown, although autoimmune, viral, genetic, and environmental factors are considered to have potential causal significance (Smith, C. & Schapiro, R., "Neurology," *Multiple Sclerosis*, pg. 7, 1996).

Multiple Sclerosis randomly attacks the central nervous system and may manifest itself over several decades in a wide range of disabilities including, but not limited to, inability to walk, loss of bowel and bladder control, blindness, mild alteration of sensation, paralysis of limbs, impaired speech, sexual dysfunction, extreme fatigue, poor coordination, spasticity, and cognitive dysfunction. The course of MS is unpredictable. The disease may wax and wane. Significant manifestation can be brought on by heat, overwork, or a common cold and followed by return to a state with little evidence of active disease. Sometimes there are manifestations with no apparent trigger. A small group of those with the disease experience continued evolving neurological deficits. Generally, progression, severity and specific symptoms cannot be foreseen.

Various interventions may alleviate some of the manifestations. While medications may slow the disease course, there is no cure for MS. Coping and planning can be difficult and exhausting for those who make continual adjustments in daily activity. Work schedules or family plans may be disrupted by the sudden onset of fatigue. Driving and independent activity may be difficult due to MS-related impairments. Bladder difficulties may cause a person to avoid activities.

Maintaining healthy lifestyle habits can assist persons with MS to maintain maximum function despite the disease.

Exercise can strengthen muscles when possible or can help maintain muscle tone for those that are affected, although the potential for overexercise must be understood. Adequate rest is critical for persons with MS and relaxation techniques can be aids as well (Chan, A., "Physical Therapy," *Multiple Sclerosis*, pg. 87, 1996). Various diets have been suggested, as have vitamin and nutritional supplements. However, the evidence supporting the value of those measures is inconclusive. Alcohol or substance abuse can be problems for persons with the disease whose neurological deficits have caused decreased tolerance. Any substance that places extra strain on the already-impaired nervous system must be used with extreme caution. Drug interactions can be a danger if the person is on prescribed medication (Lechtenberg, R., *Multiple Sclerosis Fact Book*, pg. 171, 1989).

It is difficult to assess the employment status of persons with MS. This is due in part to the nature of the disease and its variable impact on individuals' ability to work. Information on the employment status of persons with MS may be available through a secondary analysis of databases such as the 1994–95 National Health Interview Survey Disability Supplement. Persons with MS may require unique work accommodations such as sustained cooler environments, rest breaks, and flexible work schedules.

Rehabilitation techniques are available to assist the person with MS in daily life, including at the workplace. Medications can be effective for treating fatigue, bladder, bowel, or sexual difficulties. Physical therapists commonly recommend mobility aids and devices to help with visual impairments or difficulties using the hands. At times, as when mobility impairments occur, there may be hesitation or unwillingness on the part of the person with MS, physicians, or health care coverage providers, to use assistive technologies, believing that the problem will go away (Iezzoni, L., "When Walking Fails," *The Journal of the American Medical Association*, Vol. 276, No. 19, pg. 1609, 1996).

While the life expectancy for persons with MS is nearly identical to that of healthy individuals, various manifestations of MS can be expected over the course of decades. As a person with MS ages, depression, cognitive dysfunction, and other emotional or physical health problems may play increasingly larger roles. Treatment and rehabilitation modalities may be different if a manifestation is caused by aging, as opposed to MS.

NIDRR is particularly interested in receiving public comments on whether this RRTC should pursue two research questions related to rehabilitation interventions: (1) the extent to which women with MS require unique rehabilitation interventions, and (2) whether alternative models of providing rehabilitation interventions may be needed for persons of different cultural, economic, minority, ethnic or geographic backgrounds.

Proposed Priority 3

The Secretary proposes to establish an RRTC on MS to promote the health and wellness, and improve the functioning and employment status of persons with MS. The RRTC shall:

- (1) Identify, develop, and evaluate health promotion and wellness activities, including those that address substance abuse.
- (2) Identify, develop, and evaluate rehabilitation techniques to manage and improve functioning, including those that address coping with the uncertain course of MS and depression, stress, and cognitive dysfunction;
- (3) Investigate the employment status of persons with MS;
- (4) Identify, develop, and evaluate workplace accommodations; and
- (5) Investigate the interaction between aging and MS.

In carrying out the purposes of the priority, the RRTC shall collaborate with the Consortium of MS Centers and the RRTC on Substance Abuse.

Proposed Priority 4: Community Integration for Persons with Traumatic Brain Injury

Background

Each year approximately 1.9 million Americans experience traumatic brain injuries (Collins, J. F., "Types of Injuries by Selected Characteristics: US 1985-1987," National Center for Health Statistics, *Vital Health Stat*, 10 (175), 1990). Brain injury is frequently a childhood injury, and incidence is highest among youth and young adults, particularly males (NIDRR Rehabilitation Research and Training Center, University of California, San Francisco, *Disability Statistics Abstract*, No. 14, November, 1995). The number of people surviving brain injuries has increased significantly over the last 25 years due to improved emergency medical services and advances in acute care.

Community integration is the primary aim of rehabilitation after serious trauma. For the purposes of this priority, community integration is defined as integration into home-like

settings, social networks, and productive activities such as employment, school, or volunteer work (Willer, B., et al., "Assessment of Community Integration for Traumatic Brain Injury," *Journal of Head Trauma Rehabilitation*, Vol. 8, No. 2, pgs. 75-87, June, 1993). Living independently, pursuing avocational activities, volunteering, educational endeavors, employment, and participation in social activities outside the home are important community integration outcomes.

Sequelae to TBI include problems of cognition resulting in memory and learning difficulties and personality and behavior problems, including irritability and impulsivity, that impact on community integration outcomes. In addition, individuals with severe TBI often experience fatigue, limited attention span, information processing problems, visual perception difficulties, and depression. Furthermore, alcohol use at the time of injury, as well as pre- or post-injury heavy drinking, has been related to worse post-injury outcomes (Kreutzer, J. S., "A Prospective Longitudinal Multi-center Analysis of Alcohol Use Patterns Among Persons with TBI," *The Journal of Head Trauma Rehabilitation*, Vol. 11, No. 5, pg. 58, October, 1996).

Persons who experience the physical and mental consequences of TBI require a variety of programs and services to be successfully reintegrated in the community. These resources may include schools, libraries, recreation centers, health facilities, drug treatment programs, housing, transportation, and police and law enforcement services. Often these programs and services are not fully accessible to this population because their needs are not known or recognized.

The sequelae of TBI contribute to significant difficulties obtaining and retaining employment post-injury. Because of the demographics of head injury, some of the survivors may not have worked prior to the injury. Those who were employed face challenges in seeking to return to work. Despite increasing emphasis on vocational rehabilitation, investigation of long-term outcomes has indicated unemployment rates ranging from 34 percent to 75 percent at two to 15 years after injury. A recent longitudinal investigation revealed unemployment rates for rehabilitation patients as high as 76 percent during the first four years after injury (Sander, A. M., "Neurobehavioral Functioning, Substance Abuse, and Employment after Brain Injury: Implications for Vocational Rehabilitation," *Journal of Head*

Trauma Rehabilitation, 12 (5), pgs. 28-41, 1997). Past research has examined the efficacy of supported employment and other strategies for improving employment outcomes for individuals with TBI. Successful strategies consider the structure and culture of the workplace in linking these to the needs of individuals with TBI to succeed in employment settings (Wehman, P. H., et al., "Return to Work for Persons with Severe Traumatic Brain Injury: A Data-based Approach to Program Development," *Journal of Head Trauma Rehabilitation*, 10 (1), pgs. 27-39, 1995).

The prevalence of TBI in children is documented by the National Pediatric Trauma Registry located at the RRTC on Rehabilitation and Childhood Trauma. Most injured children are one to 14 years of age. Children with disabilities face numerous problems transitioning from rehabilitation to educational settings. Educators may be unaware of the impact of TBIs on school performance and uncertain of effective educational programming. Establishing a stronger link between hospitals and school professionals is an essential step toward improving educational and functional outcomes (Farmer, J. E., et al., "Educational Outcomes in Children with Disabilities; Linking Hospitals and Schools," *NeuroRehabilitation*, Vol. 5, No. 1, pgs. 49-56, 1995).

Families of people with TBI exhibit high levels of distress, depression and anxiety. As a result, they may experience isolation and diminished social interaction and diminished ability to make decisions regarding medical, ethical, and financial issues. Even 15 years post-injury, family members of persons with TBI report tension, friction, and distress (Gervasio, A. H., "Kinship and Family Members' Psychological Distress after TBI: A Large Sample Study," *The Journal of Head Trauma Rehabilitation*, 12(3), pgs. 14-16, 1997).

Because of improved treatment and increased survival rates, many more people with TBI are living to middle age and beyond. For people with TBI who live with their families, both their aging and that of the caregivers may create problems. This is especially true for those people who live with their parents following head injury. Shortages of affordable and accessible housing, personal assistance services, and respite care may pose threats to community integration and require additional community resources.

Proposed Priority 4

The Secretary proposes to establish an RRTC on Community Integration of Persons with TBI to assist families to

cope, and to improve community resources, employment outcomes, and educational programming. The RRTC shall:

- (1) Identify and evaluate model programs and services that support community integration;
- (2) Identify, develop, and evaluate strategies to improve employment outcomes, including obtaining initial employment and successful return-to-work;
- (3) Identify and evaluate effective practices that link rehabilitation and education professionals to facilitate identification and appropriate educational programming for children;
- (4) Identify and evaluate techniques to assist families to cope; and
- (5) Investigate the impact of aging on community integration;

In carrying out the purposes of the priority, the RRTC must:

- Coordinate research efforts with the TBI Model Systems projects, other NIDRR TBI projects and centers, and the RRTC on Substance Abuse; and
- Address the needs of persons with TBI who are substance abusers.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 202 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13—350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Proposed Priority 5: Improving Research Information Dissemination and Utilization to Promote Independent Living

Background

One of the persistent concerns in the area of knowledge dissemination and utilization is the gap between information generated from disability and rehabilitation research and its utilization by persons with disabilities in their efforts to live independently in

the community. Persons with disabilities can draw from a wealth of information derived from research, such as universal design concepts, consumer-directed personal assistance strategies, the availability of assistive technology, peer counseling techniques, housing options, and self-care techniques. This information can help provide persons with disabilities with the knowledge to exercise control over their lives, reduce their reliance on others in making decisions, perform everyday activities, and participate more fully in community life.

To generate baseline data on information dissemination related to independent living, the National Center for the Dissemination of Disability Research (NCDDR) conducted a nationwide survey asking persons with disabilities about their perceptions of the usefulness of research-based disability information, their knowledge of where to obtain that information, and their current modes of receiving information. Seventy-two percent of survey respondents affirmed that disability research information is useful to them. Twenty percent reported that they do not know if it is useful to them, and eight percent responded that the information is not useful. The survey also asked the respondents if they knew how to find information from disability research. Forty-eight percent responded they did, and 32 percent responded that they did not know how to find the information (NCDDR, "Research Exchange," Vol. 2, No. 4, 1997).

Even if research information is in the public domain, it may not be accessible to persons with disabilities. Highly technical language, obscure journal articles, and under-publicized or prohibitively expensive conference presentations exemplify some of the barriers that persons with disabilities face in their efforts to access research information. There may also be physical barriers when research information is not available in alternate formats (e.g., braille, large print, tape recording) for persons with sensory disabilities.

NIDRR has funded information dissemination and utilization efforts related to living independently in the community, using a variety of techniques, media, and dissemination strategies. NIDRR also disseminates information through national information databases and dissemination programs, such as the National Rehabilitation Information Center (NARIC) and ABLEDATA, a database that contains information on more than 22,000 assistive devices. Many Centers for Independent Living (CILs) provide information and referral

activities both in person, in print, and electronically. In addition, there are fully established consumer-run publications, television networks, electronic bulletin boards, and world wide web pages that provide independent living information.

The Internet is a primary medium for the dissemination of disability information. The Internet allows this information to be available to persons with disabilities in daily life settings, rather than requiring travel to workshops and conferences. The NCDDR survey showed that over 50 percent of the persons with disabilities living independently indicated that they have never used the Internet to obtain information, 25 percent reported using it often or very often.

Although many persons with disabilities do not currently own computers or contract with Internet provider services themselves, many institutions, such as public libraries, churches, or places other than employment or educational sites are increasingly providing alternate points of free access. Also, the decreasing costs of web TV and other accessing equipment are expected to make this resource more universally available in the future.

Proposed Priority 5

The Secretary proposes to establish a DRRP on Improving Research Information Dissemination and Utilization to Promote Independent Living. The DRRP shall:

- (1) Using the NCDDR survey results as baseline information, further assess the use of research information to promote independent living;
- (2) Identify the barriers to increased use of research information by persons with disabilities;
- (3) Based on the input of persons with disabilities, identify research that promotes independent living;
- (4) Develop and implement strategies to disseminate research information to promote independent living, using a variety of innovative methods and media;
- (5) Develop and disseminate strategies that other information providers, such as CILs, NIDRR-funded grantees, and consumer publications, can use to increase the utilization of research to promote independent living, and provide technical assistance to those entities to increase the dissemination and utilization of this information; and
- (6) Develop and implement strategies to assist persons with disabilities to increase their use of existing and future information technologies such as the Internet.

In carrying out the purposes of the priority, the DRRP must:

- Include information and activities that feature concepts of consumer choice, independence, personal autonomy and self-direction; and
- Coordinate activities with the NCDDR.

Proposed Priority 6: Supported Living and Choice for Persons With Mental Retardation

Background

Personal autonomy and choice are primary rehabilitation goals for persons with mental retardation. Supported living has emerged as a viable approach toward achieving these goals. In order for the potential impact of supported living to be realized, information on supported living must be provided to a wide array of parties involved with promoting choice and community living for persons with mental retardation.

Based on the National Health Interview Survey on adults living in the general household population and surveys of people in formal residential support programs, about 78 percent or 1,250,000 of the adult population of the U.S. can be identified as being limited in a major life activity and having a primary or secondary condition of mental retardation.

NIDRR has supported research and demonstrations in the area of mental retardation and developmental disabilities since 1965. Throughout this time, researchers have addressed issues involving deinstitutionalization, mainstreaming, transition from school to work, supported employment and the overall supports persons with mental retardation and developmental disabilities need to live as independently as possible in the community.

Supported living refers to the development and provision of assistance, including natural supports, to enable persons with mental retardation to live in settings and participate in activities that contribute to their personal goals and quality of life (Abery, B. H., et al., "Research on Community Integration of Persons with Mental Retardation and Related Conditions: Current Knowledge, Emerging Challenges and Recommended Future Directions," Prepared for the NIDRR Long Range Planning Process, pg. 4, May, 1996). Supported living intends to increase control and choice of services and supports that persons with mental retardation receive.

Access to community services and community supports varies greatly by

State. Information on trends in supported community living and innovative models of successful community living can assist States to initiate and improve effective services. In addition to parents and family members, direct service personnel such as group home staff, foster family members and job coaches, are primary sources of support and services for persons with mental retardation living in the community.

In the past decade, there has been growing concern about recruitment and retention of direct service personnel. Research has shown high turnover rates of between 55 percent and 73 percent annually (Braddock, D., & Mitchell, D., "Residential Services and Developmental Disabilities in the United States: A National Survey of Staff Compensation, Turnover, and Related Issues," American Association on Mental Retardation, Washington, DC, 1992). In order to attract and retain competent direct service personnel, service providers must provide staff with information and training on effective and innovative approaches to promote independence. Agency trainers and managers require information about effective training techniques that teach support providers how to encourage self advocacy and choice making to persons with mental retardation. In addition, public awareness activities that educate both the public and policymakers on the importance of direct service workers can enhance the image of community workers and the individuals with developmental disabilities they assist (Larson, S. A., et al., "Residential Services Personnel: Recruitment, Training and Retention," *Challenges for a Service System in Transition*, pg. 321, 1994).

Recent developments in two major Federal programs significantly affect the nature and extent of community-based services for persons with mental retardation: the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (welfare reform) and Medicaid. Recent welfare reforms provide States with increased flexibility in the delivery of community-based public services. The Medicaid program is the primary source of payment for both health care and community-based long term care services for persons with mental retardation and their families. Providing training and technical assistance on supported living to policymakers and services providers involved in the administration of welfare and Medicaid programs will enable them to take advantage of new opportunities to shape integrated and

flexible programs for persons with mental retardation.

Proposed Priority 6

The Secretary proposes to establish a Dissemination, Training, and Technical Assistance Project to promote supported living and choice for persons with mental retardation. The Project shall:

- (1) Identify and synthesize research findings on state-of-the-art models of supported living;
- (2) Develop and disseminate materials based on the synthesis and provide training and technical assistance to consumers, families, service providers, State policy makers and State agencies; and
- (3) Develop and disseminate training materials for direct service staff with input from consumers and family members.

In carrying out the purposes of the priority, the Project shall disseminate materials and coordinate training activities with relevant units of the Department of Health and Human Services, State public and private managed care representatives, individuals with disabilities and other NIDRR Centers addressing related issues.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>
<http://www.ed.gov/news.html>

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1-888-293-6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219-1511 or, toll free, 1-800-222-4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public

inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR parts 350 and 353.

Program Authority: 29 U.S.C. 760-762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects, and 84.133B, Rehabilitation Research and Training Centers)

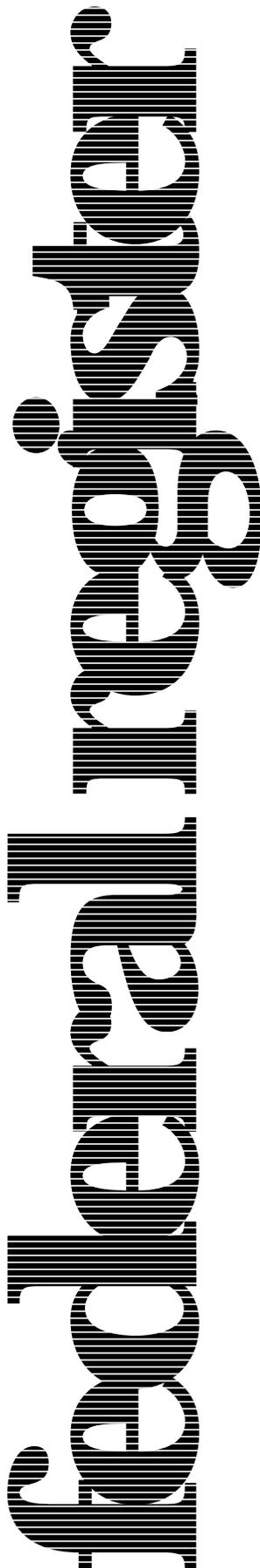
Dated: December 16, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97-33259 Filed 12-19-97; 8:45 am]

BILLING CODE 4000-01-P



Monday
December 22, 1997

Part V

Department of the Treasury

Internal Revenue Service

26 CFR Part 54

Department of Labor

Pension Welfare Benefits Administration

29 CFR Part 2590

**Department of Health and
Human Services**

Health Care Financing Administration

45 CFR Part 146

**Mental Health Parity; Interim Rules
HIPAA Mental Health Parity Act;
Proposed Rule**

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 54**

[T.D. 8741]

RIN 1545-AV53

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration****29 CFR Part 2590**

RIN 1210-AA62

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Care Financing Administration****45 CFR Part 146**

RIN 0938-AI05

Interim Rules for Mental Health Parity

AGENCIES: Internal Revenue Service, Department of the Treasury; Pension and Welfare Benefits Administration, Department of Labor; Health Care Financing Administration, Department of Health and Human Services.

ACTION: Interim rules with request for comments.

SUMMARY: This document contains interim rules governing parity between medical/surgical benefits and mental health benefits in group health plans and health insurance coverage offered by issuers in connection with a group health plan. The rules contained in this document implement changes made to certain provisions of the Internal Revenue Code of 1986 (Code), the Employee Retirement Income Security Act of 1974 (ERISA or Act), and the Public Health Service Act (PHS Act) enacted as part of the Mental Health Parity Act of 1996 (MHPA) and the Taxpayer Relief Act of 1997. Interested persons are invited to submit comments on the interim rules for consideration by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (Departments) in developing final rules. The rules contained in this document are being adopted on an interim basis to ensure that sponsors and administrators of group health plans, participants and beneficiaries, States, and issuers of group health insurance coverage have timely guidance concerning compliance with the requirements of MHPA.

DATES: *Effective date.* The interim rules are effective January 1, 1998.

Applicability dates. The requirements of MHPA and the interim rules apply to group health plans and health insurance issuers offering health insurance coverage in connection with a group health plan for plan years beginning on or after January 1, 1998. MHPA includes a sunset provision under which the MHPA requirements do not apply to benefits for services furnished on or after September 30, 2001.

Information collection. Affected parties are not required to comply with the information collection requirements in these interim rules until the Departments publish in the **Federal Register** the control numbers assigned to these information collection requirements by the Office of Management and Budget (OMB). Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995. The Departments have submitted a copy of this rule to OMB for its review of the information collections. Interested persons are invited to send comments regarding these burdens or any other aspect of these collections of information on or before February 20, 1998.

Comments. Written comments on these interim rules are invited and must be received by the Departments on or before March 23, 1998.

ADDRESSES: Comments on the information collection requirements should be sent directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attention: HCFA Desk Officer. Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, Room C2-26-17, 7500 Security Boulevard, Baltimore, MD 21244-1850; Attention: John Burke

Written comments on other aspects of the interim rules should be submitted with a signed original and three copies (except for electronic submissions sent to the Internal Revenue Service (IRS)) to any of the addresses specified below. For convenience, comments may be addressed to any of the Departments. Comments addressed to any Department will be shared with the other Departments.

Comments to the IRS can be addressed to: CC:DOM:CORP:R (REG-109704-97), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

In the alternative, comments may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-109704-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

Alternatively, taxpayers may transmit comments electronically via the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

Comments to the Department of Labor can be addressed to: U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N-5669, Washington, DC 20210; *Attention:* MHPA Comments.

Alternatively, comments may be hand-delivered between the hours of 9 a.m. and 5 p.m. to the same address.

Comments to the Department of Health and Human Services can be addressed to: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-2891-IFC, P.O. Box 26688, Baltimore, MD 21207.

In the alternative, comments may be hand-delivered between the hours of 8:30 a.m. and 5:00 p.m. to either:

Room 309-G, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

or

Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850

All submissions to the Internal Revenue Service will be open to public inspection and copying in Room 1621, 1111 Constitution Avenue, NW, Washington, DC from 9:00 a.m. to 4:00 p.m.

All submissions to the Department of Labor will be open to public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m.

All submissions to the Department of Health and Human Services will be open to public inspection and copying in Room 309-G of the Department of Health and Human Services offices at 200 Independence Avenue, SW, Washington, DC from 8:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Terese Klitenic, Health Care Financing Administration, Department of Health and Human Services, at (410) 786-1565; Mark Connor, Pension and Welfare Benefits Administration, Department of Labor, at (202) 219-4377; or Russ

Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622-4695.

Customer service information.

Individuals interested in obtaining a copy of the Department of Labor's booklet entitled "Questions and Answers: Recent Changes in Health Care Law," which includes information on MHPA, may call the following toll-free number: 1-800-998-7542.

SUPPLEMENTARY INFORMATION:

A. Background

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104-204, 110 Stat. 2944). MHPA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide for parity in the application of certain dollar limits on mental health benefits with dollar limits on medical/surgical benefits. Provisions implementing MHPA were later added to the Internal Revenue Code of 1986 (Code) under the Taxpayer Relief Act of 1997 (Pub. L. 105-34).

1. Regulatory Responsibility

The provisions of MHPA are set forth in Chapter 100 of Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Title XXVII of the PHS Act.¹ The Secretaries of the Treasury, Labor, and Health and Human Services share jurisdiction over the MHPA provisions. These provisions are substantially similar, except as follows:

- The MHPA provisions in the Code generally apply to all group health plans other than governmental plans, but they do not apply to health insurance issuers. A taxpayer that fails to comply with these provisions may be subject to an excise tax under section 4980D of the Code.

- The MHPA provisions in ERISA generally apply to all group health plans other than governmental plans, church plans, and certain other plans. These provisions also apply to health insurance issuers that offer health insurance coverage in connection with such group health plans. Generally, the Secretary of Labor enforces the MHPA provisions in ERISA, except that no enforcement action may be taken by the Secretary against issuers. However, individuals may generally pursue actions against issuers under ERISA and, in some circumstances, under State law.

¹ Chapter 100 of Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Title XXVII of the PHS Act were added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191.

- The MHPA provisions in the PHS Act generally apply to health insurance issuers that offer health insurance coverage in connection with group health plans and to certain State and local governmental plans. States, in the first instance, enforce the PHS Act with respect to issuers. Only if a State does not substantially enforce any provisions under its insurance laws will the Department of Health and Human Services enforce the provisions, through the imposition of civil money penalties. Moreover, no enforcement action may be taken by the Secretary of Health and Human Services against any group health plan except certain State and local governmental plans.

The interim rules being issued today by the Secretaries of the Treasury, Labor, and Health and Human Services have been developed on a coordinated basis by the Departments. In addition, these interim rules take into account comments received by the Departments in response to the request for public comments on MHPA published in the **Federal Register** on June 26, 1997 (62 FR 34604). Except to the extent needed to reflect the statutory differences described above, the interim rules of each Department are substantively identical. However, there are certain non-substantive differences. The interim rules reflect certain stylistic differences in language and structure to conform to conventions used by a particular Department. These differences have been minimized and any differences in wording are not intended to create any substantive difference.

2. Preemption of State Laws

The McCarran-Ferguson Act of 1945 (Pub. L. 79-15) exempts the business of insurance from federal antitrust regulation to the extent that it is regulated by the States and indicates that no federal law should be interpreted as overriding State insurance regulation unless it does so explicitly. Section 514(a) of ERISA preempts State laws relating to employee benefit plans (including group health plans). Section 731 of ERISA and section 2723 of the PHS Act provide that Part 7 of Subtitle B of Title I of ERISA and Part A of Title XXVII of the PHS Act (including the MHPA provisions) do not in any way affect or modify section 514 of ERISA with respect to group health plans.

Section 514(b)(2) of ERISA saves from preemption any State law that regulates insurance. However, section 731(a) of ERISA and section 2723(a) of the PHS Act preempt State insurance laws relating to health insurance issuers in connection with group health insurance

coverage to the extent such laws "prevent the application of" Part 7 of Subtitle B of Title I of ERISA or Part A of Title XXVII of the PHS Act, including the MHPA provisions. (There is no corresponding provision in the Code.) In this regard, the conference report to HIPAA states that the conferees generally intended the narrowest preemption of State laws with regard to health insurance issuers (not group health plans) with respect to the provisions of Part 7 of Subtitle B of Title I of ERISA and Part A of Title XXVII of the PHS Act.² Consequently, the conference report to HIPAA states that State laws with regard to health insurance issuers that are broader than federal requirements in certain areas would not "prevent the application of" the provisions of Part 7 of Subtitle B of Title I of ERISA or Part A of Title XXVII of the PHS Act. Further, the conference report to MHPA states that the application of these preemption provisions should permit the operation of any State law or provision that requires more favorable treatment of mental health benefits under health insurance coverage than that required under the MHPA provisions.

Thus, generally, a State law that requires more favorable treatment of mental health benefits under health insurance coverage offered by issuers would not be preempted by the provisions of MHPA and the interim rules.

B. Overview of MHPA and the Interim Rules

The MHPA provisions are set forth in section 9812 of the Code, section 712 of ERISA, and section 2705 of the PHS Act. MHPA and the interim rules apply to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits.

The MHPA provisions provide for parity in the application of aggregate lifetime dollar limits, and annual dollar limits, between mental health benefits and medical/surgical benefits. If a group health plan offers two or more benefit packages under the plan, the

² However, the preemption is broader for the statutory requirements of section 701 of ERISA and section 2701 of the PHS Act that limit the application of preexisting condition exclusions. Under these broader provisions, State laws cannot "differ" from the preexisting condition exclusion requirements of section 701 of ERISA or section 2701 of the PHS Act except as specifically permitted by section 731(b)(2) of ERISA and section 2723(b)(2) of the PHS Act. These provisions permit a State to impose on health insurance issuers certain stricter limitations relating to preexisting condition exclusions.

requirements of MHPA and the interim rules apply separately to each package. The interim rules make clear that the MHPA requirements apply regardless of whether the mental health benefits are administered separately under the plan. In addition, the interim rules make clear that the MHPA requirements in ERISA and the PHS Act apply both to group health plans and to health insurance issuers offering coverage in connection with a group health plan.

MHPA and the interim rules do not require a group health plan (or health insurance coverage offered in connection with a group health plan) to provide mental health benefits. In addition, MHPA and the interim rules do not affect the terms and conditions (including cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requirements that patients or providers obtain prior authorization for treatment, and requirements relating to primary care physicians' referrals for treatment) relating to the amount, duration, or scope of mental health benefits under a plan (or coverage) except as specifically provided in regard to parity of aggregate lifetime dollar limits and annual dollar limits.³

1. Aggregate Lifetime Limits and Annual Limits

Under MHPA and the interim rules, a group health plan (or health insurance coverage offered in connection with a group health plan) providing both medical/surgical benefits and mental health benefits may comply with the MHPA parity requirements in any of the following general ways:

- The plan (or coverage) may comply by not including any aggregate lifetime dollar limit or annual dollar limit on mental health benefits.
- The plan (or coverage) may comply by imposing a single aggregate lifetime or annual dollar limit on both medical/surgical benefits and mental health benefits in a way that does not distinguish between the two.
- The plan (or coverage) may comply by imposing an aggregate lifetime dollar limit or annual dollar limit on mental health benefits that is not less than the aggregate lifetime dollar limit or annual

dollar limit on medical/surgical benefits.

- In the case of a plan (or coverage) under which aggregate lifetime dollar limits or annual dollar limits differ for categories of medical/surgical benefits, the plan (or coverage) may comply by calculating a weighted average aggregate lifetime dollar limit or weighted average annual dollar limit for mental health benefits. The weighted average must be based on a formula in the interim rules that takes into account the limits on different categories of medical/surgical benefits.

In addition, under MHPA and the interim rules, benefits for treatment of substance abuse or chemical dependency may not be counted in applying an aggregate lifetime or annual dollar limit that applies separately to mental health benefits.

2. Exemptions from the Requirements of MHPA

(a) Small Employer Exemption

The parity requirements under MHPA and the interim rules do not apply to any group health plan (or health insurance coverage offered in connection with a group health plan) for any plan year of a small employer. The term "small employer" is defined as an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.⁴

For purposes of the small employer exemption, all persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Code (26 U.S.C. 414) are treated as one employer. In addition, if an employer was not in existence throughout the preceding calendar year, whether the employer is a small employer is determined on the average number of employees the employer reasonably expects to employ on business days during the current calendar year. Finally, any reference to an employer in the small employer exemption includes a reference to a predecessor of the employer.

(b) Increased Cost Exemption

The second exemption from the MHPA requirements applies to group health plans (or health insurance coverage offered in connection with a group health plan) if the application of the MHPA parity requirements described in paragraph (b)(1)(i)⁵ results in an increase in the cost under the plan (or coverage) of at least one percent. This exemption is available only if the requirements of paragraph (f) are met. If a plan offers more than one benefit package, the exemption is applied separately to each benefit package. Except as provided in the transition period described in paragraph (h), a plan must implement the parity requirements for the first plan year beginning on or after January 1, 1998, and must continue to comply with the parity requirements until September 30, 2001 (the sunset date in paragraph (i)) unless the plan satisfies the exemption described in paragraph (f). However, the exemption is not effective until 30 days after the notice requirements in paragraph (f)(3) are satisfied.

The interim rules, in paragraph (f)(2), describe the ratio of two terms used to determine if a plan (or coverage) has experienced a cost increase of one percent or more. The first term is the total cost incurred under parity (including both mental health costs and medical/surgical costs). The second term is the total cost incurred under parity reduced by the costs required solely to comply with parity. Costs required solely to comply with parity include mental health claims that would have been denied absent amendments required to comply with parity, the administrative costs related to those claims, and other administrative costs attributable to complying with the parity requirements. Premium payments are not considered in this calculation. The ratio is expressed by the following formula:

$$\frac{IE}{IE - (CE + AE)} \geq 1.01000$$

IE represents the incurred expenditures during the base period. *CE* represents the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with the parity requirements of paragraph (b)(1)(i). *AE* represents administrative costs related to claims in *CE* and other administrative costs attributable to

³In response to the Departments' request for public comments on MHPA published in the **Federal Register** (62 FR 34604), the Equal Employment Opportunity Commission (EEOC) noted that the Americans with Disabilities Act (ADA) prohibits disability-based distinctions (including such distinctions relating to the provision of mental health benefits) in employer-provided health insurance plans unless the plan otherwise falls within the protections of section 501(c) of the ADA. The ADA is within the regulatory jurisdiction of the EEOC.

⁴Section 9831(a) of the Code, section 732(a) of ERISA, and section 2721(a) of the PHS Act provide an exception that applies under the MHPA provisions as well as under provisions added by HIPAA and the Newborns' and Mothers' Health Protection Act of 1996. The exception applies to any group health plan (and health insurance coverage offered in connection with a group health plan) for any plan year if, on the first day of the plan year, the plan has fewer than 2 participants who are current employees.

⁵Any reference to a particular paragraph in this preamble to the interim rules is a reference to the corresponding paragraphs in each of the Departments' interim rules.

complying with the parity requirements of paragraph (b)(1)(i).

Examples illustrate how the rule is applied in the case of a self-funded plan, a fully insured plan, and a partially insured plan. Moreover, in the case of a partially insured plan in which the partially insured portion is pooled for rating purposes, the costs of the pool should be allocated proportionally among the pool members by reasonable methods, including proportional enrollment. Additional provisions in paragraph (f) describe the baseline for determining those costs that are attributable solely to compliance with the parity requirements, the base period used to calculate whether a plan may claim the exemption, and how long the exemption applies once it is claimed. The base period must begin on the first day in any plan year that the plan

complies with the requirements of paragraph (b)(1)(i) of this section and must extend for a period of at least six consecutive calendar months. However, in no event may the base period begin prior to September 26, 1996 (the date of enactment of the Mental Health Parity Act (Pub. L. 104-204, 110 Stat. 2944)).

Before a group health plan may claim the one-percent increased cost exemption, it must furnish participants and beneficiaries with a notice of the plan's exemption from the parity requirements that includes the information described in paragraph (f)(3)(i). A plan may satisfy this requirement by providing participants and beneficiaries with a summary of material reductions in covered services or benefits, under 29 CFR 2520.104b-3(d), if it includes all the information required by paragraph (f)(3)(i). However,

this exemption under MHPA is not effective until at least 30 days after the notice is sent to the participants and beneficiaries and the appropriate federal agency even if the notice is incorporated into a summary of material reductions in covered services or benefits.

A group health plan that is not subject to Part 7 of Subtitle B of Title I of ERISA, and a plan subject to Part 7 of Subtitle B of Title I of ERISA that chooses not to incorporate the information in paragraph (f)(3)(i) into a summary of material reductions in covered services or benefits (which must be furnished to participants and beneficiaries and the appropriate federal agency), may use the following model to satisfy the notice requirement under paragraph (f)(3) of the interim rules:

BILLING CODE 4830-01-P; 4510-29-P; 4120-01-P

NOTICE OF GROUP HEALTH PLAN'S EXEMPTION FROM THE MENTAL HEALTH PARITY ACT

*** DESCRIPTION OF THE ONE PERCENT INCREASED COST EXEMPTION —** This notice is required to be provided to you under the requirements of the Mental Health Parity Act of 1996 (MHPA) because the group health plan identified in Line 1 below is claiming the one percent increased cost exemption from the requirements of MHPA. Under MHPA, a group health plan offering both medical/surgical and mental health benefits generally can no longer set annual or aggregate lifetime dollar limits on mental health benefits that are lower than any such dollar limits for medical/surgical benefits. In addition, a plan that does not impose an annual or aggregate lifetime dollar limit on medical/surgical benefits generally may not impose such a limit on mental health benefits. However, a group health plan can claim an exemption from these requirements if the plan's costs increase one percent or more due to the application of MHPA's requirements.

This notice is to inform you that the group health plan identified in Line 1 below is claiming the exemption from the requirements of MHPA. The exemption is effective as of the date identified in Line 4 below. Since benefits under your group health plan may change as of the date identified in Line 4 it is important that you contact your plan administrator or the plan representative identified in Line 5 below to see how your benefits may be affected as a result of your group health plan's election of this exemption from the requirements of MHPA.

Upon submission of this notice by you (or your representative) to the plan administrator or the person identified in Line 5 below, the plan will provide you or your representative, free of charge, a summary of the information upon which the plan's exemption is based.

1. Name of the group health plan and the plan number (PN): _____

2. Name, address, and telephone number of plan administrator responsible for providing this notice:

3. For single-employer plans, the name, address, telephone number, (if different from Line 2) and employer identification number (EIN) of the employer sponsoring the group health plan:

4. Effective date of the exemption (at least 30 days after the notices are sent): _____

5. For further information, call: _____

To claim the one-percent increased cost exemption, a group health plan that is a church plan (as defined in section 414(e) of the Code) also must furnish to the Department of the Treasury a copy of the notice sent to participants and beneficiaries that satisfies the requirements of paragraph (f)(3)(i). To claim the one percent increased cost exemption, a group health plan subject to Part 7 of Subtitle B of Title I of ERISA also must furnish to the Department of Labor a copy of the notice sent to participants and beneficiaries that satisfies the requirements of paragraph (f)(3)(i). To claim the one percent increased cost exemption, a group health plan that is a nonfederal governmental plan also must furnish to the Department of Health and Human Services a copy of the notice sent to participants and beneficiaries that satisfies the requirements of paragraph (f)(3)(i). In all cases, the exemption is not effective until 30 days after notice has been sent both to participants and beneficiaries and to the appropriate federal agency. Any notice submitted to the Department of Labor or Health and Human Services will be available for public inspection.

The Secretaries have designated the following addresses for delivery of these notices:

For notices to the Department of the Treasury, church plans should mail the notice to: Office of the Assistant Commissioner, Examination, Examination Programs CP:EX:E, 1111 Constitution Avenue, NW., Washington, DC 20224; Attention: MHPA one-percent cost exemption notice.

For notices to the Department of Labor, plans should mail the notice to: Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: MHPA one-percent cost exemption notice.

For notices to the Department of Health and Human Services, plans should mail the notice to: Health Care Financing Administration, 7500 Security Boulevard, Baltimore, MD 21244-1850; Attention: Insurance Standards: Exemptions.

Finally, to claim the one percent increased cost exemption, a plan (or issuer) must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information

described in paragraph (f)(4). An individual who is not a participant or beneficiary and who presents a notice described in paragraph (f)(3)(i) is considered to be a representative. For this purpose, individually identifiable information in the notice may be redacted. The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with parity, and the administrative expenses attributable to complying with the parity requirements. In no event should a summary of information include individually identifiable information.

Civil money penalties as described in regulations at 45 CFR 146.184(d) apply to an issuer or nonfederal governmental plan that fails to satisfy the requirements of paragraph (f).

3. MHPA's Effective Date and Sunset Provision

The MHPA provisions are generally effective for group health plans (and health insurance issuers offering health insurance coverage in connection with a group health plan) for plan years beginning on or after January 1, 1998. MHPA includes a sunset provision under which the MHPA requirements do not apply to benefits for services furnished on or after September 30, 2001.

However, for requirements of this section other than the one-percent increased cost exemption, the interim rules provide a limitation on enforcement actions in paragraph (h)(2). Under that paragraph, no enforcement action can be taken by any of the Secretaries against a group health plan (or issuer) that has sought to comply in good faith with the requirements of section 9812 of the Code, section 712 of ERISA, and section 2705 of the PHS Act with respect to a violation that occurs before the earlier of the first day of the first plan year beginning on or after April 1, 1998, or January 1, 1999. Compliance with the requirements of the interim rules is deemed to be good faith compliance with the requirements of section 9812 of the Code, section 712 of ERISA, and section 2705 of the PHS Act.

With respect to the increased cost exemption, the interim rules provide in paragraph (h)(3) a transition period for compliance with the requirements of

paragraph (f). Under paragraph (h)(3), no enforcement action will be taken against a group health plan (or issuer) that is subject to the MHPA requirements prior to April 1, 1998 solely because the plan has claimed the increased cost exemption under section 9812(c)(2) of the Code, section 712(c)(2) of ERISA, or section 2705(c)(2) of the PHS Act based on assumptions inconsistent with the rules under paragraph (f) of the interim rules, provided that the plan is amended to comply with the parity requirements no later than March 31, 1998 and the plan complies with the notice requirements in paragraph (h)(3)(ii).

A group health plan satisfies this transition period notice requirement only if the plan provides notice to the applicable federal agency and posts such notice at the location(s) where documents must be made available for examination under section 104(b)(2) of ERISA and the regulations thereunder (§ 2520.104b-1(b)(3)). The notice must indicate the plan's intent to use the transition period by 30 days after the first day of the plan year beginning on or after January 1, 1998, but in no event later than March 31, 1998. For a group health plan that is a church plan, the applicable federal agency is the Department of the Treasury. For a group health plan that is subject to Part 7 of Subtitle B of Title I of ERISA, the applicable federal agency is the Department of Labor. For a group health plan that is a nonfederal governmental plan, the applicable federal agency is the Department of Health and Human Services. In all cases, the notice must include the date; the name of the plan and the plan number; the name, address, and telephone number of the plan sponsor or plan administrator; the employer identification number (in the case of single-employer plans only); the individual to contact for further information; the signature of the plan administrator; and the date signed. In addition, the notice must be provided at no charge to participants and beneficiaries (or their representatives) within 15 days after receipt of a written or oral request for such notification, but in no event does the notice have to be provided before it has been sent to the applicable federal agency. For this purpose, plans may use the following model:

BILLING CODE 4830-01-P; 4510-29-P; 4210-01-P

NOTICE OF GROUP HEALTH PLAN'S USE OF TRANSITION PERIOD

*** IMPORTANT — This notice is required to be provided if a group health plan uses the transition period under the requirements of the Mental Health Parity Act (MHPA). Under MHPA, a group health plan offering both medical/surgical and mental health benefits generally can no longer set annual or aggregate lifetime dollar limits on mental health benefits that are lower than any such dollar limits for medical/surgical benefits. In addition, a plan that does not impose an annual or aggregate lifetime dollar limit on medical/surgical benefits generally may not impose such a limit on mental health benefits. However, a group health plan can claim an exemption from these requirements if the plan's costs increase one percent or more due to the application of MHPA's requirements. Under MHPA, a plan that claims the one percent increased cost exemption prior to the issuance of the MHPA interim regulations based on assumptions inconsistent with the MHPA interim regulations may delay compliance with the parity requirements of MHPA until a date no later than March 31, 1998.**

This notice is to inform you that the plan is utilizing the MHPA transition period and that the plan is delaying compliance with the parity requirements of MHPA until a time no later than March 31, 1998.

1. Name of the group health plan and the plan number (PN): _____

2. Name, address, and telephone number of plan administrator responsible for providing this notice:

3. For single-employer plans, the name, address, telephone number, (if different from Line 2), and employer identification number (EIN) of the employer sponsoring the group health plan:

4. For further information, call: _____

5. Signature of plan administrator: _____ Date: _____

The Secretaries have designated the following addresses for delivery of the notices: For notices to the Department of the Treasury, plans should mail the notice to: Office of the Assistant Commissioner, Examination, Examination Programs CP:EX:E, 1111 Constitution Avenue, NW., Washington, DC 20224; Attention: MHPA transition period notice.

For notices to the Department of Labor, plans should mail the notice to: Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: MHPA transition period notice.

For notices to the Department of Health and Human Services, plans should mail the notice to: Health Care Financing Administration, 7500 Security Boulevard, Baltimore, MD 21244-1850; Attention: Insurance Standards: Exemptions.

C. Interim Rules and Request for Comments

Section 9833 of the Code (formerly section 9806), section 734 of ERISA (formerly section 707), and section 2792 of the PHS Act provide, in part, that the Secretaries of the Treasury, Labor, and Health and Human Services may promulgate any interim final rules as they determine are appropriate to carry out the provisions of Chapter 100 of Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Part A of Title XXVII of the PHS Act, including the MHPA provisions.

Under Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

These rules are being adopted on an interim final basis because the Secretaries have determined that without prompt guidance some members of the regulated community may not know what steps to take to comply with the MHPA requirements, which may result in an adverse impact on participants and beneficiaries with regard to their mental health benefits under group health plans and the protections provided under MHPA. Moreover, MHPA's requirements will affect the regulated community in the immediate future.

MHPA's requirements are effective for all group health plans and for health insurance issuers offering coverage in connection with such plans for plan years beginning on or after January 1,

1998. Plan administrators and sponsors, issuers, and participants and beneficiaries, will need guidance on the new statutory provisions before MHPA's effective date. As noted earlier, these interim rules take into account comments received by the Departments in response to the request for public comments on MHPA published in the **Federal Register** on June 26, 1997 (62 FR 34604). For the foregoing reasons, the Departments find that the publication of a proposed regulation, for the purpose of notice and public comment thereon, would be impracticable, unnecessary, and contrary to the public interest.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires an agency to publish a regulatory flexibility analysis describing the impact of a proposed rule which the agency determines would have a significant impact on a substantial number of small entities. The RFA requires that the agency present an initial regulatory flexibility analysis and seek public comment on its analysis when the agency publishes a general notice of proposed rulemaking (NPRM) under section 553 of the Administrative Procedures Act (5 U.S.C. 553 *et seq.*) (APA). Under the RFA, small entities include small businesses, non-profit organizations and governmental agencies. For our purposes, under the RFA, States and individuals are not considered small entities. However, small employers and small group health plans are considered small entities.

Since these rules are issued as interim final rules, and not as an NPRM, a formal regulatory flexibility analysis has not been prepared. Nonetheless, in the discussion below on the rule's impact on the regulated community, the Departments present an analysis addressing many of the same issues otherwise required by the RFA, including the likely impact of the interim rule on small entities, and a discussion of regulatory alternatives considered in crafting the rule. The Departments invite interested persons to submit comments for consideration in the development of the final rules implementing the MHPA. Consistent with the RFA, the Departments encourage the public to submit comments that accomplish the stated purpose of the MHPA and minimize the impact on small entities. Specifically, we welcome comments addressing the impact of the MHPA's 1 percent cost exemption for plans and issuers that can demonstrate that implementation of the parity rules would raise their

expenditures by more than one percent. We also welcome comments addressing the operation of the MHPA provision requiring that plans using differential aggregate lifetime or annual limits for various categories of benefits use a weighted average of such differential limits to calculate the overall aggregate lifetime and annual limits for the plan.

E. Executive Order 12866—Departments of Labor and Health and Human Services

The Office of Management and Budget has determined this rule to be a major rule, as well as an economically significant regulatory action under Section 3(f) of Executive Order 12866. The following analysis fulfills the requirement under the Executive Order to assess the economic impact of major and economically significant regulatory actions.

Executive Order 12866 requires agencies to assess the costs and benefits of available regulatory alternatives, and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Section 3(f) of the Executive Order 12866 requires agencies to prepare a regulatory impact analysis for any rule which is deemed a "significant regulatory action" according to specified criteria, including whether the rule may have an annual effect on the economy of \$100 million or more or certain other specified effects; or whether the rules raise novel legal or policy issues arising out of the President's priorities.

This analysis was conducted by the Departments of Labor and Health and Human Services. It discusses the economic impact of the MHPA, which this rule implements, with special emphasis on the one percent cost exemption. It quantifies the number of plans and individuals who might be affected by the exemption rule, illustrating the exemption's effect in the context of other statutory MHPA provisions. It separately considers the impact of regulatory discretion exercised by the Departments in connection with this rule.

a. Overall Impact of the MHPA

In general, the MHPA may have both direct and indirect effects on group health plans, plan sponsors, and plan participants. Direct effects may include broader coverage of mental health treatments and associated increases in mental health benefit payments. Indirect effects may include the steps employers who sponsor plans may take to reduce

or offset their expenditures attributable to compliance with the MHPA, such as amending, curtailing or dropping mental health benefits or other components of compensation, as well as participants' responses to any expenditure increases that are passed to them.

Direct Effects

The most direct effect of the MHPA is broader health insurance coverage for mental health treatment. In many health plans, mental health coverage is more restrictive than medical/surgical coverage due to lower annual and/or lifetime dollar limits, more restrictive limits on visits and stays, and other plan provisions. For example, a recent survey of employee benefit plans by Hay/Huggins illustrates the differences in plan terms and lower dollar limits of mental health services and medical/surgical services. The survey reported that indemnity plans typically impose a lifetime limit of \$50,000 for mental health benefits. On the other hand, medical/surgical benefits of a typical indemnity plan provide a lifetime limit of \$1,000,000.

Requiring fuller coverage of mental health treatment will increase mental health benefit payments and associated plan expenditures. Some of this increase will be paid by plan sponsors, and some will be paid by participants in the form of increased premiums and/or reductions in other compensation. Aside from any increased administrative costs involved, these plan expenditure increases generally represent one side of transfer payments rather than erosion in overall social welfare. In other words, additional plan expenditures arising from the MHPA are balanced by additional benefits paid for mental health services. One result will be that some money that would have been spent on other goods or services will be spent instead on mental health services.

The direct effects of the MHPA will in turn cause other effects due to subsequent responses by affected employers (in their capacity as plan sponsors) and participants.

Indirect Effects of the MHPA

There are numerous ways in which plan sponsors affected by the MHPA might react. Some might take no action other than to remove or increase dollar limits on mental health benefits. Others might make other changes to their mental health benefits in order to reduce or offset expenditure increases from compliance with MHPA. The statute explicitly preserves plan sponsors' right to provide no mental health benefits, or to set the "terms and

conditions (including cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits," except with respect to annual or lifetime dollar limits. Some plan design options would be associated with lower plan expenditure increases from compliance with the MHPA. The statute also provides an "increased cost exemption" under which the statute "shall not apply" if its application "results in an increase in the cost . . . of at least 1 percent" (ERISA Section 712(c)(2)). Plan sponsors' responses to the MHPA may lessen their expenditures associated with compliance; that is, their responses may reduce the amount of transfers arising from the MHPA.

For example, many mental health plans currently have non-dollar limits. According to the U.S. Bureau of Labor Statistics, among full-time participants at private establishments with 100 or more employees in 1993, 55 percent were subject to separate day limits for inpatient mental health treatment, and 43 percent were subject to separate visit limits for outpatient mental health treatment (U.S. Bureau of Labor Statistics, *Employee Benefits in Medium and Large Private Establishments, 1993*). Plans that impose non-dollar limits on mental health benefits may face smaller expenditure increases from the MHPA.

Many plans currently subject mental health benefits to separate cost sharing provisions. Among full-time participants in medium and large private establishments in 1993, 15 percent were subject to separate coinsurance rates and 4 percent were subject to separate copayment rates for inpatient mental health care, while 53 percent and 18 percent were respectively subject to separate coinsurance and copayment rates for outpatient mental health care. Cost sharing generally affects plan expenditures in two ways. First, by shifting some payments for services to participants, cost sharing directly reduces the expenditures borne by plans. Second, by increasing the price of services faced by participants, cost sharing reduces the quantity of services that participants demand. Because of both of these mechanisms, plans that have more cost sharing for mental health benefits will not be impacted as much by the MHPA as plans that have parity in cost sharing.

Many plans use HMO-style management techniques to control mental health benefit expenditures. Plans that have HMO-style mental health "carve-outs" but no mental

health limits are likely to pay less for mental health benefits than fee-for-service plans with low dollar limits that are impermissible under the MHPA. For example, a FFS plan with utilization review and an annual mental health limit of \$10,000 averages \$6.51 per member per month, while an unlimited "carve out" plan pays \$6.12, according to a Price Waterhouse LLP actuarial model developed for the Departments based on the same data as above.

There are a number of reasons why the permissible plan designs outlined here should have little negative effect on existing mental health coverage. First, the modest expenditure increases necessitated by the MHPA would be unlikely to prompt many major design changes. As noted below, approximately 10 percent of affected plans will face increased expenditures under the MHPA of at least one percent, according to the Price Waterhouse, LLP analysis conducted for the Departments. Only 4 percent of affected plans are expected to be faced with increases from the MHPA of 1.5 percent or more, according to the same analysis. Second, the largest expenditure increases and therefore the most aggressive responses will be associated with plans that have the tightest dollar caps today—that is, with plans that would have provided the most restrictive coverage anyway.

Other effects resulting from the MHPA may include plan sponsors dropping mental health coverage altogether, or dropping or curtailing other health benefits or components of compensation. Such curtailments could include shifting some of the cost of benefits to employees, for example in the form of increased participant premium contributions for health benefits. Participants, in turn, might respond to premium increases by dropping their health benefits or electing less expensive plans. As with plan sponsor amendments to mental health benefits, such responses by plan sponsors and participants are expected to be modest and/or rare, given the generally small direct effects of the MHPA on plan expenditures.

b. Review of Quantitative Estimates

The Congressional Budget Office (CBO) estimated that the MHPA's direct effect would be to increase health plan expenditures by 0.4 percent on aggregate. (See Congressional Budget Office, "CBO's Estimates of the Mental Health Parity Amendments to the VA/ HUD Appropriation Bill, as Passed in the Senate," September 10, 1996.) This assumes that plan sponsors make no changes to their plans other than to raise or eliminate dollar limits on mental

health benefits consistent with the MHPA's parity requirements. However, some plan sponsors may make other changes to their plans in order to reduce or offset the impact of the MHPA on their expenditures. For example, some plan sponsors might amend, curtail, or drop mental health benefits or health benefits in general. Taking into account the likely incidence of such plan sponsor responses to the MHPA, CBO estimated that the true aggregate increase in health plan expenditures attributable to the MHPA would only be 0.16 percent.

Combining these figures with those from an earlier CBO analysis, the Departments calculate that, in dollar terms, the total annual direct impact of the MHPA would be to increase aggregate health plan expenditures by \$1.16 billion, not accounting for plan sponsor responses to reduce that impact. Accounting for those responses, the actual increase in annual aggregate health plan expenditures would be \$464 million. It should be noted that these figures do not account for the MHPA's increased cost exemption, its exemption of firms with 50 or fewer employees, the incidence of managed care plans whose added cost under the MHPA would be smaller than those of managed fee for service plans, or for plans that are separately subject to state requirements equal or greater than the MHPA's. The Departments' estimates, reported below, incorporate these adjustments.

CBO also reports the Joint Committee on Taxation's estimate that the MHPA will reduce federal revenues by \$560 million over six years. CBO explains that most of the 0.16 percent increase in plan expenditures would be shifted back to employees as lower pay, thus eroding the income and payroll tax bases. On an annual basis, the MHPA would increase expenditures for federal annuitants' health benefits by \$30 million, CBO reports. Finally, the MHPA's impact on nonfederal governmental entities would amount to \$50 million, while its impact on the private sector would probably exceed \$100 million, according to CBO.

The CBO estimates were based on a typical fee-for-service indemnity plan with customary management techniques to control expenditures, and not on plans with other types of delivery systems, such as Health Maintenance Organizations (HMOs), Preferred Provider Organizations (PPOs), or Point-of-Service (POS) plans. In fact, plans using different delivery systems will face different expenditure increases under the MHPA. For example, HMOs, which typically contract with health care providers at discounted rates and

tightly manage utilization, will face smaller increases under the MHPA.

Coopers & Lybrand (C&L) also estimated the impact of the MHPA (Ronald E. Bachman, "An Actuarial Analysis of S. 2031, The Mental Health Parity Act of 1996," prepared for the American Psychological Association. Coopers & Lybrand LLP, September 1996). C&L estimated that the MHPA would increase plan expenditures by 0.12 percent per plan on average before taking into account any responses by plan sponsors. Taking plans sponsors' responses into account and using the same response assumption as CBO, C&L estimated that plan expenditures would increase by less than 0.05 percent. In dollar terms, these increases would amount to \$348 million and \$139 million respectively.

Unlike CBO, C&L considered four different delivery systems: fee-for-service with standard utilization review on typical medical services, fee-for-service with specialized mental health utilization review, PPO and POS plans with specialized mental health utilization review, and HMO and carve-out mental health plans. Under each delivery system, C&L also considered a variety of annual dollar limits ranging from \$10,000 to unlimited amounts, rather than assuming that all plans in the delivery system provided the same level of benefits.

The Departments performed additional quantitative analysis, generally analogous to CBO's, in the course of assessing the impact of the regulatory discretion reflected in this rule. The additional analysis suggests that the direct impact of the MHPA, not accounting for plan sponsors' responses, would be to increase annual aggregate health plan expenditures by 0.29 percent or \$653 million. Under CBO's assumption regarding plan sponsor responses to reduce the added expenditure, actual added expenditures would amount to \$261 million. The Departments did not attempt to independently quantify such responses. However, the Departments estimate that if all plans eligible for the one percent cost exemption exercise it, the increase in plan expenditures would be reduced from 0.29 percent to 0.14 percent or \$310 million. The Departments' analysis is detailed below.

c. Exercise of Regulatory Discretion

One Percent Cost Exemption

The main area in which the agencies exercised regulatory discretion is in connection with the one percent cost increase exemption. Alternative regulatory interpretations can impact

the outcome of the number of plans, firms, policyholders, and covered lives that would be exempted from the MHPA.

The Departments considered options concerning the interpretation of the one-percent cost exemption and how it should be implemented. In general, they considered (1) whether the eligibility for the exemption should be determined retrospectively or prospectively, and what, if any, rules should be established with respect to how eligibility should be determined, (2) whether eligibility should be contingent on affirmative approval from an enforcement agency or simply subject to possible review by such an agency, and (3) whether plan sponsors electing exemptions should be required to notify participants and/or enforcement agencies of this action and/or to disclose to these parties evidence documenting eligibility for the exemption. They also considered the administrability of each option, seeking to balance the costs and benefits to plans and participants, as well as the benefits and burdens of the regulatory scheme on the federal government.

Retro/prospective Determination

The options considered ranged from a purely retrospective interpretation to a purely prospective one, and included intermediate interpretations that blend these two approaches.

Under a purely retrospective interpretation, the one percent increased cost exemption would be based on actually incurred expenditures increases, measured retrospectively after implementation of the statute. In other words, all plans must comply and provide parity of annual and/or lifetime dollar limits of mental health and medical services for the first year beginning with the start of a plan year on or after January 1, 1998. If during the first year, a plan experiences increases in expenditures equal to one percent or more as a result of complying with the statute, that plan would then be eligible to exercise an exemption from the MHPA for subsequent plan years.

The calculation for determining the percent increase would be based on the ratio of the increase in plan expenditures to the total plan expenditures, that is, both medical and mental health expenditures. For self-insured plans, the numerator would be the actual value of mental health claims paid in excess of the previous plan limits. For example, if the annual mental health limit were \$10,000 and the medical/surgical were \$1,000,000, then the sum of all mental health claims paid in excess of \$10,000 would be included in the numerator of the ratio

used for that plan in calculations related to the one percent exemption. The denominator for self-insured plans would be the total value of medical and mental health claims excluding mental health claims in excess of \$10,000. If the result is an increase of one or more percent, the plan would be exempt from complying with the statute in any other year until the statute sunsets in 2001. Because there is a lag between the time that claims are incurred and the time they are reported, complete data needed for the calculation might not be available until three or six months after the end of the first plan year under the MHPA. With respect to fully insured plans, the calculation would be slightly different. To the extent that different plans' experiences are pooled for purposes of setting premiums, their eligibility for the exemption would depend on their pooled experience under MHPA, rather than on each plan's individual experience.

The purely retrospective interpretation would minimize the availability of the exemption, and therefore might result in both the greatest incidence of parity in lifetime and annual dollar limits and the greatest incidence of other plan actions to reduce or offset the increase in expenditures arising from the MHPA. It would also assure that all plan elections to exercise the one percent increased cost exemption are based on actual experience under the MHPA's parity requirements and not on projections or estimates of such experience.

Under a purely prospective interpretation, a plan would be eligible for the exemption prospectively if its expected additional expenditures from the MHPA act equaled or exceeded one percent of its expected total expenditures absent the MHPA. A self-insured plan would project these figures, relying on available data and actuarial projection methods. A fully insured plan would compare legitimate premium quotes with and without the exemption to determine if the difference equals or exceeds one percent. The purely prospective interpretation would maximize the availability of the exemption, and therefore might result in both the least incidence of parity in lifetime and annual dollar limits and the least incidence of other plan actions to reduce or offset expenditure increases arising from the MHPA.

Other interpretations were also considered, some closer to a purely retrospective interpretation and others closer to a purely prospective one. For example, one interpretation might allow plans to prospectively determine their eligibility and exercise the exemption,

but only based upon a narrowly constrained analysis of their own prior experience, taking into account only the potential added expenditure from the MHPA associated with participants whose past mental health claims reached or nearly reached MHPA-prohibited dollar limits. Interpretations closer to the purely retrospective view would lessen the availability of the exemption, and therefore might result in both greater incidence of parity in lifetime and annual dollar limits and lesser incidence of other plan actions to reduce or offset expenditure increases arising from the MHPA; those closer to the purely prospective view would do the opposite.

The approach adopted under this rule, referenced above, can be characterized as modified retrospective approach, based on a relatively brief base period. It is intended to assure the accurate measurement of increased costs while minimizing the burden on plan sponsors who wish to exercise the exemption as soon as accurate measurements can be made. It also assures that all plan elections to exercise the one percent increased cost exemption are based on actual experience under the MHPA's parity requirements and not on projections or estimates of such experience. The rule eases compliance burdens by providing a transition period under which certain plans whose plan years begin during the first quarter of 1998 can exercise the exemption until April 1, 1998.

Exemption Authority

This rule provides that plans may determine their own eligibility for the exemption and, if eligible, exercise the exemption, without affirmative approval from any enforcement agency.

Notification and Disclosure

The Departments also exercised discretion in requiring notice and disclosure in connection with the one percent increased cost exemption. The rule requires plans exercising the one percent increased cost exemption during all or part of the first quarter of 1998 under the rule's transition provisions to notify the federal government, and to post a copy of this notice at the workplace. It further requires plans otherwise exercising the exemption to notify participants and the federal government, and to disclose on request to these parties summary documentation of the plans' eligibility for the exemption.

Notifications and disclosures will be of benefit to participants. They will help assure plans' compliance with the MHPA, and will promote participants'

understanding of their and their plans' status under the MHPA. Moreover, by promoting participants' understanding, notifications and disclosures will inform participants' choices among plans and their feedback to plan sponsors, thereby fostering more vigorous competition among plan sponsors and issuers to provide benefits attractive to participants at competitive prices. The cost of these notifications and disclosures is outlined below.

Weighted Average Limits

The Departments also exercised discretion in developing rules that specify when plans may impose separate dollar limits on mental health benefits equal to the weighted average of limits imposed on other benefit categories, and in how this weighted average may be calculated. In general, the rules provide that such mental health limits may be imposed if the benefit categories to which separate limits apply account for at least one-third of total plan expenditures and are comparable in scope to mental health benefits. The average is calculated by weighting each applicable limit to reflect its share of total plan expenditures. Any unlimited categories are figured into the average by using in place of a limit a reasonable estimate of the maximum plan expenditure that could possibly be incurred in connection with all such categories, and weighting this estimate to reflect the proportion of total plan expenditures attributable to all such categories.

Alternative rules might have permitted more, fewer, or different plans to impose such limits on mental health benefits, and/or resulted in calculated averages that were higher or lower. For example, if unlimited categories were treated as having infinite limits, then the weighted average of category limits would equal infinity and the option of imposing a weighted average limit on mental health benefits effectively would be foreclosed. In contrast, if limits applicable to benefit categories narrower in scope than mental health benefits could be averaged to arrive at the permissible mental health limit, plans might be able to impose very low limits on very narrow benefit categories, with little effect on coverage of these categories but with the result of a lower permissible mental health benefit limit.

d. Impact of Regulatory Discretion

Because the Departments exercised regulatory discretion in connection with the one percent cost exemption, it is necessary to quantify the number of plans eligible for the exemption. This

requires both estimates of the affected universe and estimates of the distribution of impacts within that universe. CBO reported universe estimates but did not estimate the distribution of impacts. C&L provided a distribution but not universe estimates. Thus, neither source provides the necessary basis for estimating the reach of the one percent cost exemption. To address this gap, the Departments, assisted by Price Waterhouse LLP, combined the CBO and C&L analyses with other data to produce relevant national estimates, as follows.

First, the Departments estimated the relevant universe at 3.0 million plans sponsored by 2.8 million employers covering 145 million individuals. To derive these estimates, we tallied the number of group health plan policyholders and dependents by firm size from the Census Bureau's March 1996 Current Population Survey. Census enterprise data provided average firm sizes in each size category, allowing us to estimate the number of employers covering these individuals. KPMG Peat Marwick's 1997 survey provided the average number of plans per firm in each size group, supporting estimates of the number of plans. Data from the Bureau of Labor Statistics' Employee Benefits Survey and the Health and Retirement Study provided a proportionate breakdown of plans and individuals in each firm size group across plan types (HMO, PPO, and fee for service). Likewise, data from KPMG and Foster Higgins surveys were used to divide insured from self-insured plans.

Second, the Departments narrowed the focus to plans affected by the MHPA. Approximately 296,000 plans, sponsored by 136,000 employers and covering 113 million individuals, would be directly affected by the MHPA. This excludes firms with fewer than 50 employees (which are exempt under ERISA Section 712 (c)(1)), plans already covered by state mandates to provide parity in annual and lifetime dollar limits (based on C&L and Hay Huggins reports of the incidence of differential limits—roughly 29,000 plans were excluded here), and insured plans in 13 states that, independent of the MHPA, as of January 1, 1998 will require parity equivalent to or surpassing that required by the MHPA. (Those 13 states are: Indiana, Maryland, Minnesota, Montana, Arkansas, Colorado, Connecticut, Maine, Missouri, New Hampshire, North Carolina, Rhode Island, and Texas.) Some of the plans identified here as affected may not be affected. The MHPA permits self-insured nonfederal governmental plans to opt out of compliance. This includes

roughly 22,000 plans covering about 18 million individuals. It also exempts plans whose costs increase by one percent or more, as enumerated below.

Third, the Departments estimated the overall impact of the MHPA as follows: affected plans' potential increases in mental health expenditures under the MHPA equal \$653 million, or 0.29 percent of affected plans' \$226 billion in total expenditures. (The 0.29 percent figure is benchmarked to CBO's estimate that the average cost increase for indemnity plans would be 0.4 percent, but it is adjusted to reflect C&L's assessment of the relative magnitude of cost increases for different plan types. The \$226 billion figure is benchmarked to CBO's \$290 billion universe, but reduced proportionately to reflect the Department's estimate of the proportion of the total universe that is affected by the MHPA.) Under CBO's assumption regarding plan sponsor actions to reduce the added expenditure, actual added expenditures would amount to \$261 million. Expenditures could be smaller still as a result of self-insured nonfederal governmental plans' right to opt out of compliance and the MHPA's one percent increased cost exemption, which are not accounted for in the foregoing estimates. Recall also that these expenditures represent transfer payments and not social costs.

One Percent Cost Exemption

The effect of this rule will be to prohibit all covered plans from imposing annual or lifetime dollar limits on mental health benefits that are lower than limits imposed on medical and surgical benefits during at least seven months of the first plan year beginning on or after January 1, 1998. Specifically, after six months, the rule permits plans to exercise an exemption as soon as they document a cost increase of one percent or more and provide 30 days notice to participants and the federal government.

Exactly when a given plan will become eligible to elect the one percent increased cost exemption will depend on the timing of its increased costs and its documentation of those costs. In many cases, plans' increased costs under the MHPA will not equal or exceed one percent until more than the initial six months have elapsed. For example, added costs from the MHPA's provision restricting the use of annual dollar limits on mental health benefits would likely be concentrated late in the plans year, when some participants would otherwise have reached these limits. In addition, plans that utilize this rule's transition period may not be affected by the MHPA's provisions until

after the first three months of the plan year have elapsed. Therefore, these may be less likely to incur added costs of one percent or more until later in the plan year, or until a subsequent plan year (in which they would be affected by the MHPA beginning on the first day of the plan year).

Whether eligible plans wishing to reduce the direct impact of the MHPA will opt to pursue the exemption or opt for alternative responses will depend on each plan's particular circumstances and priorities.

The Departments estimated the number of affected plans with potential increases of at least one percent. Roughly 30,000 plans, or about 10 percent of a plans affected by MHPA, potentially would be eligible for the one-percent increased cost exemption. That is, all else being equal, complying with the MHPA would increase 30,000 plans' expenditures by at least one percent. These plans cover about 5 million policyholders and 11 million individuals. This is the universe potentially affected by the provisions of this rule that address the one percent increased cost exemption.

In assessing the impact of this rule, the Departments considered the economic consequences of its provisions implementing the one percent cost exemption. Several factors are likely to affect the magnitude of those consequences.

First, under any interpretation, only 10 percent of MHPA-affected plans (or 30,000 plans) could become eligible for the exemption, and only some of those would elect to exercise it. The estimated 30,000 plans that would become eligible for the one-percent cost exemption represents the upper limit of the number of plans that would actually exercise the exemption. Many of the potentially eligible plans are likely to forego the exemption in favor of other permitted actions. A survey of 300 large firms conducted by William M. Mercer, Inc., found that fewer than 2 percent intended to pursue the one percent increased cost exemption. Extrapolated to the Departments' estimated plan universe, this suggests that 6,000 plans, or 22 percent of the 30,000 that are potentially eligible, would pursue the exemption.

Second, expenditure increases from the MHPA will generally be modest, even for plans potentially eligible for the one percent cost exemption. Their potential expenditure increase would be \$332 million on a base of \$23 billion in total expenditures, or 1.47 percent overall.

Third, as noted above, plans can be designed in ways that lessen these expenditure increases.

Fourth, the 2,215 self-insured nonfederal governmental plans that might become eligible for the one percent cost exemption are separately permitted to opt out of the MHPA entirely, thereby exercising an alternative exemption with equivalent effect. These plans cover 1.8 million individuals, or 16 percent of individuals in potentially eligible plans.

Fifth, the estimates presented in this analysis are conservative; actual expenditures arising from compliance with the MHPA are likely to be less than reported here. In particular, the estimates may understate the reach and cost-effectiveness of managed mental health programs that will exist during the years that the MHPA is in effect (See Roland Sturm, "How Expensive is Unlimited Mental Health Care Coverage Under Managed Care?" *JAMA*, Nov. 12, 1997—Vol. 278 No. 18).

Sixth, because plan expenditure increases under the MHPA (aside from increases in administrative expenses) are transfers, the availability and use of the exemption does not change aggregate social welfare. However, the availability and use of the exemption does affect the size and incidence of transfers across affected parties.

Finally, this rule preserves the availability of most of this savings under the one percent exemption—certain eligible plans are permitted to exercise the exemption after seven months, thereby operating under the exemption for up to 38 of the 45 months during which the MHPA is in effect.

This rule also requires certain notices and disclosures by plans exercising the one percent increased cost exemption. The Departments undertook to estimate the paperwork burdens associated with these provisions, as well as the burden associated with determining whether a plan is eligible for the exemption. These estimates are summarized below.

The estimates reported immediately below are for all plans affected by the notice and disclosure provisions of this rule. The Paperwork Reduction Act (PRA) analysis that follows is presented separately for affected private-sector plans and for plans sponsored by nonfederal governmental employers, which are under the jurisdictions of the Departments of Labor and of Health and Human Services, respectively.

With respect to the notice to participants and beneficiaries and to the federal government by plans exercising the one percent cost exemption, the maximum possible number of such notices is approximately 5.0 million

(reflecting all plans potentially eligible to elect the exemption), while a more likely figure is 1.1 million (reflecting the Mercer survey cited above). Assuming each notice requires 2 minutes of labor at \$11 per hour, plus \$0.50 for postage and materials, total costs would amount to up to \$4.3 million or more probably \$931,000. (These assumptions reflect plans' ability to satisfy this notice requirement through the provisions of a separately required summary of material modifications, as well as availability of a model notice to the government, which together essentially eliminate separate preparation burdens under this requirement and help minimize ongoing burdens.)

With respect to requirement for group health plans to notify the federal government of use of the transition period, and to post these notices in the workplace, only those plans whose plan years begin during the first three months on 1998 and who are potentially eligible for the one percent cost exemption are potentially affected by this provision. These notices would be filed and posted within 30 days or less of the beginning of the plan year, so all would be filed in 1998. Based on annual reports filed with the Department of Labor, the Departments estimate that 60 percent of all eligible plans, accounting for 72 percent of participants in such plans, begin their plan years during these months. This amounts to 18,000 plans, representing the maximum number of notices that would be filed. Extrapolating from the Mercer survey cited above, about 4,000 of these plans might intend to pursue the exemption, representing a more probable number of notices to be filed. Applying the same per unit cost assumptions as above to the filing and posting of these notices, the cost of these notices would be no more than \$8,000 and more likely \$2,000. These assumptions reflect the availability of a model notice, the use of which eliminates preparation costs and helps minimize ongoing burdens.

With respect to the requirement for plans to disclose on request summary information documenting the plan's eligibility for the one percent increased cost exemption, the number of such disclosures will depend on the volume of requests. One might expect requests to arise most commonly when participants are at or near plans' dollar limits. Hay Huggins estimates for the Congressional Research Service (See Roland Sturm, "How Expensive is Unlimited Mental Health Care Coverage Under Managed Care?" *JAMA*, Nov. 12, 1997—Vol. 278 No. 18) suggest that 0.73 percent of participants on average incur mental health claims of more than

\$10,000—a typical annual limit—in a given year. The Departments adjusted this figure to reflect the estimated relationship between increased expenditures under the MHPA for plans eligible for the one percent increased cost exemption and increased expenditures under the MHPA for all affected plans, concluding that 3.74 percent of participants in plans eligible for the one percent increased cost exemption incur claims of more than \$10,000 in a given year. Assuming that this proportion of participants in plans electing the exemption request disclosures, the maximum number of such disclosure requests would be 186,000, while a more probable figure would be 40,000. Given the same per unit cost assumptions as above, the associated costs would be \$161,000 and \$35,000, respectively.

Finally, with respect to plan determinations of eligibility for the one percent increased cost exemption, the Departments expect that plans wishing to exercise the one percent increased cost exemption or their service providers will revise their automated claim record systems to facilitate calculation of the plans' increased costs attributable to the MHPA. The number of plans performing such functions in-house that might wish to exercise the exemption is estimated to be no more than 5,346 and more probably 1,142. The number of service providers (including health insurance issuers and third party administrators) that will perform this function for plans that wish to exercise the exemption is estimated to be 1,770 (including 400 third party administrators, 650 health insurers, 645 HMOs, and 75 Blue Cross Blue Shield organizations). Assuming a start up cost of \$5,000 per affected entity, the total start-up cost associated with determining plans' eligibility to exercise the exemption amounts to \$14.6 million to \$35.6 million, to be amortized over 10 years beginning in 1998.

The estimates of the numbers and costs of notices, disclosures and calculations reported above, and below in connection with the Paperwork Reduction Act, may be high with respect to nonfederal governmental plans. An estimated 2,215 self-insured nonfederal governmental plans might become eligible for the one percent cost exemption. These plans are separately permitted to opt out of the MHPA entirely, thereby exercising an alternative exemption with equivalent effect, and without becoming subject to the calculation, notice, and disclosure requirements. These plans cover 1.8

million individuals, or 16 percent of individuals in potentially eligible plans.

Weighted Average

The economic impact of the Departments' exercise of discretion in the weighted average rule is also expected to be modest.

First, separate limits for benefit categories other than mental health are not very common. For example, among full-time employees at establishments with 100 or more employees participating in non-HMO group health plans in 1993, only a fraction were subject to separate limits for many major benefit categories. For example, just 14 percent were subject to separate limits for inpatient surgery, just 13 percent were subject to such limits for outpatient surgery, and only about one in four were subject to separate limits for both inpatient and office physician visits (U.S. Bureau of Labor Statistics, *Employee Benefits in Medium and Large Private Establishments, 1993*). "Separate limits" in this context include not only dollar limits, but also non-dollar limits, such as inpatient day or outpatient visit limits, as well as differential coinsurance rates, copayments, or deductibles. Therefore, the proportion with separate dollar limits that would permit imposition of a weighted average limit on mental health benefits would be even smaller. In addition, such separate limits are even less common in HMOs.

Second, discretion exercised in the weighted average rule affects plans' ability to impose weighted average limits on mental health benefits only at the margin. In other words, compared with the approach set forth in the rule, alternative approaches would have increased or decreased the proportion of plans that are able to impose weighted average limits and the dollar level of calculated averages by only a small amount.

Third, not all plans that are permitted to impose weighted average limits on mental health benefits will elect to do so.

Fourth, some plans that under the rule are not permitted to impose weighted average limits on mental health benefits, under an alternative approach, might have been permitted to impose only a relatively high limit. As such, their expenditure increases from the MHPA might have been nearly the same with a weighted average limit on mental health benefits as with no separate limit on such benefits.

Consider a plan with a \$500,000 annual cap on all inpatient care and a \$250,000 annual cap on all outpatient care, and a \$25,000 annual cap on mental health

benefits. Under the interim rules, such a plan could not impose a weighted average limit on mental health benefits. Any separate limit on mental health care would have to be at least \$750,000, or at least \$500,000 for inpatient care and at least \$250,000 for outpatient care. Had the plan been permitted to impose a weighted average cap, however, it still would have been required to increase its mental health cap from \$25,000 to some amount between \$250,000 and \$500,000, depending on the weights.

Finally, as with the one percent cost exemption and with the MHPA generally, the impact of regulatory discretion in the weighted average rule will be reduced because self-insured nonfederal governmental plans can opt out, the MHPA's added expenditure is modest, plans can be designed in ways that lessen the MHPA's added expenditure, and the estimates presented here are conservative.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (P.L. 104-4) requires agencies to prepare several analytic statements before proposing any rules that may result in annual expenditures of \$100 million by state, local and tribal governments or the private sector. These rules are not subject to the Unfunded Mandates Reform Act because they are interim final rules. However, consistent with the policy embodied in the Unfunded Mandates Reform Act, the regulation has been designed to be the least burdensome alternative for state, local and tribal governments, and the private sector, while achieving the objectives of the MHPA.

G. Small Business Regulatory Enforcement and Fairness Act of 1995

The Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that this is a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Section 801 *et. seq.*) (SBREFA).

The Secretaries have determined that the effective date of these interim final rules is January 1, 1998. Pursuant to Section 808(2) of SBREFA, the Secretaries find, for good cause, that notice and public procedure thereon are impracticable, unnecessary and contrary to the public interest.

These rules are adopted on an interim final basis because the Secretaries have determined that without prompt guidance some members of the regulated community may have difficulty complying with the MHPA

requirements, which may result in an adverse impact on participants and beneficiaries with regard to their mental health benefits under group health plans and the protections provided under MHPA. Moreover, MHPA's requirements will affect the regulated community in the immediate future.

MHPA's requirements are effective for all group health plans, and for health insurance issuers offering coverage in connection with such plans for plan years beginning on or after January 1, 1998. Plan administrators and sponsors, issuers and participants and beneficiaries will need guidance on the new statutory provisions before MHPA's effective date. As noted earlier, these interim rules take into account comments received by the Departments, in response to the request for public comments on MHPA published in the **Federal Register** on June 26, 1997. 62 FR 34604. For the foregoing reasons, the Departments find that notice and public comment would be impracticable, unnecessary and contrary to the public interest.

H. Paperwork Reduction Act—The Department of Labor and the Department of the Treasury

The Department of Labor and the Department of the Treasury have submitted this emergency processing public information collection request (ICR), consisting of three distinct ICRs to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). The Departments have asked for OMB clearance as soon as possible, and OMB approval is anticipated by the applicable effective date.

These regulations contain three distinct ICRs. The first ICR is a notice to participants and beneficiaries and to the federal government of the plan's election of the exemption from the MHPA's provisions due to an increase in cost under the plan of at least one percent attributable to compliance with these provisions. A plan may satisfy this requirement by providing participants and beneficiaries with a notice of material reductions in covered service or benefits, under the Department of Labor's regulations at 29 CFR section 2520.104b-3(d), that includes the information in paragraph (f)(3)(i) of this interim final rule regarding issuing a notice to participants and beneficiaries of the plan's exemption from these parity requirements. Before the one percent increased cost exemption is effective, the plan must also notify the federal government. For this purpose, the group health plan may either send

the Department of Labor a copy of the summary of material reductions in covered services or benefits sent to participants and beneficiaries, containing the plan number and the plan sponsor's employer identification number, or the plan (or coverage) may use the Departments' model notice in this interim final rule which has been developed for this purpose.

The second ICR is a summary of the information used to calculate the plan's increased costs under the MHPA for purposes of electing the one percent increased cost exemption, which the plan must make available to participants and beneficiaries, on request at no charge.

The third ICR is a notice of a group health plan's use of the transition period. The rule requires plans exercising the one percent increased cost exemption during all or part of the first quarter of 1998 under the rule's transition provisions to notify the federal government, and to post a copy of this notice at the workplace.

1. Notice to Participants and Beneficiaries and the Federal Government of Electing One Percent Increased Cost Exemption

i. Department of Labor

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35) and 5 CFR 1320.11. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed collection of information, Notice to Participants and Beneficiaries and the Federal Government of Electing One Percent Increased Cost Exemption. A copy of the proposed ICR can be obtained by contacting the employee listed below in the contact section of the notice.

Information collection: affected parties are not required to comply with the ICRs in these rules until the Department of Labor publishes in the **Federal Register** the control numbers assigned to these ICRs by OMB. The

publication of the control numbers notifies the public that OMB has approved these ICRs under the Paperwork Reduction Act of 1995. The Department has asked for OMB clearance as soon as possible, and OMB approval is anticipated by the applicable effective date.

Dates: Written comments must be submitted to the office listed in the addressee section below on or before February 20, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Addressee: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, Room N-5647, Washington, D.C. 20210. Telephone: 202-219-4782 (this is not a toll-free number). Fax: 202-219-4745.

ii. Department of the Treasury

The collection of information is in 54.9812-1T. This information is required by the interim final rules so that participants will be informed about their rights under MHPA, and so that participants and beneficiaries, and the federal government, will receive notice of a plan's election of the one percent increased cost exemption. The likely respondents are business or other for-profit institutions, non-profit institutions, small businesses or organizations, and Taft-Hartley trusts. Responses to this collection of information are required to obtain the benefit of the exemption.

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.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received on or before February 20, 1998. In light of the request for OMB clearance by the effective date of the MHPA, submission of comments within the first 30 days is encouraged to ensure their consideration. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How to enhance the quality, utility, and clarity of the information to be collected;

How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

I. Background

MHPA generally requires that group health plans provide parity in the application of dollar limits to mental health and medical/surgical benefits. The statute exempts plans from this requirement if its application results in an increase in the cost under the plan or coverage of at least one percent. This regulation requires a plan electing this exemption to notify participants and beneficiaries and the federal government of the plan's election of the exemption. This ICR covers this notification requirement.

II. Current Actions

Under 29 CFR 2590.712(f)(3) (i) and (ii), and 26 CFR 54.9812-1T a group health plan electing the one percent exemption is obligated to provide a written notice of that election to participants and beneficiaries and to the federal government of the plan's election of the exemption. A plan may satisfy this requirement by providing

participants and beneficiaries with a notice of material reductions in covered service or benefits, under the Department of Labor's regulations at 29 CFR section 2520.104b-3(d), that includes the information in paragraph (f)(3)(i) of this interim final rule regarding issuing a notice to participants and beneficiaries of the plan's exemption from these parity requirements. To satisfy the requirement to notify the federal government, a group health plan may either send the Department a copy of the summary of material reductions in covered services

or benefits sent to participants and beneficiaries, containing the plan number and the plan sponsor's employer identification number, or the plan may use the Department's model notice in this interim final rule which has been developed for this purpose. Based on past experience, the staff believes that most of the materials required to be issued under this notice procedure will be prepared by contract service providers such as insurance companies and third-party administrators.

Type of Review: New.

Agencies: U.S. Department of Labor, Pension and Welfare Benefits Administration; U.S. Department of the Treasury, Internal Revenue Service.

Title: Notice to Participants and Beneficiaries and the Federal Government of Electing One Percent Increased Cost Exemption.

OMB Number: XXXXXXXX

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Group health plans.

Frequency: On occasion.

Burden:

Year	Total respondents (range)	Total responses (range)	Average time per response (range) (minutes)	Burden hours (range)	Cost (range)
1998 .....	.....	.....	.....	.....	.....
1999	5,612 to 25,446.	813,505 to 3.8MM.	2	6,324 to 29,605.	\$705,037 to \$3.3MM
2000 .....	.....	.....	.....	.....	.....
Totals	5,612 to 25,446.	813,505 to 3.8MM.	2	6,324 to 29,605.	\$705,037 to \$3.3MM

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICRs; they will also become a matter of public record.

2. Calculation and Disclosure of Documentation of Eligibility for Exemption

i. Department of Labor

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35) and 5 CFR 1320.11. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed collection of information, Documentation of Eligibility for Exemption. A copy of the proposed ICR can be obtained by contacting the

employee listed below in the contact section of the notice.

Information collection: Affected parties are not required to comply with the ICRs in these rules until the Department of Labor publishes in the **Federal Register** the control numbers assigned to these ICRs by OMB. The publication of the control numbers notifies the public that OMB has approved these ICRs under the Paperwork Reduction Act of 1995. The Department has asked for OMB clearance as soon as possible, and OMB approval is anticipated by the applicable effective date.

Dates: Written comments must be submitted to the office listed in the addressee section below on or before February 20, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Addressee: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, Room N-5647, Washington, D.C. 20210. Telephone: 202-219-4782 (this is not a toll-free number). Fax: 202-219-4745.

ii. Department of the Treasury

The collection of information is in Section 54.9812-1T. This information is required by the interim final rules so that participants will be informed about their rights under MHPA, and so that participants and beneficiaries may receive a summary of the information upon which the plan based its election of the one percent increased cost exemption. The likely respondents are business or other for-profit institutions, non-profit institutions, small businesses or organizations, and Taft-Hartley trusts. Responses to this collection of information are required to obtain the benefit of the exemption.

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.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received on or before February 20, 1998. In light of the request for OMB clearance by the effective date of the MHPA, submission of comments within the first 30 days is encouraged to ensure their consideration. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How to enhance the quality, utility, and clarity of the information to be collected;

How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

I. Background

MHPA generally requires that group health plans provide parity in the application of dollar limits to mental health and medical/surgical benefits. The statute exempts plans from this requirement if its application results in an increase in the cost under the plan or coverage of at least one percent. This regulation requires plans wishing to elect this exemption to calculate their increased costs according to certain rules. It further requires plans electing this exemption to disclose to participants and beneficiaries (or their representatives), on request, and at no charge, a summary of the information upon which the exemption was based. This ICR covers this disclosure requirement.

II. Current Actions:

Under 29 CFR 2590.712(f)(2) and 26 CFR 54.9812-1T, a group health plan wishing to elect the one percent exemption must calculate their increased costs according to certain rules. Under 29 CFR 2590.712(f)(4) and 26 CFR 54.9812-1T, a group health plan electing the one percent exemption is obligated to disclose to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based.

Type of Review: New.

Agencies: U.S. Department of Labor, Pension and Welfare Benefits Administration; U.S. Department of the Treasury, Internal Revenue Service.

Title: Calculation and Disclosure of Documentation of Eligibility for Exemption.

OMB Number: XXXXXXXX.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Group Health Plans.

Frequency: On occasion.

Calculation burden: It is expected that plans wishing to exercise the one percent increased cost exemption or their service providers will revise their automated claim record systems to facilitate calculation of the plans' increased costs attributable to the MHPA. The number of plans performing such functions in-house that might wish to exercise the exemption is estimated to be no more than 4,489 and probably 958. The number of service providers (including health insurance issuers and third party administrators) that will perform this function for plans using service providers that wish to exercise the exemption is estimated to be 1,770. Assuming a cost of \$5,000 per affected entity, the total cost associated with determining plans' eligibility to exercise the exemption amounts to \$12.5 million to \$30.1 million, to be amortized over 10 years beginning in 1998.

Disclosure burden: In addition to the calculation burden, plans wishing to elect the one percent increased cost exemption will incur a burden in connection with disclosure requests from participants, as detailed below.

Year	Total respondents (range)	Total responses (range)	Average time per response (minutes)	Burden hours (range)	Cost (range)
1998 .....	.....	.....	.....	.....	.....
1999	5,612 to 25,466.	30,188 to 140,412.	2	235 to 1,101.	\$26,163 to \$121,690
2000	5,612 to 25,466.	30,188 to 140,412.	2	235 to 1,101.	\$26,163 to \$121,690
Totals	5,612 to 25,466.	60,377 to 280,824.	2	470 to 2,201.	\$52,326 to \$243,381

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICRs; they will also become a matter of public record.

3. Notice of Group Health Plan's Use of Transition Period, and Posting Thereof

i. Department of Labor

The Department of Labor, as part of its continuing effort to reduce paperwork

and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35) and 5 CFR 1320.11. This program helps to ensure that requested data can be provided in

the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed collection of information, Notice of Group Health Plan's Use of Transition Period. A copy

of the proposed ICR can be obtained by contacting the employee listed below in the contact section of the notice.

Information collection: affected parties are not required to comply with the ICRs in these rules until the Department of Labor publishes in the **Federal Register** the control numbers assigned to these ICRs by OMB. The publication of the control numbers notifies the public that OMB has approved these ICRs under the Paperwork Reduction Act of 1995. The Department has asked for OMB clearance as soon as possible, and OMB approval is anticipated by the applicable effective date.

Dates: Written comments must be submitted to the office listed in the addressee section below on or before February 20, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Addressee: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, Room N-5647, Washington, D.C. 20210. Telephone: 202-219-4782 (this is not a toll-free number). Fax: 202-219-4745.

ii. Department of the Treasury

The collection of information is in Section 54.9812-1T. This information is

required by the interim final rules so that participants will be informed about their rights under MHPA, and so that plans electing the one percent increased cost exemption during all or part of the first quarter of 1998 under the rules' transition provisions will notify the federal government and post the notice in the workplace. The likely respondents are business or other for-profit institutions, non-profit institutions, small businesses or organizations, and Taft-Hartley trusts. Responses to this collection of information are required to obtain the benefit of the exemption.

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.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received on or before February 20, 1998. In light of the request for OMB clearance by the effective date of the MHPA, submission of comments within the first 30 days is encouraged to ensure their consideration. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How to enhance the quality, utility, and clarity of the information to be collected;

How to minimize the burden of complying with the proposed collection of information, including the

application of automated collection techniques or other forms of information technology; and

Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

I. Background

MHPA generally requires that group health plans provide parity in the application of dollar limits to mental health and medical/surgical benefits. The statute exempts plans from this requirement if its application results in an increase in the cost under the plan or coverage of at least one percent. This regulation requires a notice of group health plan's use of transition period, under which plans electing the one percent increased cost exemption during all or part of the first quarter of 1998 under the rule's transition provisions must notify the federal government and to post a copy of the notice in the workplace. This ICR covers this notification requirement.

II. Current Actions

Under 29 CFR 2590.712(h)(3)(ii) and 26 CFR 54.9812-1T, group health plans electing the one percent increased cost exemption during all or part of the first quarter of 1998 under the rule's transition provisions must notify the federal government. Based on past experience, the staff believes that most of the materials required to be issued under this notice procedure will be prepared by contract service providers such as insurance companies and third-party administrators.

Type of Review: New.

Agencies: U.S. Department of Labor, Pension and Welfare Benefits Administration; U.S. Department of the Treasury, Internal Revenue Service.

Title: Notice of Group Health Plan's Use of Transition Period.

OMB Number:

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Group Health Plans.

Frequency: On occasion.

Burden:

Year	Total respondents (range)	Total responses (range)	Average time per response (minutes)	Burden hours (range)	Cost (range)
1998	3,348 to 15,193.	3,348 to 15,193.	2	19 to 89 ...	\$1,514 to \$6,910
1999 .....	.....	.....	.....	.....	.....
2000 .....	.....	.....	.....	.....	.....

Year	Total respondents (range)	Total responses (range)	Average time per response (minutes)	Burden hours (range)	Cost (range)
Totals	3,348 to 15,193.	3,348 to 15,193.	2	19 to 89 ...	\$1,514 to \$6,910

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICRs; they will also become a matter of public record.

**I. Paperwork Reduction Act—
Department of Health and Human Services**

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the

information collection requirements discussed below.

Section 146.136 of this document contains three distinct information collection requirements, as summarized below:

Type of Information Request: New collection.

Title of Information Collection: Mental Health Parity Act of 1996; Information Collection Requirements Contained in 45 CFR 146.136; HCFA-2891-IFC.

Form Number: HCFA-R-223 (OMB approval #: 0938-XXXX).

Use: The information collection requirements contained in this interim final rule will help ensure that sponsors and administrators of group health plans notify the required individuals/entities of a plan's exemption from the MHPA parity requirements and make the data used to calculate the exemption available to affected individuals and entities.

Frequency: On occasion.

Affected Public: States, businesses or other for profit, not-for-profit institutions, Federal Government, individuals or households.

Notification Requirements: Nonfederal governmental plans, not exempt from the parity requirements by reason of an opt out under regulations at 45 CFR 146.180, must furnish participants and beneficiaries with a notice of the plan's exemption from the

parity requirements based on increased costs. A plan may satisfy this requirement by providing participants and beneficiaries with a notice of material reductions in covered services or benefits, under 29 CFR 2520.104b-3(d), that includes the information in paragraph (f)(3)(i). Even though a plan generally is not required to furnish a material reduction in covered services or benefits for 60 days, in no case will the exemption be effective until 30 days after the notice is sent to participants and beneficiaries. For this purpose, a plan that does not furnish the summary of material reductions in covered services or benefits may satisfy its notice requirements by using the model exemption notice described above in this preamble.

In addition, the nonfederal governmental plan (or issuer providing coverage to such a plan) must also furnish to the Department of Health and Human Services a notice similar to the notice sent to participants and beneficiaries before the exemption is effective. For this purpose, the plan may either send the Department the summary of material reductions in covered services or benefits sent to participants and beneficiaries, or the plan (or issuer) may use the model described above. In all cases, the exemption is not effective until 30 days after notice has been sent.

Burden:

Year	Total respondents (range)	Total responses (range)	Average time per response range (minutes)	Burden hours (range)	Cost (range)
1998 .....	.....	.....	.....	.....	.....
1999	890 to 4,092.	261,000 to 1.2 MM.	2	2,133 to 9,975.	\$226,000 to \$1.1 MM
2000 .....	.....	.....	.....	.....	.....
Total	890 to 4,092.	261,000 to 1.2 MM.	2	2,133 to 9,975.	\$226,000 to \$1.1 MM

Availability of documentation: Nonfederal governmental plans that take the exemption, or issuers that provide coverage for such plans, must make available to participants and beneficiaries, on request and at no

charge, a summary of the data used to calculate the exemption of this section. The summary of data must include the incurred expenditures (including identification of the portion of the total representing claims and the portion of

the total representing administrative expenses), the base period, the claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with parity, and the

administrative expenses attributable to complying with the parity requirements.

Burden:

Year	Total respondents (range)	Total responses (range)	Average time per response (range) (minutes)	Burden hours (range)	Cost (range)
1998 .....	.....	.....	.....	.....	.....
1999	890 to 4,092.	9,700 to 45,300.	2	79 to 372	\$8,400 to \$39,300
2000	890 to 4,092.	9,700 to 45,300.	2	79 to 372	\$8,400 to \$39,300
Total	890 to 4,092.	19,400 to 90,600.	2	158 to 744	\$16,800 to \$78,600

Plans that take the exemption will incur start up costs for preparing to issue the information they must disclose. We estimate the start up costs for nonfederal governmental plans that take this exemption to range from \$2.1 million to \$5.5 million.

Notice of Use of Transition Period: With respect to the increased cost exemption, the interim rules provide in paragraph (g)(3) a transition period for compliance with the requirements of paragraph (f). Under paragraph (g)(3), no enforcement action shall be taken against a nonfederal governmental plan

that is subject to the MHPA requirements prior to April 1, 1998 solely because the plan claims the increased cost exemption under section 2705(c)(2) of the PHS Act based on assumptions inconsistent with the rules under paragraph (f), provided that the plan is amended to comply with the parity requirements no later than March 31, 1998 and the plan complies with certain notice requirements. A nonfederal governmental plan satisfies the notice requirements only if such plan provides notice to the Department of Health and Human Services of the

plan's intent to use the transition period by 30 days after the first day of the plan year beginning on or after January 1, 1998, but in no event can the notice be provided later than March 31, 1998. Such notice shall include the name of the plan; the name, address, and telephone number of the plan sponsor or plan administrator; the employer identification number; and the plan number. In addition, such notice must be provided at no charge to participants within 30 days after receipt of a written request for such notification.

Burden:

Year	Total respondents (range)	Total responses (range)	Average time per response (range) (minutes)	Burden hours (range)	Cost (range)
1998	531 to 2,441.	531 to 2,441.	2	4 to 17	\$250 to \$1,151
1999	—	—	—	—	—
2000	—	—	—	—	—
Total	531 to 2,441.	531 to 2,441.	2	4 to 17	\$250 to \$1,151

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in § 146.136. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and recordkeeping requirements, please mail copies directly to the following: Health Care Financing Administration, Office of Information Services, information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2-26-17, 7500 Security Boulevard, Baltimore, MD 21244-1850. ATTN: John Burke HCFA-2891-IFC.

We have submitted a copy of this rule to OMB for its review of these information collections. A notice will be

published in the **Federal Register** when approval is obtained. Interested persons are invited to send comments regarding this burden or any other aspect of these collections of information. If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following addresses:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20530, Attn: Allison Herron Eydt, HCFA Desk Officer. DATED:

Gerald B. Lindrew, Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research

Statutory Authority

The Department of the Treasury temporary rule is adopted pursuant to the authority contained in sections 7805 and 9833 of the Code (26 U.S.C. 7805, 9833), as amended by HIPAA (Pub. L. 104-191, 110 Stat. 1936) and the Taxpayer Relief Act of 1997 (Pub. L. 105-34, 111 Stat. 788).

The Department of Labor interim final rule is adopted pursuant to the authority contained in sections 107, 209, 505, 701-703, 711, 712, and 731-734 of ERISA (29 U.S.C. 1027, 1059, 1135, 1171-1173, 1181, 1182, and 1191-1194), as amended by HIPAA (Pub. L. 104-191, 110 Stat. 1936) and MHPA (Pub. L. 104-204, 110 Stat. 2944), and Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

The Department of Health and Human Services interim final rule is adopted pursuant to the authority contained in sections 2701, 2702, 2705, 2711, 2712, 2713, 2721, 2722, 2723, and 2792 of the PHS Act (42 U.S.C. 300gg, 300gg-1, 300gg-5, 300gg-11, 300gg-12, 300gg-13, 300gg-21, 300gg-22, 300gg-23, and 300gg-92), as established by HIPAA (Pub. L. 104-191, 110 Stat. 1936) and MHPA (Pub. L. 104-204, 110 Stat. 2944).

List of Subjects

26 CFR Part 54

Excise taxes, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Employee benefit plans, Employee Retirement Income Security Act, Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements, State regulation of health insurance.

Adoption of Amendments to the Regulations

Internal Revenue Service

26 CFR Chapter I

Accordingly, 26 CFR Part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by revising the entries for sections 54.9801-1T through 54.9801-6T and 54.9802-1T, by removing the entries for sections 54.9804-1T, and 54.9806-1T, and by adding entries for sections 54.9812-1T, 54.9831-1T, and 54.9833-1T to read in part as follows:

- Authority:** 26 U.S.C. 7805 * * *
- Section 54.9801-1T also issued under 26 U.S.C. 9833.
 - Section 54.9801-2T also issued under 26 U.S.C. 9833.
 - Section 54.9801-3T also issued under 26 U.S.C. 9833.
 - Section 54.9801-4T also issued under 26 U.S.C. 9833.
 - Section 54.9801-5T also issued under 26 U.S.C. 9801(c)(4), 9801(e)(3), and 9833.
 - Section 54.9801-6T also issued under 26 U.S.C. 9833.
 - Section 54.9802-1T also issued under 26 U.S.C. 9833.
 - Section 54.9812-1T also issued under 26 U.S.C. 9833.
 - Section 54.9831-1T also issued under 26 U.S.C. 9833.
 - Section 54.9833-1T also issued under 26 U.S.C. 9833.

Par. 2. In § 54.9801-1T, paragraph (a) is revised to read as follows:

§ 54.9801-1T Basis and scope (temporary).

(a) *Statutory basis.* Sections 54.9801-1T through 54.9801-6T, 54.9802-1T, 54.9812-1T, 54.9831-1T and 54.9833-1T (portability sections) implement Chapter 100 of Subtitle K of the Internal Revenue Code of 1986.

Par. 3. Section 54.9801-2T is amended by:

1. Revising the introductory text.
2. Revising the definition of *excepted benefits*.
3. Revising the definition of *health insurance coverage*.

The revisions read as follows:

§ 54.9801-2T Definitions (temporary).

Unless otherwise provided, the definitions in this section govern in applying the provisions of §§ 54.9801-1T through 54.9801-6T, 54.9802-1T, 54.9812-1T, 54.9831-1T, and 54.9833-1T.

Excepted benefits means the benefits described as excepted in § 54.9831-1T(b).

Health insurance coverage means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or HMO contract offered by a health insurance issuer. However, benefits described in § 54.9831-1T(b)(2) are not treated as benefits consisting of medical care.

Par. 4. In § 54.9801-4T, paragraph (a)(2) is revised to read as follows:

§ 54.9801-4T Rules relating to creditable coverage (temporary).

- (a) * * *
- (2) *Excluded coverage.* Creditable coverage does not include coverage consisting solely of coverage of excepted benefits (described in § 54.9831-1T).

Par. 5. In § 54.9801-5T, the first sentence of paragraph (a)(3)(vi) is revised to read as follows:

§ 54.9801-5T Certification and disclosure of previous coverage (temporary).

- (a) * * *
- (3) * * *
- (vi) *Excepted benefits; categories of benefits.* No certificate is required to be furnished with respect to excepted

benefits described in § 54.9831-1T. * * *

§ 54.9804-1T [Redesignated as § 54.9831-1T]

Par. 6. Section 54.9804-1T is redesignated as § 54.9831-1T and amended by revising paragraph (b)(1) to read as follows:

§ 54.9831-1T Special rules relating to group health plans (temporary).

(b) *Excepted benefits—(1) In general.* The requirements of §§ 54.9801-1T through 54.9801-6T, 54.9802-1T, and 54.9812-1T do not apply to any group health plan in relation to its provision of the benefits described in paragraph (b) (2), (3), (4), or (5) of this section (or any combination of these benefits).

§ 54.9806-1T [Redesignated as § 54.9833-1T]

Par. 7. Section 54.9806-1T is redesignated as § 54.9833-1T and amended by:

1. Revising paragraph (a)(1).
2. Revising the first sentence of paragraph (a)(2).

The revisions read as follows:

§ 54.9833-1T Effective dates (temporary).

(a) *General effective dates—(1) Non-collectively-bargained plans.* Except as otherwise provided in this section, Chapter 100 of Subtitle K and §§ 54.9801-1T through 54.9806-1T, 54.9802-1T, and 54.9831-1T apply with respect to group health plans for plan years beginning after June 30, 1997.

(2) *Collectively bargained plans.* Except as otherwise provided in this section (other than paragraph (a)(1) of this section), in the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before August 21, 1996, Chapter 100 of Subtitle K and §§ 54.9801-1T through 54.9801-6T, 54.9802-1T, and 54.9831-1T do not apply to plan years beginning before the later of July 1, 1997, or the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after August 21, 1996). * * *

Par. 8. Section 54.9812-1T is added to read as follows:

§ 54.9812-1T Parity in the application of certain limits to mental health benefits (temporary).

(a) *Definitions.* For purposes of this section, except where the context clearly indicates otherwise, the following definitions apply:

Aggregate lifetime limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Annual limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a plan for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Medical/surgical benefits means benefits for medical or surgical services, as defined under the terms of the plan, but does not include mental health benefits.

Mental health benefits means benefits for mental health services, as defined under the terms of the plan, but does not include benefits for treatment of substance abuse or chemical dependency.

(b) *Requirements regarding limits on benefits—(1) In general—(i) General parity requirement.* A group health plan that provides both medical/surgical benefits and mental health benefits must comply with paragraph (b) (2), (3), or (6) of this section.

(ii) Exception. The rule in paragraph (b)(1)(i) of this section does not apply if a plan satisfies the requirements of paragraph (e) or (f) of this section.

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits.* If a plan does not include an aggregate lifetime or annual limit on any medical/surgical benefits or includes aggregate lifetime or annual limits that apply to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual limit, respectively, on mental health benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits.* If a plan includes an aggregate lifetime or annual limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health benefits in a manner that does not distinguish between the medical/surgical and mental health benefits; or

(ii) Not include an aggregate lifetime or annual limit on mental health benefits that is less than the aggregate lifetime or annual limit, respectively, on the medical/surgical benefits.

(4) *Examples.* The rules of paragraphs (b)(2) and (3) of this section are illustrated by the following examples:

Example 1. (i) Prior to the effective date of the mental health parity provisions, a group health plan had no annual limit on medical/surgical benefits and had a \$10,000 annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Eliminating the plan's annual limit on mental health benefits;

(B) Replacing the plan's previous annual limit on mental health benefits with a \$500,000 annual limit on all benefits (including medical/surgical and mental health benefits); and

(C) Replacing the plan's previous annual limit on mental health benefits with a \$250,000 annual limit on medical/surgical benefits and a \$250,000 annual limit on mental health benefits.

(ii) In this *Example 1*, each of the three options being considered by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 2. (i) Prior to the effective date of the mental health parity provisions, a group health plan had a \$100,000 annual limit on medical/surgical inpatient benefits, a \$50,000 annual limit on medical/surgical outpatient benefits, and a \$100,000 annual limit on all mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Replacing the plan's previous annual limit on mental health benefits with a \$150,000 annual limit on mental health benefits; and

(B) Replacing the plan's previous annual limit on mental health benefits with a \$100,000 annual limit on mental health inpatient benefits and a \$50,000 annual limit on mental health outpatient benefits.

(ii) In this *Example 2*, each option under consideration by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 3. (i) A group health plan that is subject to the requirements of this section has no aggregate lifetime or annual limit for either medical/surgical benefits or mental health benefits. While the plan provides medical/surgical benefits with respect to both network and out-of-network providers, it does not provide mental health benefits with respect to out-of-network providers.

(ii) In this *Example 3*, the plan complies with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 4. (i) Prior to the effective date of the mental health parity provisions, a group

health plan had an annual limit on medical/surgical benefits and a separate but identical annual limit on mental health benefits. The plan included benefits for treatment of substance abuse and chemical dependency in its definition of mental health benefits.

Accordingly, claims paid for treatment of substance abuse and chemical dependency were counted in applying the annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Making no change in the plan so that claims paid for treatment of substance abuse and chemical dependency continue to count in applying the annual limit on mental health benefits;

(B) Amending the plan to count claims paid for treatment of substance abuse and chemical dependency in applying the annual limit on medical/surgical benefits (rather than counting those claims in applying the annual limit on mental health benefits);

(C) Amending the plan to provide a new category of benefits for treatment of chemical dependency and substance abuse that is subject to a separate, lower limit and under which claims paid for treatment of substance abuse and chemical dependency are counted only in applying the annual limit on this separate category; and

(D) Amending the plan to eliminate distinctions between medical/surgical benefits and mental health benefits and establishing an overall limit on benefits offered under the plan under which claims paid for treatment of substance abuse and chemical dependency are counted with medical/surgical benefits and mental health benefits in applying the overall limit.

(ii) In this *Example 4*, the group health plan is described in paragraph (b)(3) of this section. Because mental health benefits are defined in paragraph (a) of this section as excluding benefits for treatment of substance abuse and chemical dependency, the inclusion of benefits for treatment of substance abuse and chemical dependency in applying an aggregate lifetime limit or annual limit on mental health benefits under option (A) of this *Example 4* would not comply with the requirements of paragraph (b)(3) of this section. However, options (B), (C), and (D) of this *Example 4* would comply with the requirements of paragraph (b)(3) of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

(5) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of medical/surgical benefits subject to a limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual limits). Any reasonable method may be used to

determine whether the dollar amounts expected to be paid under the plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(6) *Plan not described in paragraph (b)(2) or (3) of this section*—(i) *In general.* A group health plan that is not described in paragraph (b)(2) or (3) of this section, must either—

(A) Impose no aggregate lifetime or annual limit, as appropriate, on mental health benefits; or

(B) Impose an aggregate lifetime or annual limit on mental health benefits that is no less than an average limit for medical/surgical benefits calculated in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(6)(i)(B). In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(6), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(5) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(iii) *Example.* The rules of this paragraph (b)(6) are illustrated by the following example:

Example. (i) A group health plan that is subject to the requirements of this section includes a \$100,000 annual limit on medical/surgical benefits related to cardio-pulmonary diseases. The plan does not include an annual limit on any other category of medical/surgical benefits. The plan determines that 40% of the dollar amount of plan payments for medical/surgical benefits are related to cardio-pulmonary diseases. The plan determines that \$1,000,000 is a reasonable estimate of the upper limit on the dollar amount that the plan may incur with respect to the other 60% of payments for medical/surgical benefits.

(ii) In this *Example*, the plan is not described in paragraph (b)(3) of this section because there is not one annual limit that applies to at least two-thirds of all medical/

surgical benefits. Further, the plan is not described in paragraph (b)(2) of this section because more than one-third of all medical/surgical benefits are subject to an annual limit. Under this paragraph (b)(6), the plan sponsor can choose either to include no annual limit on mental health benefits, or to include an annual limit on mental health benefits that is not less than the weighted average of the annual limits applicable to each category of medical/surgical benefits. In this example, the minimum weighted average annual limit that can be applied to mental health benefits is $\$640,000 (40\% \times \$100,000 + 60\% \times \$1,000,000 = \$640,000)$.

(c) *Rule in the case of separate benefit packages.* If a group health plan offers two or more benefit packages, the requirements of this section, including the exemption provisions in paragraph (f) of this section, apply separately to each benefit package. Examples of a group health plan that offers two or more benefit packages include a group health plan that offers employees a choice between indemnity coverage or HMO coverage, and a group health plan that provides one benefit package for retirees and a different benefit package for current employees.

(d) *Applicability*—(1) *Group health plans.* The requirements of this section apply to a group health plan offering both medical/surgical benefits and mental health benefits regardless of whether the mental health benefits are administered separately under the plan.

(2) *Health insurance issuers.* See 29 CFR 2590.712(d)(2) and 45 CFR 146.136(d)(2), which provide that health insurance issuers offering health insurance coverage for both medical/surgical benefits and mental health benefits in connection with a group health plan are subject to rules similar to those applicable to group health plans under this section.

(3) *Scope.* This section does not—

(i) Require a group health plan to provide any mental health benefits; or
(ii) Affect the terms and conditions (including cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requiring prior authorization for treatment, or requiring primary care physicians' referrals for treatment) relating to the amount, duration, or scope of the mental health benefits under the plan except as specifically provided in paragraph (b) of this section.

(e) *Small employer exemption*—(1) *In general.* The requirements of this section do not apply to a group health plan for a plan year of a small employer. For purposes of this paragraph (e), the term *small employer* means, in connection with a group health plan with respect to a calendar year and a

plan year, an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. See section 9831(a) and § 54.9831-1T(a), which provide that this section (and certain other sections) does not apply to any group health plan for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) *Rules in determining employer size.* For purposes of paragraph (e)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(f) *Increased cost exemption*—(1) *In general.* A group health plan is not subject to the requirements of this section if the requirements of this paragraph (f) are satisfied. If a plan offers more than one benefit package, this paragraph (f) applies separately to each benefit package. Except as provided in paragraph (h) of this section, a plan must comply with the requirements of paragraph (b)(1)(i) of this section for the first plan year beginning on or after January 1, 1998, and must continue to comply with the requirements of paragraph (b)(1)(i) of this section until the plan satisfies the requirements in this paragraph (f). In no event is the exemption of this paragraph (f) effective until 30 days after the notice requirements in paragraph (f)(3) of this section are satisfied. If the requirements of this paragraph (f) are satisfied with respect to a plan, the exemption continues in effect (at the plan's discretion) until September 30, 2001, even if the plan subsequently purchases a different policy from the same or a different issuer and regardless of any other changes to the plan's benefit structure.

(2) *Calculation of the one-percent increase*—(i) *Ratio.* A group health plan satisfies the requirements of this paragraph (f)(2) if the application of paragraph (b)(1)(i) of this section to the plan results in an increase in the cost under the plan of at least one percent.

The application of paragraph (b)(1)(i) of this section results in an increased cost of at least one percent under a group health plan only if the ratio below equals or exceeds 1.01000. The ratio is determined as follows:

(A) The incurred expenditures during the base period, divided by,

(B) The incurred expenditures during the base period, reduced by—

(1) The claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section; and

(2) Administrative expenses attributable to complying with the requirements of this section.

(ii) *Formula.* The ratio of paragraph (f)(2)(i) of this section is expressed mathematically as follows:

$$\frac{IE}{IE - (CE + AE)} \geq 1.01000$$

(A) *IE* means the incurred expenditures during the base period.

(B) *CE* means the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section

(C) *AE* means administrative costs related to claims in *CE* and other administrative costs attributable to complying with the requirements of this section.

(iii) *Incurred expenditures.* *Incurred expenditures* means actual claims incurred during the base period and reported within two months following the base period, and administrative costs for all benefits under the group health plan, including mental health benefits and medical/surgical benefits, during the base period. Incurred expenditures do not include premiums.

(iv) *Base period.* *Base period* means the period used to calculate whether the plan may claim the one-percent increased cost exemption in this paragraph (f). The base period must begin on the first day in any plan year that the plan complies with the requirements of paragraph (b)(1)(i) of this section and must extend for a period of at least six consecutive calendar months. However, in no event may the base period begin prior to September 26, 1996 (the date of enactment of the Mental Health Parity Act (Pub. L. 104-204, 110 Stat. 2944)).

(v) *Rating pools.* For plans that are combined in a pool for rating purposes, the calculation under this paragraph (f)(2) for each plan in the pool for the base period is based on the incurred expenditures of the pool, whether or not all the plans in the pool have

participated in the pool for the entire base period. (However, only the plans that have complied with paragraph (b)(1)(i) of this section for at least six months as a member of the pool satisfy the requirements of this paragraph (f)(2).) Otherwise, the calculation under this paragraph (f)(2) for each plan is calculated by the plan administrator based on the incurred expenditures of the plan.

(vi) *Examples.* The rules of this paragraph (f)(2) are illustrated by the following examples:

Example 1. (i) A group health plan has a plan year that is the calendar year. The plan satisfies the requirements of paragraph (b)(1)(i) of this section as of January 1, 1998. On September 15, 1998, the plan determines that \$1,000,000 in claims have been incurred during the period between January 1, 1998 and June 30, 1998 and reported by August 30, 1998. The plan also determines that \$100,000 in administrative costs have been incurred for all benefits under the group health plan, including mental health benefits. Thus, the plan determines that its incurred expenditures for the base period are \$1,100,000. The plan also determines that the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section are \$40,000 and that administrative expenses attributable to complying with the requirements of this section are \$10,000. Thus, the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are \$1,050,000 (\$1,100,000 - (\$40,000 + \$10,000) = \$1,050,000).

(ii) In this *Example 1*, the plan satisfies the requirements of this paragraph (f)(2) because the application of this section results in an increased cost of at least one percent under the terms of the plan (\$1,100,000/\$1,050,000 = 1.04762).

Example 2. (i) A health insurance issuer sells a group health insurance policy that is rated on a pooled basis and is sold to 30 group health plans. One of the group health plans inquires whether it qualifies for the one-percent increased cost exemption. The issuer performs the calculation for the pool as a whole and determines that the application of this section results in an increased cost of 0.500 percent (for a ratio under this paragraph (f)(2) of 1.00500) for the pool. The issuer informs the requesting plan and the other plans in the pool of the calculation.

(ii) In this *Example 2*, none of the plans satisfy the requirements of this paragraph (f)(2) and a plan that purchases a policy not complying with the requirements of paragraph (b)(1)(i) of this section violates the requirements of this section.

Example 3. (i) A partially insured plan is collecting the information to determine whether it qualifies for the exemption. The plan administrator determines the incurred expenses for the base period for the self-funded portion of the plan to be \$2,000,000 and the administrative expenses for the base

period for the self-funded portion to be \$200,000. For the insured portion of the plan, the plan administrator requests data from the insurer. For the insured portion of the plan, the plan's own incurred expenses for the base period are \$1,000,000 and the administrative expenses for the base period are \$100,000.

The plan administrator determines that under the self-funded portion of the plan, the claims incurred for the base period that would have been denied under the terms of the plan absent the amendment are \$0 because the self-funded portion does not cover mental health benefits and the plan's administrative costs attributable to complying with the requirements of this section are \$1,000. The issuer determines that under the insured portion of the plan, the claims incurred for the base period that would have been denied under the terms of the plan absent the amendment are \$25,000 and the administrative costs attributable to complying with the requirements of this section are \$1,000. Thus, the total incurred expenditures for the plan for the base period are \$3,300,000 (\$2,000,000 + \$200,000 + \$1,000,000 + \$100,000 = \$3,300,000) and the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are \$3,273,000 (\$3,300,000 - (\$0 + \$1,000 + \$25,000 + \$1,000) = \$3,273,000).

(ii) In this *Example 3*, the plan does not satisfy the requirements of this paragraph (f)(2) because the application of this section does not result in an increased cost of at least one percent under the terms of the plan (\$3,300,000/\$3,273,000 = 1.00825).

(3) *Notice of exemption—(i) Participants and beneficiaries—(A) In general.* A group health plan must notify participants and beneficiaries of the plan's decision to claim the one-percent increased cost exemption. The notice must include the following information:

(1) A statement that the plan is exempt from the requirements of this section and a description of the basis for the exemption;

(2) The name and telephone number of the individual to contact for further information;

(3) The plan name and plan number (PN);

(4) The plan administrator's name, address, and telephone number;

(5) For single-employer plans, the plan sponsor's name, address, and telephone number (if different from paragraph (f)(3)(i)(A)(3) of this section) and the plan sponsor's employer identification number (EIN);

(6) The effective date of the exemption;

(7) The ability of participants and beneficiaries to contact the plan administrator to see how benefits may be affected as a result of the plan's claim of the exemption; and

(8) The availability, upon request and free of charge, of a summary of the

information required under paragraph (f)(4) of this section.

(B) *Use of summary of material reductions in covered services or benefits.* A plan may satisfy the requirements of paragraph (f)(3)(i)(A) of this section by providing participants and beneficiaries (in accordance with paragraph (f)(3)(i)(C) of this section) with a summary of material reductions in covered services or benefits required under 29 CFR 2520.104b-3(d) that also includes the information of this paragraph (f)(3)(i). However, in all cases, the exemption is not effective until 30 days after notice has been sent.

(C) *Delivery.* The notice described in this paragraph (f)(3)(i) is required to be provided to all participants and beneficiaries. The notice may be furnished by any method of delivery that satisfies the requirements of section 104(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(1)) (e.g., first-class mail). If the notice is provided to the participant at the participant's last known address, then the requirements of this paragraph (f)(3)(i) are satisfied with respect to the participant and all beneficiaries residing at that address. If a beneficiary's last known address is different from the participant's last known address, a separate notice is required to be provided to the beneficiary at the beneficiary's last known address.

(D) *Example.* The rules of this paragraph (f)(3)(i) are illustrated by the following example:

Example. (i) A group health plan has a plan year that is the calendar year and has an open enrollment period every November 1 through November 30. The plan determines on September 15 that it satisfies the requirements of paragraph (f)(2) of this section. As part of its open enrollment materials, the plan mails, on October 15, to all participants and beneficiaries a notice satisfying the requirements of this paragraph (f)(3)(i).

(ii) In this *Example*, the plan has sent the notice in a manner that complies with this paragraph (f)(3)(i).

(ii) *Federal agencies.* A group health plan that is a church plan (as defined in section 414(e)) claiming the exemption of this paragraph (f) for any benefit package must provide notice in accordance with the requirement of this paragraph (f)(3)(ii). This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies. For any other group health plan, see 29 CFR 2590.712(f)(3)(ii)(B).

(4) *Availability of documentation.* The plan must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based. An individual who is not a participant or beneficiary and who presents a notice described in paragraph (f)(3)(i) of this section is considered to be a representative. A representative may request the summary of information by providing the plan a copy of the notice provided to the participant under paragraph (f)(3)(i) of this section with any individually identifiable information redacted. The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with paragraph (b)(1)(i) of this section, the administrative costs related to those claims, and other administrative costs attributable to complying with the requirements of this section. In no event should the summary of information include any individually identifiable information.

(g) *Special rules for group health insurance coverage—*(1) *Sale of nonparity policies.* See 29 CFR 2590.712(g)(1) and 45 CFR 146.136(g)(1) for rules limiting the right of an issuer to sell a policy without parity (as described in 29 CFR 2590.712(b) and 45 CFR 146.136(b)) to a plan that meets the requirements of 29 CFR 2590.712 (e) or (f) and 45 CFR 146.136 (e) or (f).

(2) *Duration of exemption.* After a plan meets the requirements of paragraph (f) of this section, the plan may change issuers without having to meet the requirements of paragraph (f) of this section again before September 30, 2001.

(h) *Effective dates—*(1) *In general.* The requirements of this section are applicable for plan years beginning on or after January 1, 1998.

(2) *Limitation on actions.* (i) Except as provided in paragraph (h)(3) of this section, no enforcement action is to be taken by the Secretary against a group health plan that has sought to comply in good faith with the requirements of section 9812, with respect to a violation that occurs before the earlier of—

(A) The first day of the first plan year beginning on or after April 1, 1998; or

(B) January 1, 1999.

(ii) Compliance with the requirements of this section is deemed to be good faith compliance with the requirements of section 9812.

(iii) The rules of this paragraph (h)(2) are illustrated by the following examples:

Example 1. (i) A group health plan has a plan year that is the calendar year. The plan complies with section 9812 in good faith using assumptions inconsistent with paragraph (b)(6) of this section relating to weighted averages for categories of benefits.

(ii) In this *Example 1*, no enforcement action may be taken against the plan with respect to a violation resulting solely from those assumptions and occurring before January 1, 1999.

Example 2. (i) A group health plan has a plan year that is the calendar year. For the entire 1998 plan year, the plan applies a \$1,000,000 annual limit on medical/surgical benefits and a \$100,000 annual limit on mental health benefits.

(ii) In this *Example 2*, the plan has not sought to comply with the requirements of section 9812 in good faith, and this paragraph (h)(2) does not apply.

(3) *Transition period for increased cost exemption—*(i) *In general.* No enforcement action will be taken against a group health plan that is subject to the requirements of this section based on a violation of this section that occurs before April 1, 1998 solely because the plan claims the increased cost exemption under section 9812(c)(2) based on assumptions inconsistent with the rules under paragraph (f) of this section, provided that a plan amendment that complies with the requirements of paragraph (b)(1)(i) of this section is adopted and effective no later than March 31, 1998 and the plan complies with the notice requirements in paragraph (h)(3)(ii) of this section.

(ii) *Notice of plan's use of transition period.* (A) A group health plan satisfies the requirements of this paragraph (h)(3)(ii) only if the plan provides notice to the applicable federal agency and posts the notice at the location(s) where documents must be made available for examination by participants and beneficiaries under section 104(b)(2) of the Employee Retirement Income Security Act of 1974, and the regulations thereunder (29 CFR 2520.104b-1(b)(3)). The notice must indicate the plan's decision to use the transition period in paragraph (h)(3)(i) of this section by 30 days after the first day of the plan year beginning on or after January 1, 1998, but in no event later than March 31, 1998. For a group health plan that is a church plan (as defined in section 414(e)), the applicable federal agency is the Department of the Treasury. For a group health plan that is not a church plan, see 29 CFR 2590.712(h)(3)(ii). The notice must include—

(I) The name of the plan and the plan number (PN);

(2) The name, address, and telephone number of the plan administrator;

(3) For single-employer plans, the name, address, and telephone number of the plan sponsor (if different from the plan administrator) and the plan sponsor's employer identification number (EIN);

(4) The name and telephone number of the individual to contact for further information; and

(5) The signature of the plan administrator and the date of the signature.

(B) The notice must be provided at no charge to participants or their representative within 15 days after receipt of a written or oral request for such notification, but in no event before the notice has been sent to the applicable federal agency.

(i) *Sunset*. This section does not apply to benefits for services furnished on or after September 30, 2001.

Dated: December 16, 1997.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: December 16, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

Pension and Welfare Benefits Administration

29 CFR Chapter XXV

29 CFR Part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS

1. The authority citation for Part 2590 is revised to read as follows:

Authority: Secs. 107, 209, 505, 701–703, 711, 712, and 731–734 of ERISA (29 U.S.C. 1027, 1059, 1135, 1171–1173, 1181, 1182, and 1191–1194), as amended by Pub. L. 104–191, 110 Stat. 1936 and Pub. L. 104–204, 110 Stat. 2944; and Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

Subpart B—Other Requirements

2. Section 2590.712 is revised to read as follows:

§ 2590.712 Parity in the application of certain limits to mental health benefits.

(a) *Definitions*. For purposes of this section, except where the context clearly indicates otherwise, the following definitions apply:

Aggregate lifetime limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan (or group health insurance coverage offered in

connection with such a plan) for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Annual limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a plan (or group health insurance coverage offered in connection with such a plan) for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Medical/surgical benefits means benefits for medical or surgical services, as defined under the terms of the plan or group health insurance coverage, but does not include mental health benefits.

Mental health benefits means benefits for mental health services, as defined under the terms of the plan or group health insurance coverage, but does not include benefits for treatment of substance abuse or chemical dependency.

(b) *Requirements regarding limits on benefits—(1)—general—(i) General parity requirement*. A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits must comply with paragraph (b)(2), (3), or (6) of this section.

(ii) *Exception*. The rule in paragraph (b)(1)(i) of this section does not apply if a plan, or coverage, satisfies the requirements of paragraph (e) or (f) of this section.

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits*. If a plan (or group health insurance coverage) does not include an aggregate lifetime or annual limit on any medical/surgical benefits or includes aggregate lifetime or annual limits that apply to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual limit, respectively, on mental health benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits*. If a plan (or group health insurance coverage) includes an aggregate lifetime or annual limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health benefits in a manner that does not distinguish between the medical/surgical and mental health benefits; or

(ii) Not include an aggregate lifetime or annual limit on mental health

benefits that is less than the aggregate lifetime or annual limit, respectively, on the medical/surgical benefits.

(4) *Examples*. The rules of paragraphs (b)(2) and (3) of this section are illustrated by the following examples:

Example 1. (i) Prior to the effective date of the mental health parity provisions, a group health plan had no annual limit on medical/surgical benefits and had a \$10,000 annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Eliminating the plan's annual limit on mental health benefits;

(B) Replacing the plan's previous annual limit on mental health benefits with a \$500,000 annual limit on all benefits (including medical/surgical and mental health benefits); and

(C) Replacing the plan's previous annual limit on mental health benefits with a \$250,000 annual limit on medical/surgical benefits and a \$250,000 annual limit on mental health benefits.

(ii) In this *Example 1*, each of the three options being considered by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 2. (i) Prior to the effective date of the mental health parity provisions, a group health plan had a \$100,000 annual limit on medical/surgical inpatient benefits, a \$50,000 annual limit on medical/surgical outpatient benefits, and a \$100,000 annual limit on all mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Replacing the plan's previous annual limit on mental health benefits with a \$150,000 annual limit on mental health benefits; and

(B) Replacing the plan's previous annual limit on mental health benefits with a \$100,000 annual limit on mental health inpatient benefits and a \$50,000 annual limit on mental health outpatient benefits.

(ii) In this *Example 2*, each option under consideration by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 3. (i) A group health plan that is subject to the requirements of this section has no aggregate lifetime or annual limit for either medical/surgical benefits or mental health benefits. While the plan provides medical/surgical benefits with respect to both network and out-of-network providers, it does not provide mental health benefits with respect to out-of-network providers.

(ii) In this *Example 3*, the plan complies with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 4. (i) Prior to the effective date of the mental health parity provisions, a group health plan had an annual limit on medical/surgical benefits and a separate but identical

annual limit on mental health benefits. The plan included benefits for treatment of substance abuse and chemical dependency in its definition of mental health benefits. Accordingly, claims paid for treatment of substance abuse and chemical dependency were counted in applying the annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Making no change in the plan so that claims paid for treatment of substance abuse and chemical dependency continue to count in applying the annual limit on mental health benefits;

(B) Amending the plan to count claims paid for treatment of substance abuse and chemical dependency in applying the annual limit on medical/surgical benefits (rather than counting those claims in applying the annual limit on mental health benefits);

(C) Amending the plan to provide a new category of benefits for treatment of chemical dependency and substance abuse that is subject to a separate, lower limit and under which claims paid for treatment of substance abuse and chemical dependency are counted only in applying the annual limit on this separate category; and

(D) Amending the plan to eliminate distinctions between medical/surgical benefits and mental health benefits and establishing an overall limit on benefits offered under the plan under which claims paid for treatment of substance abuse and chemical dependency are counted with medical/surgical benefits and mental health benefits in applying the overall limit.

(ii) In this *Example 4*, the group health plan is described in paragraph (b)(3) of this section. Because mental health benefits are defined in paragraph (a) of this section as excluding benefits for treatment of substance abuse and chemical dependency, the inclusion of benefits for treatment of substance abuse and chemical dependency in applying an aggregate lifetime limit or annual limit on mental health benefits under option (A) of this *Example 4* would not comply with the requirements of paragraph (b)(3) of this section. However, options (B), (C), and (D) of this *Example 4* would comply with the requirements of paragraph (b)(3) of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

(5) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of medical/surgical benefits subject to a limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual limits). Any reasonable method may be used to determine whether the dollar amounts expected to be paid under the plan will

constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(6) *Plan not described in paragraph (b)(2) or (3) of this section—(i) In general.* A group health plan (or group health insurance coverage) that is not described in paragraph (b)(2) or (3) of this section, must either—

(A) Impose no aggregate lifetime or annual limit, as appropriate, on mental health benefits; or

(B) Impose an aggregate lifetime or annual limit on mental health benefits that is no less than an average limit calculated for medical/surgical benefits in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(6)(i)(B). In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(6), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(5) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(iii) *Example.* The rules of this paragraph (b)(6) are illustrated by the following example:

Example. (i) A group health plan that is subject to the requirements of this section includes a \$100,000 annual limit on medical/surgical benefits related to cardio-pulmonary diseases. The plan does not include an annual limit on any other category of medical/surgical benefits. The plan determines that 40% of the dollar amount of plan payments for medical/surgical benefits are related to cardio-pulmonary diseases. The plan determines that \$1,000,000 is a reasonable estimate of the upper limit on the dollar amount that the plan may incur with respect to the other 60% of payments for medical/surgical benefits.

(ii) In this *Example*, the plan is not described in paragraph (b)(3) of this section because there is not one annual limit that applies to at least two-thirds of all medical/surgical benefits. Further, the plan is not

described in paragraph (b)(2) of this section because more than one-third of all medical/surgical benefits are subject to an annual limit. Under this paragraph (b)(6), the plan sponsor can choose either to include no annual limit on mental health benefits, or to include an annual limit on mental health benefits that is not less than the weighted average of the annual limits applicable to each category of medical/surgical benefits. In this example, the minimum weighted average annual limit that can be applied to mental health benefits is \$640,000 (40% x \$100,000 + 60% x \$1,000,000 = \$640,000).

(c) *Rule in the case of separate benefit packages.* If a group health plan offers two or more benefit packages, the requirements of this section, including the exemption provisions in paragraph (f) of this section, apply separately to each benefit package. Examples of a group health plan that offers two or more benefit packages include a group health plan that offers employees a choice between indemnity coverage or HMO coverage, and a group health plan that provides one benefit package for retirees and a different benefit package for current employees.

(d) *Applicability—(1) Group health plans.* The requirements of this section apply to a group health plan offering both medical/surgical benefits and mental health benefits regardless of whether the mental health benefits are administered separately under the plan.

(2) *Health insurance issuers.* The requirements of this section apply to a health insurance issuer offering health insurance coverage for both medical/surgical benefits and mental health benefits in connection with a group health plan.

(3) *Scope.* This section does not—

(i) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) to provide any mental health benefits; or

(ii) Affect the terms and conditions (including cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requiring prior authorization for treatment, or requiring primary care physicians' referrals for treatment) relating to the amount, duration, or scope of the mental health benefits under the plan (or coverage) except as specifically provided in paragraph (b) of this section.

(e) *Small employer exemption—(1) In general.* The requirements of this section do not apply to a group health plan (or health insurance issuer offering coverage in connection with a group health plan) for a plan year of a small employer. For purposes of this paragraph (e), the term *small employer* means, in connection with a group

health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. See section 732(a) of the Act and § 2590.732(a), which provide that this section (and certain other sections) does not apply to any group health plan (and health insurance issuer offering coverage in connection with a group health plan) for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) *Rules in determining employer size.* For purposes of paragraph (e)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. 414) are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(f) *Increased cost exemption—(1) In general.* A group health plan (or health insurance coverage offered in connection with a group health plan) is not subject to the requirements of this section if the requirements of this paragraph (f) are satisfied. If a plan offers more than one benefit package, this paragraph (f) applies separately to each benefit package. Except as provided in paragraph (h) of this section, a plan must comply with the requirements of paragraph (b)(1)(i) of this section for the first plan year beginning on or after January 1, 1998, and must continue to comply with the requirements of paragraph (b)(1)(i) of this section until the plan satisfies the requirements in this paragraph (f). In no event is the exemption of this paragraph (f) effective until 30 days after the notice requirements in paragraph (f)(3) of this section are satisfied. If the requirements of this paragraph (f) are satisfied with respect to a plan, the exemption continues in effect (at the plan's discretion) until September 30, 2001, even if the plan subsequently purchases a different policy from the same or a different issuer and regardless of any other changes to the plan's benefit structure.

(2) *Calculation of the one-percent increase—(i) Ratio.* A group health plan (or group health insurance coverage) satisfies the requirements of this paragraph (f)(2) if the application of paragraph (b)(1)(i) of this section to the plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least one percent. The application of paragraph (b)(1)(i) of this section results in an increased cost of at least one percent under a group health plan (or for such coverage) only if the ratio below equals or exceeds 1.01000. The ratio is determined as follows:

(A) The incurred expenditures during the base period, divided by,

(B) The incurred expenditures during the base period, reduced by—

(1) The claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section; and

(2) Administrative expenses attributable to complying with the requirements of this section.

(ii) *Formula.* The ratio of paragraph (f)(2)(i) of this section is expressed mathematically as follows:

$$\frac{IE}{IE - (CE + AE)} \geq 1.01000$$

(A) *IE* means the incurred expenditures during the base period.

(B) *CE* means the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section

(C) *AE* means administrative costs related to claims in *CE* and other administrative costs attributable to complying with the requirements of this section.

(iii) *Incurred expenditures.* *Incurred expenditures* means actual claims incurred during the base period and reported within two months following the base period, and administrative costs for all benefits under the group health plan, including mental health benefits and medical/surgical benefits, during the base period. Incurred expenditures do not include premiums.

(iv) *Base period.* *Base period* means the period used to calculate whether the plan may claim the one-percent increased cost exemption in this paragraph (f). The base period must begin on the first day in any plan year that the plan complies with the requirements of paragraph (b)(1)(i) of this section and must extend for a period of at least six consecutive calendar months. However, in no event may the base period begin prior to

September 26, 1996 (the date of enactment of the Mental Health Parity Act (Pub. L. 104–204, 110 Stat. 2944)).

(v) *Rating pools.* For plans that are combined in a pool for rating purposes, the calculation under this paragraph (f)(2) for each plan in the pool for the base period is based on the incurred expenditures of the pool, whether or not all the plans in the pool have participated in the pool for the entire base period. (However, only the plans that have complied with paragraph (b)(1)(i) of this section for at least six months as a member of the pool satisfy the requirements of this paragraph (f)(2).) Otherwise, the calculation under this paragraph (f)(2) for each plan is calculated by the plan administrator (or issuer) based on the incurred expenditures of the plan.

(vi) *Examples.* The rules of this paragraph (f)(2) are illustrated by the following examples:

EXAMPLE 1. (i) A group health plan has a plan year that is the calendar year. The plan satisfies the requirements of paragraph (b)(1)(i) of this section as of January 1, 1998. On September 15, 1998, the plan determines that \$1,000,000 in claims have been incurred during the period between January 1, 1998 and June 30, 1998 and reported by August 30, 1998. The plan also determines that \$100,000 in administrative costs have been incurred for all benefits under the group health plan, including mental health benefits. Thus, the plan determines that its incurred expenditures for the base period are \$1,100,000. The plan also determines that the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section are \$40,000 and that administrative expenses attributable to complying with the requirements of this section are \$10,000. Thus, the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are \$1,050,000 (\$1,100,000 – (\$40,000 + \$10,000) = \$1,050,000).

(ii) In this *Example 1*, the plan satisfies the requirements of this paragraph (f)(2) because the application of this section results in an increased cost of at least one percent under the terms of the plan ($\$1,100,000 / \$1,050,000 = 1.04762$).

EXAMPLE 2. (i) A health insurance issuer sells a group health insurance policy that is rated on a pooled basis and is sold to 30 group health plans. One of the group health plans inquires whether it qualifies for the one-percent increased cost exemption. The issuer performs the calculation for the pool as a whole and determines that the application of this section results in an increased cost of 0.500 percent (for a ratio under this paragraph (f)(2) of 1.00500) for the pool. The issuer informs the requesting plan and the other plans in the pool of the calculation.

(ii) In this *Example 2*, none of the plans satisfy the requirements of this paragraph

(f)(2) and a plan that purchases a policy not complying with the requirements of paragraph (b)(1)(i) of this section violates the requirements of this section. In addition, an issuer that issues to any of the plans in the pool a policy not complying with the requirements of paragraph (b)(1)(i) of this section violates the requirements of this section.

EXAMPLE 3. (i) A partially insured plan is collecting the information to determine whether it qualifies for the exemption. The plan administrator determines the incurred expenses for the base period for the self-funded portion of the plan to be \$2,000,000 and the administrative expenses for the base period for the self-funded portion to be \$200,000. For the insured portion of the plan, the plan administrator requests data from the insurer. For the insured portion of the plan, the plan's own incurred expenses for the base period are \$1,000,000 and the administrative expenses for the base period are \$100,000. The plan administrator determines that under the self-funded portion of the plan, the claims incurred for the base period that would have been denied under the terms of the plan absent the amendment are \$0 because the self-funded portion does not cover mental health benefits and the plan's administrative costs attributable to complying with the requirements of this section are \$1,000. The issuer determines that under the insured portion of the plan, the claims incurred for the base period that would have been denied under the terms of the plan absent the amendment are \$25,000 and the administrative costs attributable to complying with the requirements of this section are \$1,000. Thus, the total incurred expenditures for the plan for the base period are \$3,300,000 (\$2,000,000 + \$200,000 + \$1,000,000 + \$100,000 = \$3,300,000) and the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are \$3,273,000 (\$3,300,000 - (\$0 + \$1,000 + \$25,000 + \$1,000) = \$3,273,000).

(ii) In this *Example 3*, the plan does not satisfy the requirements of this paragraph (f)(2) because the application of this section does not result in an increased cost of at least one percent under the terms of the plan ($\$3,300,000/\$3,273,000 = 1.00825$).

(3) **Notice of exemption—(i) Participants and beneficiaries—(A) In general.** A group health plan must notify participants and beneficiaries of the plan's decision to claim the one-percent increased cost exemption. The notice must include the following information:

(1) A statement that the plan is exempt from the requirements of this section and a description of the basis for the exemption;

(2) The name and telephone number of the individual to contact for further information;

(3) The plan name and plan number (PN);

(4) The plan administrator's name, address, and telephone number;

(5) For single-employer plans, the plan sponsor's name, address, and telephone number (if different from paragraph (f)(3)(i)(A)(3) of this section) and the plan sponsor's employer identification number (EIN);

(6) The effective date of the exemption;

(7) The ability of participants and beneficiaries to contact the plan administrator to see how benefits may be affected as a result of the plan's claim of the exemption; and

(8) The availability, upon request and free of charge, of a summary of the information required under paragraph (f)(4) of this section.

(B) **Use of summary of material reductions in covered services or benefits.** A plan may satisfy the requirements of paragraph (f)(3)(i)(A) of this section by providing participants and beneficiaries (in accordance with paragraph (f)(3)(i)(C) of this section) with a summary of material reductions in covered services or benefits required under § 2520.104b-3(d) that also includes the information of this paragraph (f)(3)(i). However, in all cases, the exemption is not effective until 30 days after notice has been sent.

(C) **Delivery.** The notice described in this paragraph (f)(3)(i) is required to be provided to all participants and beneficiaries. The notice may be furnished by any method of delivery that satisfies the requirements of section 104(b)(1) of ERISA (e.g., first-class mail). If the notice is provided to the participant at the participant's last known address, then the requirements of this paragraph (f)(3)(i) are satisfied with respect to the participant and all beneficiaries residing at that address. If a beneficiary's last known address is different from the participant's last known address, a separate notice is required to be provided to the beneficiary at the beneficiary's last known address.

(D) **Example.** The rules of this paragraph (f)(3)(i) are illustrated by the following example:

Example. (i) A group health plan has a plan year that is the calendar year and has an open enrollment period every November 1 through November 30. The plan determines on September 15 that it satisfies the requirements of paragraph (f)(2) of this section. As part of its open enrollment materials, the plan mails, on October 15, to all participants and beneficiaries a notice satisfying the requirements of this paragraph (f)(3)(i).

(ii) In this *Example*, the plan has sent the notice in a manner that complies with this paragraph (f)(3)(i).

(ii) **Federal agencies—(A) Church plans.** A church plan (as defined in

section 414(e) of the Internal Revenue Code) claiming the exemption of this paragraph (f) for any benefit package must provide notice to the Department of the Treasury. This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(B) **Group health plans subject to Part 7 of Subtitle B of Title I of ERISA.** A group health plan subject to Part 7 of Subtitle B of Title I of ERISA, and claiming the exemption of this paragraph (f) for any benefit package, must provide notice to the Department of Labor. This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(C) **Nonfederal governmental plans.** A group health plan that is a nonfederal governmental plan claiming the exemption of this paragraph (f) for any benefit package must provide notice to the Department of Health and Human Services (HHS). This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(4) **Availability of documentation.** The plan (or issuer) must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based. An individual who is not a participant or beneficiary and who presents a notice described in paragraph (f)(3)(i) of this section is considered to be a representative. A representative may request the summary of information by providing the plan a copy of the notice provided to the participant under paragraph (f)(3)(i) of this section with any individually identifiable information redacted. The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with paragraph (b)(1)(i) of this section, the administrative costs related to those claims, and other administrative costs attributable to complying with the requirements of this section. In no event should the summary of information

include any individually identifiable information.

(g) *Special rules for group health insurance coverage*—(1) *Sale of nonparity policies*. An issuer may sell a policy without parity (as described in paragraph (b) of this section) only to a plan that meets the requirements of paragraphs (e) or (f) of this section.

(2) *Duration of exemption*. After a plan meets the requirements of paragraph (f) of this section, the plan may change issuers without having to meet the requirements of paragraph (f) of this section again before September 30, 2001.

(h) *Effective dates*—(1) *In general*. The requirements of this section are applicable for plan years beginning on or after January 1, 1998.

(2) *Limitation on actions*. (i) Except as provided in paragraph (h)(3) of this section, no enforcement action is to be taken by the Secretary against a group health plan that has sought to comply in good faith with the requirements of section 712 of the Act, with respect to a violation that occurs before the earlier of—

(A) The first day of the first plan year beginning on or after April 1, 1998; or
(B) January 1, 1999.

(ii) Compliance with the requirements of this section is deemed to be good faith compliance with the requirements of section 712 of Part 7 of Subtitle B of Title I of ERISA.

(iii) The rules of this paragraph (h)(2) are illustrated by the following examples:

Example 1. (i) A group health plan has a plan year that is the calendar year. The plan complies with section 712 of Part 7 of Subtitle B of Title I of ERISA in good faith using assumptions inconsistent with paragraph (b)(6) of this section relating to weighted averages for categories of benefits.

(ii) In this *Example 1*, no enforcement action may be taken against the plan with respect to a violation resulting solely from those assumptions and occurring before January 1, 1999.

Example 2. (i) A group health plan has a plan year that is the calendar year. For the entire 1998 plan year, the plan applies a \$1,000,000 annual limit on medical/surgical benefits and a \$100,000 annual limit on mental health benefits.

(ii) In this *Example 2*, the plan has not sought to comply with the requirements of section 712 of the Act in good faith and this paragraph (h)(2) does not apply.

(3) *Transition period for increased cost exemption*—(i) *In general*. No enforcement action will be taken against a group health plan that is subject to the requirements of this section based on a violation of this section that occurs before April 1, 1998 solely because the plan claims the increased cost

exemption under section 712(c)(2) of Part 7 of Subtitle B of Title I of ERISA based on assumptions inconsistent with the rules under paragraph (f) of this section, provided that a plan amendment that complies with the requirements of paragraph (b)(1)(i) of this section is adopted and effective no later than March 31, 1998 and the plan complies with the notice requirements in paragraph (h)(3)(ii) of this section.

(ii) *Notice of plan's use of transition period*. (A) A group health plan satisfies the requirements of this paragraph (h)(3)(ii) only if the plan provides notice to the applicable federal agency and posts such notice at the location(s) where documents must be made available for examination by participants and beneficiaries under section 104(b)(2) of ERISA and the regulations thereunder (29 CFR 2520.104b-1(b)(3)). The notice must indicate the plan's decision to use the transition period in paragraph (h)(3)(i) of this section by 30 days after the first day of the plan year beginning on or after January 1, 1998, but in no event later than March 31, 1998. For a group health plan that is a church plan, the applicable federal agency is the Department of the Treasury. For a group health plan that is subject to Part 7 of Subtitle B of Title I of ERISA, the applicable federal agency is the Department of Labor. For a group health plan that is a nonfederal governmental plan, the applicable federal agency is the Department of Health and Human Services. The notice must include—

(1) The name of the plan and the plan number (PN);

(2) The name, address, and telephone number of the plan administrator;

(3) For single-employer plans, the name, address, and telephone number of the plan sponsor (if different from the plan administrator) and the plan sponsor's employer identification number (EIN);

(4) The name and telephone number of the individual to contact for further information; and

(5) The signature of the plan administrator and the date of the signature.

(B) The notice must be provided at no charge to participants or their representative within 15 days after receipt of a written or oral request for such notification, but in no event before the notice has been sent to the applicable federal agency.

(i) *Sunset*. This section does not apply to benefits for services furnished on or after September 30, 2001.

Signed at Washington, DC, this 16th day of December, 1997.

Olena Berg,

Assistant Secretary, Pension Welfare Benefits Administration, U.S. Department of Labor.

Health Care Financing Administration

45 CFR Subtitle A, Subchapter B

45 CFR Part 146 is amended as follows:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

1. The authority citation for Part 146 is revised to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92).

2. A new Subpart C is added to Part 146 to read as follows:

Subpart C—Requirements Related to Benefits

§ 146.136 Parity in the application of certain limits to mental health benefits.

(a) *Definitions*. For purposes of this section, except where the context clearly indicates otherwise, the following definitions apply:

Aggregate lifetime limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan (or group health insurance coverage offered in connection with such plan) for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Annual limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a plan (or group health insurance coverage offered in connection with such plan) for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Medical/surgical benefits means benefits for medical or surgical services, as defined under the terms of the plan or group health insurance coverage, but does not include mental health benefits.

Mental health benefits means benefits for mental health services, as defined under the terms of the plan or group health insurance coverage, but does not include benefits for treatment of substance abuse or chemical dependency.

(b) *Requirements regarding limits on benefits*—(1) *In general*—(i) *General parity requirement*. A group health plan (or health insurance coverage offered by an issuer in connection with a group

health plan) that provides both medical/surgical benefits and mental health benefits must comply with paragraph (b)(2), paragraph (b)(3), or paragraph (b)(6) of this section.

(ii) *Exception.* The rule in paragraph (b)(1)(i) of this section does not apply if a plan, or coverage, satisfies the requirements of paragraph (e) or paragraph (f) of this section.

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits.* If a plan (or group health insurance coverage) does not include an aggregate lifetime or annual limit on any medical/surgical benefits or includes aggregate lifetime or annual limits that apply to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual limit, respectively, on mental health benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits.* If a plan (or group health insurance coverage) includes an aggregate lifetime or annual limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health benefits in a manner that does not distinguish between the medical/surgical and mental health benefits; or

(ii) Not include an aggregate lifetime or annual limit on mental health benefits that is less than the aggregate lifetime or annual limit, respectively, on the medical/surgical benefits.

(4) *Examples.* The rules of paragraphs (b) (2) and (3) of this section are illustrated by the following examples:

Example 1. (i) Prior to the effective date of the mental health parity provisions, a group health plan had no annual limit on medical/surgical benefits and had a \$10,000 annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Eliminating the plan's annual limit on mental health benefits;

(B) Replacing the plan's previous annual limit on mental health benefits with a \$500,000 annual limit on all benefits (including medical/surgical and mental health benefits); and

(C) Replacing the plan's previous annual limit on mental health benefits with a \$250,000 annual limit on medical/surgical benefits and a \$250,000 annual limit on mental health benefits.

(ii) In this *Example 1*, each of the three options being considered by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 2. (i) Prior to the effective date of the mental health parity provisions, a group health plan had a \$100,000 annual limit on medical/surgical inpatient benefits, a \$50,000 annual limit on medical/surgical outpatient benefits, and a \$100,000 annual limit on all mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Replacing the plan's previous annual limit on mental health benefits with a \$150,000 annual limit on mental health benefits; and

(B) Replacing the plan's previous annual limit on mental health benefits with a \$100,000 annual limit on mental health inpatient benefits and a \$50,000 annual limit on mental health outpatient benefits.

(ii) In this *Example 2*, each option under consideration by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 3. (i) A group health plan that is subject to the requirements of this section has no aggregate lifetime or annual limit for either medical/surgical benefits or mental health benefits. While the plan provides medical/surgical benefits with respect to both network and out-of-network providers, it does not provide mental health benefits with respect to out-of-network providers.

(ii) In this *Example 3*, the plan complies with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 4. (i) Prior to the effective date of the mental health parity provisions, a group health plan had an annual limit on medical/surgical benefits and a separate but identical annual limit on mental health benefits. The plan included benefits for treatment of substance abuse and chemical dependency in its definition of mental health benefits. Accordingly, claims paid for treatment of substance abuse and chemical dependency were counted in applying the annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Making no change in the plan so that claims paid for treatment of substance abuse and chemical dependency continue to count in applying the annual limit on mental health benefits;

(B) Amending the plan to count claims paid for treatment of substance abuse and chemical dependency in applying the annual limit on medical/surgical benefits (rather than counting those claims in applying the annual limit on mental health benefits);

(C) Amending the plan to provide a new category of benefits for treatment of chemical dependency and substance abuse that is subject to a separate, lower limit and under which claims paid for treatment of substance abuse and chemical dependency are counted only in applying the annual limit on this separate category; and

(D) Amending the plan to eliminate distinctions between medical/surgical benefits and mental health benefits and

establishing an overall limit on benefits offered under the plan under which claims paid for treatment of substance abuse and chemical dependency are counted with medical/surgical benefits and mental health benefits in applying the overall limit.

(ii) In this *Example 4*, the group health plan is described in paragraph (b)(3) of this section. Because mental health benefits are defined in paragraph (a) of this section as excluding benefits for treatment of substance abuse and chemical dependency, the inclusion of benefits for treatment of substance abuse and chemical dependency in applying an aggregate lifetime limit or annual limit on mental health benefits under option (A) of this *Example 4* would not comply with the requirements of paragraph (b)(3) of this section. However, options (B), (C), and (D) of this *Example 4* would comply with the requirements of paragraph (b)(3) of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

(5) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of medical/surgical benefits subject to a limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual limits). Any reasonable method may be used to determine whether the dollar amounts expected to be paid under the plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(6) *Plan not described in paragraph (b)(2) or paragraph (b)(3) of this section—(i) In general.* A group health plan (or group health insurance coverage) that is not described in paragraph (b)(2) or paragraph (b)(3) of this section, must either impose—

(A) No aggregate lifetime or annual limit, as appropriate, on mental health benefits; or

(B) An aggregate lifetime or annual limit on mental health benefits that is no less than an average limit for medical/surgical benefits calculated in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment, or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(6)(i)(B). In addition, for purposes of determining

weighted averages, any benefits that are not within a category that is subject to a separately-designated limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(6), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(5) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(iii) *Examples.* The rules of this paragraph (b)(6) are illustrated by the following example:

Example. (i) A group health plan that is subject to the requirements of this section includes a \$100,000 annual limit on medical/surgical benefits related to cardio-pulmonary diseases. The plan does not include an annual limit on any other category of medical/surgical benefits. The plan determines that 40% of the dollar amount of plan payments for medical/surgical benefits are related to cardio-pulmonary diseases. The plan determines that \$1,000,000 is a reasonable estimate of the upper limit on the dollar amount that the plan may incur with respect to the other 60% of payments for medical/surgical benefits.

(ii) In this *Example*, the plan is not described in paragraph (b)(3) of this section because there is not one annual limit that applies to at least two-thirds of all medical/surgical benefits. Further, the plan is not described in paragraph (b)(2) of this section because more than one-third of all medical/surgical benefits are subject to an annual limit. Under this paragraph (b)(6), the plan sponsor can choose either to include no annual limit on mental health benefits, or to include an annual limit on mental health benefits that is not less than the weighted average of the annual limits applicable to each category of medical/surgical benefits. In this example, the minimum weighted average annual limit that can be applied to mental health benefits is $\$640,000$ ($40\% \times \$100,000 + 60\% \times \$1,000,000 = \$640,000$).

(c) *Rule in the case of separate benefit packages.* If a group health plan offers two or more benefit packages, the requirements of this section, including the exemption provisions in paragraph (f) of this section, apply separately to each benefit package. Examples of a group health plan that offers two or more benefit packages include a group health plan that offers employees a choice between indemnity coverage or HMO coverage, and a group health plan that provides one benefit package for retirees and a different benefit package for current employees.

(d) *Applicability—(1) Group health plans.* The requirements of this section

apply to a group health plan offering both medical/surgical benefits and mental health benefits regardless of whether the mental health benefits are administered separately under the plan.

(2) *Health insurance issuers.* The requirements of this section apply to a health insurance issuer offering health insurance coverage for both medical/surgical benefits and mental health benefits in connection with a group health plan.

(3) *Scope.* This section does not—

(i) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) to provide any mental health benefits; or

(ii) Affect the terms and conditions (including cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requiring prior authorization for treatment, or requiring primary care physicians' referrals for treatment) relating to the amount, duration, or scope of the mental health benefits under the plan (or coverage) except as specifically provided in paragraph (b) of this section.

(e) *Small employer exemption—(1) In general.* The requirements of this section do not apply to a group health plan (or health insurance issuer offering coverage in connection with a group health plan) for a plan year of a small employer. For purposes of this paragraph (e), the term *small employer* means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. See regulations at § 146.145(a), which provide that this section (and certain other sections) does not apply to any group health plan (and health insurance issuer offering coverage in connection with a group health plan) for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) *Rules in determining employer size.* For purposes of paragraph (e)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. 414) are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ

on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(f) *Increased cost exemption—(1) In general.* A group health plan (or health insurance coverage offered in connection with a group health plan) is not subject to the requirements of this section if the requirements of this paragraph (f) are satisfied. If a plan offers more than one benefit package, this paragraph (f) applies separately to each benefit package. Except as provided in paragraph (h) of this section, a plan must comply with the requirements of paragraph (b)(1)(i) of this section for the first plan year beginning on or after January 1, 1998, and must continue to comply with the requirements of paragraph (b)(1)(i) of this section until the plan satisfies the requirements in this paragraph (f). In no event is the exemption of this paragraph (f) effective until 30 days after the notice requirements in paragraph (f)(3) of this section are satisfied. If the requirements of this paragraph (f) are satisfied with respect to a plan, the exemption continues in effect (at the plan's discretion) until September 30, 2001, even if the plan subsequently purchases a different policy from the same or a different issuer and regardless of any other changes to the plan's benefit structure.

(2) *Calculation of the one-percent increase—(i) Ratio.* A group health plan (or group health insurance coverage) satisfies the requirements of this paragraph (f)(2) if the application of paragraph (b)(1)(i) of this section to the plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least one percent. The application of paragraph (b)(1)(i) of this section results in an increased cost of at least one percent under a group health plan (or for such coverage) only if the ratio below equals or exceeds 1.01000. The ratio is determined as follows:

(A) The incurred expenditures during the base period, divided by,

(B) The incurred expenditures during the base period, reduced by—

(1) The claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section, and

(2) Administrative expenses attributable to complying with the requirements of this section.

(ii) *Formula.* The ratio of paragraph (f)(2)(i) is expressed mathematically as follows:

$$\frac{IE}{IE - (CE + AE)} \geq 1.01000$$

(A) *IE* means the incurred expenditures during the base period.

(B) *CE* means the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section.

(C) *AE* means administrative costs related to claims in *CE* and other administrative costs attributable to complying with the requirements of this section.

(iii) *Incurred expenditures.* *Incurred expenditures* means actual claims incurred during the base period and reported within two months following the base period, and administrative costs for all benefits under the group health plan, including mental health benefits and medical/surgical benefits, during the base period. Incurred expenditures do not include premiums.

(iv) *Base period.* *Base period* means the period used to calculate whether the plan may claim the one-percent increased cost exemption in this paragraph (f). The base period must begin on the first day in any plan year that the plan complies with the requirements of paragraph (b)(1)(i) of this section and must extend for a period of at least six consecutive calendar months. However, in no event may the base period begin prior to September 26, 1996 (the date of enactment of the Mental Health Parity Act (Pub. L. 104-204, 110 Stat. 2944)).

(v) *Rating pools.* For plans that are combined in a pool for rating purposes, the calculation under this paragraph (f)(2) for each plan in the pool for the base period is based on the incurred expenditures of the pool, whether or not all the plans in the pool have participated in the pool for the entire base period. (However, only the plans that have complied with paragraph (b)(1)(i) of this section for at least six months as a member of the pool satisfy the requirements of this paragraph (f)(2).) Otherwise, the calculation under this paragraph (f)(2) for each plan is calculated by the plan administrator (or issuer) based on the incurred expenditures of the plan.

(vi) *Examples.* The rules of this paragraph (f)(2) are illustrated by the following examples:

Example 1. (i) A group health plan has a plan year that is the calendar year. The plan satisfies the requirements of paragraph (b)(1)(i) of this section as of January 1, 1998. On September 15, 1998, the plan determines that \$1,000,000 in claims have been incurred during the period between January 1, 1998 and June 30, 1998 and reported by August 30,

1998. The plan also determines that \$100,000 in administrative costs have been incurred for all benefits under the group health plan, including mental health benefits. Thus, the plan determines that its incurred expenditures for the base period are \$1,100,000. The plan also determines that the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section are \$40,000 and that administrative expenses attributable to complying with the requirements of this section are \$10,000. Thus, the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are \$1,050,000 (\$1,100,000—(\$40,000 + \$10,000) = \$1,050,000).

(ii) In this *Example 1*, the plan satisfies the requirements of this paragraph (f)(2) because the application of this section results in an increased cost of at least one percent under the terms of the plan ($\$1,100,000/\$1,050,000 = 1.04762$).

Example 2. (i) A health insurance issuer sells a group health insurance policy that is rated on a pooled-basis and is sold to 30 group health plans. One of the group health plans inquires whether it qualifies for the one percent increased cost exemption. The issuer performs the calculation for the pool as a whole and determines that the application of this section results in an increased cost of 0.500 percent (for a ratio under this paragraph (f)(2) of 1.00500) for the pool. The issuer informs the requesting plan and the other plans in the pool of the calculation.

(ii) In this *Example 2*, none of the plans satisfy the requirements of this paragraph (f)(2) and a plan that purchases a policy not complying with the requirements of paragraph (b)(1)(i) of this section violates the requirements of this section. In addition, an issuer that issues to any of the plans in the pool a policy not complying with the requirements of paragraph (b)(1)(i) of this section violates the requirements of this section.

Example 3. (i) A partially-insured plan is collecting the information to determine whether it qualifies for the exemption. The plan administrator determines the incurred expenses for the base period for the self-funded portion of the plan to be \$2,000,000 and the administrative expenses for the base period for the self-funded portion to be \$200,000. For the insured portion of the plan, the plan administrator requests data from the insurer. For the insured portion of the plan, the plan's own incurred expenses for the base period are \$1,000,000 and the administrative expenses for the base period are \$100,000. The plan administrator determines that under the self-funded portion of the plan, the claims incurred for the base period that would have been denied under the terms of the plan absent the amendment are \$0 because the self-funded portion does not cover mental health benefits and the plan's administrative costs attributable to complying with the requirements of this section are \$1,000. The issuer determines that under the insured portion of the plan, the claims incurred for the base period that would have been denied under the terms of

the plan absent the amendment are \$25,000 and the administrative costs attributable to complying with the requirements of this section are \$1,000. Thus, the total incurred expenditures for the plan for the base period are \$3,300,000 (\$2,000,000 + \$200,000 + \$1,000,000 + \$100,000 = \$3,300,000) and the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are \$3,273,000 (\$3,300,000 - (\$0 + \$1,000 + \$25,000 + \$1,000) = \$3,273,000).

(ii) In this *Example 3*, the plan does not satisfy the requirements of this paragraph (f)(2) because the application of this section does not result in an increased cost of at least one percent under the terms of the plan ($\$3,300,000/\$3,273,000 = 1.00825$).

(3) *Notice of exemption—(i) Participants and beneficiaries—(A) In general.* A group health plan must notify participants and beneficiaries of the plan's decision to claim the one percent increased cost exemption. The notice must include the following information:

(1) A statement that the plan is exempt from the requirements of this section and a description of the basis for the exemption.

(2) The name and telephone number of the individual to contact for further information.

(3) The plan name and plan number (PN).

(4) The plan administrator's name, address, and telephone number.

(5) For single-employer plans, the plan sponsor's name, address, and telephone number (if different from paragraph (f)(3)(i)(A)(3) of this section) and the plan sponsor's employer identification number (EIN).

(6) The effective date of such exemption.

(7) The ability of participants and beneficiaries to contact the plan administrator to see how benefits may be affected as a result of the plan's election of the exemption.

(8) The availability, upon request and free of charge, of a summary of the information required under paragraph (f)(4) of this section.

(B) *Use of summary of material reductions in covered services or benefits.* A plan may satisfy the requirements of paragraph (f)(3)(i)(A) by providing participants and beneficiaries (in accordance with paragraph (f)(3)(i)(C)) with a summary of material reductions in covered services or benefits consistent with Department of Labor regulations at 29 CFR 2520.104b-3(d) that also includes the information of this paragraph (f)(3)(i). However, in all cases, the exemption is not effective until 30 days after notice has been sent.

(C) *Delivery.* The notice described in this paragraph (f)(3)(i) is required to be

provided to all participants and beneficiaries. The notice may be furnished by any method of delivery that satisfies the requirements of section 104(b)(1) of ERISA (29 U.S.C. 1024(b)(1)) (e.g., first-class mail). If the notice is provided to the participant at the participant's last known address, then the requirements of this paragraph (f)(3)(i) are satisfied with respect to the participant and all beneficiaries residing at that address. If a beneficiary's last known address is different from the participant's last known address, a separate notice is required to be provided to the beneficiary at the beneficiary's last known address.

(D) *Example.* The rules of this paragraph (f)(3)(i) are illustrated by the following example:

Example. (i) A group health plan has a plan year that is the calendar year and has an open enrollment period every November 1 through November 30. The plan determines on September 15 that it satisfies the requirements of paragraph (f)(2) of this section. As part of its open enrollment materials, the plan mails, on October 15, to all participants and beneficiaries a notice satisfying the requirements of this paragraph (f)(3)(i).

(ii) In this *Example*, the plan has sent the notice in a manner that complies with this paragraph (f)(3)(i).

(ii) *Federal agencies—(A) Church plans.* A church plan (as defined in section 414(e) of the Internal Revenue Code) claiming the exemption of this paragraph (f) for any benefit package must provide notice to the Department of the Treasury. This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(B) *Group health plans subject to Part 7 of Subtitle B of Title I of ERISA.* A group health plan subject to Part 7 of Subtitle B of Title I of ERISA, and claiming the exemption of this paragraph (f) for any benefit package, must provide notice to the Department of Labor. This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(C) *Non-Federal governmental plans.* A group health plan that is a non-Federal governmental plan claiming the exemption of this paragraph (f) for any benefit package must provide notice to the Department of Health and Human Services (HHS). This requirement is

satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(4) *Availability of documentation.* The plan (or issuer) must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based. An individual who is not a participant or beneficiary and who presents a notice described in paragraph (f)(3)(i) of this section is considered to be a representative. A representative may request the summary of information by providing the plan a copy of the notice provided to the participant under paragraph (f)(3)(i) of this section with any individually identifiable information redacted. The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with paragraph (b)(1)(i) of this section, the administrative costs related to those claims, and other administrative costs attributable to complying with the requirements for the exemption. In no event should the summary of information include any individually identifiable information.

(g) *Special rules for group health insurance coverage—(1) Sale of nonparity policies.* An issuer may sell a policy without parity (as described in paragraph (b) of this section) only to a plan that meets the requirements of paragraph (e) or paragraph (f) of this section.

(2) *Duration of exemption.* After a plan meets the requirements of paragraph (f) of this section, the plan may change issuers without having to meet the requirements of paragraph (f) of this section again before September 30, 2001.

(h) *Effective dates—(1) In general.* The requirements of this section are applicable for plan years beginning on or after January 1, 1998.

(2) *Limitation on actions.* (i) Except as provided in paragraph (h)(3) of this section, no enforcement action is to be taken by the Secretary against a group health plan that has sought to comply in good faith with the requirements of section 2705 of the PHS Act, with respect to a violation that occurs before the earlier of—

(A) The first day of the first plan year beginning on or after April 1, 1998; or
(B) January 1, 1999.

(ii) Compliance with the requirements of this section is deemed to be good faith compliance with the requirements of section 2705 of the PHS Act.

(iii) The rules of this paragraph (h)(2) are illustrated by the following examples:

Example 1. (i) A group health plan has a plan year that is the calendar year. The plan complies with section 2705 of the PHS Act in good faith using assumptions inconsistent with paragraph (b)(6) of this section relating to weighted averages for categories of benefits.

(ii) In this *Example 1*, no enforcement action may be taken against the plan with respect to a violation resulting solely from those assumptions and occurring before January 1, 1999.

Example 2. (i) A group health plan has a plan year that is the calendar year. For the entire 1998 plan year, the plan applies a \$1,000,000 annual limit on medical/surgical benefits and a \$100,000 annual limit on mental health benefits.

(ii) In this *Example 2*, the plan has not sought to comply with the requirements of section 2705 of the PHS Act in good faith and this paragraph (h)(2) does not apply.

(3) *Transition period for increased cost exemption—(i) In general.* No enforcement action will be taken against a group health plan that is subject to the requirements of this section based on a violation of this section that occurs before April 1, 1998 solely because the plan claims the increased cost exemption under section 2705(c)(2) of the PHS Act based on assumptions inconsistent with the rules under paragraph (f) of this section, provided that a plan amendment that complies with the requirements of paragraph (b)(1)(i) of this section is adopted and effective no later than March 31, 1998 and the plan complies with the notice requirements in paragraph (h)(3)(ii) of this section.

(ii) *Notice of plan's use of transition period.* (A) A group health plan satisfies the requirements of this paragraph (h)(3)(ii) only if the plan provides notice to the applicable federal agency and posts the notice at the location(s) where documents must be made available for examination by participants and beneficiaries under section 104(b)(2) of ERISA and the regulations thereunder (29 CFR 2520.104b-1(b)(3)). The notice must indicate the plan's decision to use the transition period in paragraph (h)(3)(i) of this section by 30 days after the first day of the plan year beginning on or after January 1, 1998, but in no event later than March 31, 1998. For a group health plan that is a church plan, the applicable federal agency is the Department of the Treasury. For a group

health plan that is subject to Part 7 of Subtitle B of Title I of ERISA, the applicable federal agency is the Department of Labor. For a group health plan that is a nonfederal governmental plan, the applicable federal agency is the Department of Health and Human Services. The notice must include—

- (1) The name of the plan and the plan number (PN);
- (2) The name, address, and telephone number of the plan administrator;
- (3) For single-employer plans, the name, address, and telephone number of the plan sponsor (if different from the plan administrator) and the plan

sponsor's employer identification number (EIN);

(4) The name and telephone number of the individual to contact for further information; and

(5) The signature of the plan administrator and the date of the signature.

(B) The notice must be provided at no charge to participants or their representative within 15 days after receipt of a written or oral request for such notification, but in no event before the notice has been sent to the applicable federal agency.

(i) *Sunset*. This section does not apply to benefits for services furnished on or after September 30, 2001.

Dated: December 16, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: December 16, 1997.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 97-33262 Filed 12-19-97; 8:45 am]

BILLING CODE 4830-01-P; 4510-29-P; 4120-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 54**

[Reg-109704-97]

RIN 1545-AV12

HIPAA Mental Health Parity Act**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to mental health parity requirements imposed on group health plans. These requirements were added to the Internal Revenue Code by section 1532 of the Taxpayer Relief Act of 1997. The IRS is issuing the temporary regulations at the same time that the Pension and Welfare Benefits Administration of the U.S. Department of Labor and the Health Care Financing Administration of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations relating to mental health parity requirements added by the Mental Health Parity Act of 1996 to the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers and group health plans relating to the new mental health parity requirements. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by March 23, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-109704-97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-109704-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Russ Weinheimer, (202) 622-4695; concerning submissions or to request a

hearing, Mike Slaughter, 202-622-7180. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information referenced in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collection of information is in § 54.9812-1T (see the temporary regulations published elsewhere in this issue of the **Federal Register**). The collection of information is required if a plan wishes to avail itself of an exemption provided under the statute. The likely respondents are business or other for-profit institutions, nonprofit institutions, small businesses or organizations, and Taft-Hartley trusts. Responses to this collection of information are required in order to obtain the benefit of being exempt from the mental health parity requirement.

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.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 20, 1998. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information (see the preamble to the temporary regulations published elsewhere in this issue of the **Federal Register**);

- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Background

The temporary regulations published elsewhere in this issue of the **Federal Register** add § 54.9812-1T to the Miscellaneous Excise Tax Regulations. These regulations are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

Pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, it is hereby certified that the collection of information referenced in this notice of proposed rulemaking (see § 54.9812-1T of the temporary regulations published elsewhere in this issue of the **Federal Register**) will not have a significant economic impact on a substantial number of small entities. Employers with 50 or fewer employees are not subject to the law. Moreover, even for employers that are subject to the mental health parity requirements, no collection of information is required unless they qualify for and claim the 1% increased cost exemption. Even for employers subject to the law who claim the exemption, the estimated time for each response is 2 minutes. Thus, for example, an employer with 100 employees in its group health plan that claimed the 1% increased cost exemption, that took advantage of the three-month transitional period provided in the temporary regulations and that received 10 requests to examine the assumptions used in claiming the exemption would incur a total one-time burden of less than 4 hours. At an estimated cost of \$11 per hour, this would result in a one-time cost of less than \$44. This is not a significant economic impact.

This regulation is not subject to the Unfunded Mandates Reform Act of 1995 because the regulation is an interpretive regulation. For further information and

for analyses relating to the joint rulemaking, see the preamble to the joint rulemaking. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Russ Weinheimer, Office of the Chief Counsel, Employee Benefits and Exempt Organizations. However, other personnel from the IRS and Treasury Department participated in their development. The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the U.S. Department of Labor and U.S. Department of Health and Human Services.

List of Subjects in 26 CFR Part 54

Excise taxes, Health insurance, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.9812-1 is also issued under 26 U.S.C. 9833. * * *

Par. 2. Section 54.9812-1 is added to read as follows:

§ 54.9812-1 Parity in the application of certain limits to mental health benefits.

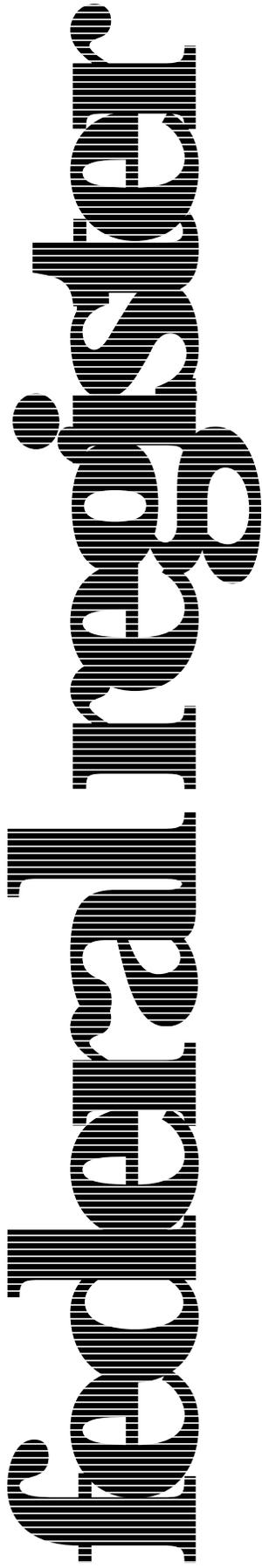
[The text of this proposed section is the same as the text of § 54.9812-1T published elsewhere in this issue of the **Federal Register**].

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 97-33263 Filed 12-19-97; 8:45 am]

BILLING CODE 4830-01-U



Monday
December 22, 1997

Part VI

Department of Labor

**Office of Federal Contract Compliance
Programs**

**41 CFR Parts 60–1 and 60–999
Government Contractors; Affirmative
Action Requirements, Executive Order
11246; Approval of Information Collection
Requirements and OMB Control Numbers;
Final Rule; Correction**

DEPARTMENT OF LABOR**Office of Federal Contract Compliance Programs****41 CFR Parts 60-1 and 60-999**

RIN 1215-AA01

Government Contractors, Affirmative Action Requirements, Executive Order 11246; Approval of Information Collection Requirements and OMB Control Numbers; Correction**AGENCY:** Office of Federal Contract Compliance Programs (OFCCP), Labor.**ACTION:** Final rule; technical amendments.

SUMMARY: This document informs the public that the Office of Management and Budget (OMB) has approved, under the Paperwork Reduction Act of 1995 (PRA), the collection of information requirements contained in the OFCCP rule published on August 19, 1997, which revised a limited number of regulations implementing Executive Order 11246 (62 FR 44174). OMB has approved of these revisions under existing PRA control numbers and this document makes a ministerial, technical amendment to the OFCCP table displaying all control numbers for collections of information in OFCCP rules. Today's publication also makes other minor typographical and technical corrections to the regulations implementing Executive Order 11246.

EFFECTIVE DATE: This document is effective December 22, 1997.

Information collection requirements contained in the final rule published at 62 FR 44174 are effective December 22, 1997.

FOR FURTHER INFORMATION CONTACT:

James I. Melvin, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room N-3424, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 219-9430 (voice), 1-800-326-2577 (TDD). Copies of this document in alternate formats may be obtained by calling OFCCP at (202) 219-9368 (voice) or 1-800-326-2577 (TDD). The alternate formats available are large print, electronic file on computer disk and audio-tape. This document also is available on the Internet at <http://www.dol.gov/dol/esa>.

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act Approval**

On August 19, 1997, OFCCP published a final rule revising its regulations implementing Executive

Order 11246, as amended, which prohibits all nonexempt Government contractors and subcontractors, and federally assisted construction contractors and subcontractors, from discriminating in employment. The Executive Order also requires these contractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex, and national origin.

OFCCP reviewed the collection of information aspects of the rule in accordance with the PRA and OMB implementing regulations published at 5 CFR part 1320 (62 FR 44187-88). OFCCP believes that the rule will not result in an increase in paperwork burdens from what was previously required by the OFCCP regulations. In accordance with the PRA, OFCCP submitted to OMB the information collection requirements contained in the rule. On October 16, 1997, OMB approved the information collection requirements in the rule as revisions to existing PRA control numbers 1215-0072 (Supply and Service) and 1215-0163 (Construction).

In accordance with OMB recommendations, 5 CFR 1320.3(f)(3), OFCCP publishes a single table in 41 CFR part 60-999 that lists the OMB-assigned control numbers for information collection requirements contained in OFCCP rules. This document makes a ministerial, technical amendment to the table published at 41 CFR 60-999.2. The table is updated to reflect the deletion of 41 CFR part 60-60 from the regulations.

Corrections to Part 60-1

This document makes a technical correction to 41 CFR 60-1.7(a)(1) regarding the deadline for filing Standard Form 100 ("EEO-1"), which is published jointly by OFCCP and the Equal Employment Opportunity Commission (EEOC). Certain larger contractors are required to file an EEO-1 annually. Currently, § 60-1.7(a)(1) states that the EEO-1 filing deadline is on or before March 31 of each year. In 1991, however, the EEO-1 filing deadline was changed to September 30 of each year. EEOC amended its regulations to change the EEO-1 filing deadline to September 30. 29 CFR 1602.7; 56 FR 35753, 35754-55 (July 26, 1991). The instructional materials accompanying the forms, which have been approved by OMB under the PRA (control number 3046-0007), state that the filing deadline is September 30. Accordingly, a ministerial correction is made to § 60-1.7(a)(1) to reflect the September 30 EEO-1 annual filing deadline.

This document also makes a ministerial correction to 41 CFR 60-1.12(d) to reflect the appropriate effective date for the record retention requirements in § 60-1.12 that were issued on August 19, 1997, at 62 FR 44189. Section 60-1.12(d) listed September 18, 1997, as the effective date of the § 60-1.12 record retention rules. September 18, 1997, was the general effective date for the rules issued by OFCCP on August 19, 1997. However, as OFCCP stated in the preamble to those rules at 62 FR 44187, the new § 60-1.12 record retention provisions were not to be effective until approved by OMB under the PRA and until OFCCP displayed valid OMB control numbers. Consequently, because today's document announces the OMB approval of the record retention provisions under the PRA and displays the valid control numbers, § 60-1.12(d) is corrected to state that today's date is the effective date of § 60-1.12.

Today's publication also replaces the word "Director" throughout Part 60-1 with the words "Deputy Assistant Secretary" to reflect the current title of the head of OFCCP. The Part 60-1 final rule substituted the title of "Deputy Assistant Secretary" for the title "Director" in the definition section of the rule and in the regulatory sections amended on August 19, 1997. Today's document makes this non-substantive nomenclature change uniform throughout Part 60-1.

In addition, today's publication makes a number of other minor, typographical corrections to 41 CFR 60-1.3, 1.12, 1.26, and 1.42. These changes correct spelling, capitalization and punctuation errors.

Regulatory Analyses and Procedures*Administrative Procedure Act (APA)*

This final rule makes minor technical and correcting amendments to 41 CFR parts 60-1 and 60-999. Because the amendments in this document are ministerial and non-substantive, the APA requirements that rule changes be published in proposed form and have a delayed effective date are unnecessary and would serve no useful purpose. Therefore, in accordance with the APA, 5 U.S.C. 553 (b)(3)(B) and (d)(3), good cause exists to waive notice of proposed rulemaking and the delayed effective date.

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866, and therefore a regulatory impact analysis is not required.

Regulatory Flexibility Act (RFA)

This final rule will not change existing obligations for Federal contractors. Consequently, under the RFA, as amended, 5 U.S.C. 605(b), it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This final rule does not include any Federal mandate that may result in the expenditure by state, local and tribal governments in the aggregate, or by the private sector, of \$100,000,000 or more in any one year.

List of Subjects

41 CFR Part 60-1

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Reporting and recordkeeping requirements.

41 CFR Part 60-999

Reporting and recordkeeping requirements, Paperwork Reduction Act, OMB control numbers.

Signed at Washington, D.C. this 15th day of December 1997.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

For the reasons stated above, 41 CFR parts 60-1 and 60-999 are revised to read as follows:

PART 60-1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

1. The authority citation for part 60-1 continues to read as follows:

Authority: Sec. 201, E.O. 11246 (30 FR 12319), as amended by E.O. 11375 (32 14303) and E.O. 12086 (43 FR 46501).

2. In part 60-1 remove the word "Director" and add, in its place, the words "Deputy Assistant Secretary" in the following sections:

- (a) Section 60-1.2 (in two places);
- (b) Section 60-1.4(d);
- (c) Section 60-1.5 (b)(1) (in two places), (b)(2), (c), and (d);
- (d) Section 60-1.7 (a)(2) (in two places), (a)(3) (in two places), (a)(4), (b)(1), and (b)(2) (in two places);
- (e) Section 60-1.9. (a), (b), (c), and (d) (in two places);
- (f) Section 60-1.10;
- (g) Section 60-1.21;
- (h) Section 60-1.23(b);
- (i) Section 60-1.24 (c)(3), (c)(4), (c)(5), (d) heading, (d)(1), and (d)(2);
- (j) Section 60-1.25 heading, and in the text (in four places);
- (k) Section 60-1.28;
- (l) Section 60-1.29(a) (in three places), and (b) (in two places);
- (m) Section 60-1.40(c);
- (n) Section 60-1.41(b); and
- (o) Section 60-1.46 heading, and in the text (in two places).

§ 60-1.3 [Amended]

3. In § 60-1.3, under the definition of the term "Minority group", the word "perspective" is revised to read "prospective"; under the definition of "Subcontract", in paragraph (2), the second "of" is revised to read "or"; and under the definition of "Subcontractor", the work "Firsttier" is revised to read "first-tier".

§ 60-1.7 [Amended]

4. In § 60-1.7(a)(1), the date "the 31st day of March" is revised to read "September 30".

§ 60-1.12 [Amended]

5. In § 60-1.12, in paragraph (a), in the fifth sentence, the word "compliant" is revised to read "complaint"; and in paragraph (d), the date "September 18, 1997" is revised to read "December 22, 1997".

§ 60-1.26 [Amended]

6. In § 60-1.26(a)(1)(vii), (c)(1) and (c)(3), all references to "Chapter" are revised to read "chapter".

§ 60-1.42 [Amended]

7. In § 60-1.42(a), remove the comma after the zip code "20507" and add, in its place, a double-spaced blank line before the remaining text of the paragraph.

PART 60-999—OMB CONTROL NUMBERS FOR OFCCP INFORMATION COLLECTION REQUIREMENTS

8. The authority citation for 41 CFR part 60-999 continues to read as follows:

Authority: 44 U.S.C. Ch. 35.

9. The table in § 60-999.2 is revised to read as follows:

§ 60-999.2 Display.

41 CFR Part where the information collection requirement is located	Current OMB control No.
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Part 60-2	1215-0072.
Part 60-3	3046-0017.
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Part 60-40	1215-0072, 1215-0163.
Part 60-50	1215-0072, 1215-0163.
Part 60-250	1215-0072, 1215-0131, 1215-0163.
Part 60-741	1215-0072, 1215-0131, 1215-0163.

[FR Doc. 97-33352 Filed 12-19-97; 8:45 am]

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This completes the listing of Public Laws enacted during the 1st session of the 105th Congress. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/nara/fedreg/fedreg.html>.

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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.

The list will resume when bills are enacted into Public Law during the 2d session of the 105th Congress, which convenes on January 27, 1998. A cumulative list of Public Laws will be published in the **Federal Register** on December 31, 1997.

H.R. 1658/P.L. 105-146

Atlantic Striped Bass Conservation Act Amendments of 1997 (Dec. 16, 1997; 111 Stat. 2672)

H.R. 2265/P.L. 105-147

No Electronic Theft (NET) Act (Dec. 16, 1997; 111 Stat. 2678)

H.R. 2476/P.L. 105-148

To amend title 49, United States Code, to require the National Transportation Safety Board and individual foreign air carriers to address the needs of families of passengers involved in aircraft accidents involving foreign air carriers. (Dec. 16, 1997; 111 Stat. 2681)

H.R. 3025/P.L. 105-149

To amend the Federal charter for Group Hospitalization and Medical Services, Inc., and for other purposes. (Dec. 16, 1997; 111 Stat. 2684)

H.R. 3034/P.L. 105-150

To amend section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, relating to customs user fees, to allow the use of such fees to provide for customs inspectional personnel in connection with the arrival of passengers in Florida, and for

other purposes. (Dec. 16, 1997; 111 Stat. 2685)

H.J. Res. 96/P.L. 105-151

Granting the consent and approval of Congress for the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to amend the Washington Metropolitan Area Transit Regulation Compact. (Dec. 16, 1997; 111 Stat. 2686)

H.R. 2796/P.L. 105-152

Army Reserve-National Guard Equity Reimbursement Act (Dec. 17, 1997; 111 Stat. 2688)

H.R. 2977/P.L. 105-153

Federal Advisory Committee Act Amendments of 1997 (Dec. 17, 1997; 111 Stat. 2689)

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●1, 2 (2 Reserved)	(869-032-00001-8)	\$5.00	Feb. 1, 1997
●3 (1996 Compilation and Parts 100 and 101)	(869-032-00002-6)	20.00	Jan. 1, 1997
●4	(869-032-00003-4)	7.00	Jan. 1, 1997
5 Parts:			
●1-699	(869-032-00004-2)	34.00	Jan. 1, 1997
●700-1199	(869-032-00005-1)	26.00	Jan. 1, 1997
●1200-End, 6 (6 Reserved)	(869-032-00006-9)	33.00	Jan. 1, 1997
7 Parts:			
●0-26	(869-032-00007-7)	26.00	Jan. 1, 1997
●27-52	(869-032-00008-5)	30.00	Jan. 1, 1997
●53-209	(869-032-00009-3)	22.00	Jan. 1, 1997
●210-299	(869-032-00010-7)	44.00	Jan. 1, 1997
●300-399	(869-032-00011-5)	22.00	Jan. 1, 1997
●400-699	(869-032-00012-3)	28.00	Jan. 1, 1997
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●1000-1199	(869-032-00015-8)	45.00	Jan. 1, 1997
●1200-1499	(869-032-00016-6)	33.00	Jan. 1, 1997
●1500-1899	(869-032-00017-4)	53.00	Jan. 1, 1997
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●1940-1949	(869-032-00019-1)	40.00	Jan. 1, 1997
●1950-1999	(869-032-00020-4)	42.00	Jan. 1, 1997
●2000-End	(869-032-00021-2)	20.00	Jan. 1, 1997
●8	(869-032-00022-1)	30.00	Jan. 1, 1997
9 Parts:			
●1-199	(869-032-00023-9)	39.00	Jan. 1, 1997
●200-End	(869-032-00024-7)	33.00	Jan. 1, 1997
10 Parts:			
●0-50	(869-032-00025-5)	39.00	Jan. 1, 1997
●51-199	(869-032-00026-3)	31.00	Jan. 1, 1997
●200-499	(869-032-00027-1)	30.00	Jan. 1, 1997
●500-End	(869-032-00028-0)	42.00	Jan. 1, 1997
●11	(869-032-00029-8)	20.00	Jan. 1, 1997
12 Parts:			
●1-199	(869-032-00030-1)	16.00	Jan. 1, 1997
●200-219	(869-032-00031-0)	20.00	Jan. 1, 1997
●220-299	(869-032-00032-8)	34.00	Jan. 1, 1997
●300-499	(869-032-00033-6)	27.00	Jan. 1, 1997
●500-599	(869-032-00034-4)	24.00	Jan. 1, 1997
●600-End	(869-032-00035-2)	40.00	Jan. 1, 1997
●13	(869-032-00036-1)	23.00	Jan. 1, 1997

Title	Stock Number	Price	Revision Date
14 Parts:			
●1-59	(869-032-00037-9)	44.00	Jan. 1, 1997
●60-139	(869-032-00038-7)	38.00	Jan. 1, 1997
●140-199	(869-032-00039-5)	16.00	Jan. 1, 1997
●200-1199	(869-032-00040-9)	30.00	Jan. 1, 1997
●1200-End	(869-032-00041-7)	21.00	Jan. 1, 1997
15 Parts:			
●0-299	(869-032-00042-5)	21.00	Jan. 1, 1997
●300-799	(869-032-00043-3)	32.00	Jan. 1, 1997
●800-End	(869-032-00044-1)	22.00	Jan. 1, 1997
16 Parts:			
●0-999	(869-032-00045-0)	30.00	Jan. 1, 1997
●1000-End	(869-032-00046-8)	34.00	Jan. 1, 1997
17 Parts:			
●1-199	(869-032-00048-4)	21.00	Apr. 1, 1997
●200-239	(869-032-00049-2)	32.00	Apr. 1, 1997
●240-End	(869-032-00050-6)	40.00	Apr. 1, 1997
18 Parts:			
●1-399	(869-032-00051-4)	46.00	Apr. 1, 1997
●400-End	(869-032-00052-2)	14.00	Apr. 1, 1997
19 Parts:			
●1-140	(869-032-00053-1)	33.00	Apr. 1, 1997
●141-199	(869-032-00054-9)	30.00	Apr. 1, 1997
●200-End	(869-032-00055-7)	16.00	Apr. 1, 1997
20 Parts:			
●1-399	(869-032-00056-5)	26.00	Apr. 1, 1997
●400-499	(869-032-00057-3)	46.00	Apr. 1, 1997
●500-End	(869-032-00058-1)	42.00	Apr. 1, 1997
21 Parts:			
●1-99	(869-032-00059-0)	21.00	Apr. 1, 1997
●100-169	(869-032-00060-3)	27.00	Apr. 1, 1997
●170-199	(869-032-00061-1)	28.00	Apr. 1, 1997
●200-299	(869-032-00062-0)	9.00	Apr. 1, 1997
●300-499	(869-032-00063-8)	50.00	Apr. 1, 1997
●500-599	(869-032-00064-6)	28.00	Apr. 1, 1997
●600-799	(869-032-00065-4)	9.00	Apr. 1, 1997
●800-1299	(869-032-00066-2)	31.00	Apr. 1, 1997
●1300-End	(869-032-00067-1)	13.00	Apr. 1, 1997
22 Parts:			
●1-299	(869-032-00068-9)	42.00	Apr. 1, 1997
●300-End	(869-032-00069-7)	31.00	Apr. 1, 1997
●23	(869-032-00070-1)	26.00	Apr. 1, 1997
24 Parts:			
●0-199	(869-032-00071-9)	32.00	Apr. 1, 1997
●200-499	(869-032-00072-7)	29.00	Apr. 1, 1997
●500-699	(869-032-00073-5)	18.00	Apr. 1, 1997
●700-1699	(869-032-00074-3)	42.00	Apr. 1, 1997
●1700-End	(869-032-00075-1)	18.00	Apr. 1, 1997
●25	(869-032-00076-0)	42.00	Apr. 1, 1997
26 Parts:			
●§§ 1.0-1-1.60	(869-032-00077-8)	21.00	Apr. 1, 1997
●§§ 1.61-1.169	(869-032-00078-6)	44.00	Apr. 1, 1997
●§§ 1.170-1.300	(869-032-00079-4)	31.00	Apr. 1, 1997
●§§ 1.301-1.400	(869-032-00080-8)	22.00	Apr. 1, 1997
●§§ 1.401-1.440	(869-032-00081-6)	39.00	Apr. 1, 1997
●§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
●§§ 1.501-1.640	(869-032-00083-2)	28.00	Apr. 1, 1997
●§§ 1.641-1.850	(869-032-00084-1)	33.00	Apr. 1, 1997
●§§ 1.851-1.907	(869-032-00085-9)	34.00	Apr. 1, 1997
●§§ 1.908-1.1000	(869-032-00086-7)	34.00	Apr. 1, 1997
●§§ 1.1001-1.1400	(869-032-00087-5)	35.00	Apr. 1, 1997
●§§ 1.1401-End	(869-032-00088-3)	45.00	Apr. 1, 1997
●2-29	(869-032-00089-1)	36.00	Apr. 1, 1997
●30-39	(869-032-00090-5)	25.00	Apr. 1, 1997
●40-49	(869-032-00091-3)	17.00	Apr. 1, 1997
●50-299	(869-032-00092-1)	18.00	Apr. 1, 1997
●300-499	(869-032-00093-0)	33.00	Apr. 1, 1997
●500-599	(869-032-00094-8)	6.00	Apr. 1, 1990
●600-End	(869-032-00095-3)	9.50	Apr. 1, 1997
27 Parts:			
●1-199	(869-032-00096-4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
●200-End	(869-032-00097-2)	17.00	Apr. 1, 1997	●300-399	(869-032-00151-1)	27.00	July 1, 1997
28 Parts:				●400-424	(869-032-00152-9)	33.00	⁵ July 1, 1996
●1-42	(869-032-00098-1)	36.00	July 1, 1997	●425-699	(869-032-00153-7)	40.00	July 1, 1997
●43-End	(869-032-00099-9)	30.00	July 1, 1997	●700-789	(869-032-00154-5)	38.00	July 1, 1997
29 Parts:				●790-End	(869-032-00155-3)	19.00	July 1, 1997
●0-99	(869-032-00100-5)	27.00	July 1, 1997	41 Chapters:			
●100-499	(869-032-00101-4)	12.00	July 1, 1997	1, 1-1 to 1-10		13.00	³ July 1, 1984
●500-899	(869-032-00102-2)	41.00	July 1, 1997	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
●900-1899	(869-032-00103-1)	21.00	July 1, 1997	3-6		14.00	³ July 1, 1984
●1900-1910 (§§ 1900 to 1910.999)	(869-032-00104-9)	43.00	July 1, 1997	7		6.00	³ July 1, 1984
●1910 (§§ 1910.1000 to end)	(869-032-00105-7)	29.00	July 1, 1997	8		4.50	³ July 1, 1984
●1911-1925	(869-032-00106-5)	19.00	July 1, 1997	9		13.00	³ July 1, 1984
●1926	(869-032-00107-3)	31.00	July 1, 1997	10-17		9.50	³ July 1, 1984
●1927-End	(869-032-00108-1)	40.00	July 1, 1997	18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
30 Parts:				18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
●1-199	(869-032-00109-0)	33.00	July 1, 1997	18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
●200-699	(869-032-00110-3)	28.00	July 1, 1997	19-100		13.00	³ July 1, 1984
●700-End	(869-032-00111-1)	32.00	July 1, 1997	●1-100	(869-032-00156-1)	14.00	July 1, 1997
31 Parts:				101	(869-032-00157-0)	36.00	July 1, 1997
●0-199	(869-032-00112-0)	20.00	July 1, 1997	●102-200	(869-032-00158-8)	17.00	July 1, 1997
●200-End	(869-032-00113-8)	42.00	July 1, 1997	201-End	(869-032-00159-6)	15.00	July 1, 1997
32 Parts:				42 Parts:			
1-39, Vol. I		15.00	² July 1, 1984	●1-399	(869-028-00163-7)	32.00	Oct. 1, 1996
1-39, Vol. II		19.00	² July 1, 1984	*●400-429	(869-032-00161-8)	35.00	Oct. 1, 1997
1-39, Vol. III		18.00	² July 1, 1984	●430-End	(869-028-00165-3)	44.00	Oct. 1, 1996
●1-190	(869-032-00114-6)	42.00	July 1, 1997	43 Parts:			
●191-399	(869-032-00115-4)	51.00	July 1, 1997	●1-999	(869-028-00166-1)	30.00	Oct. 1, 1996
●400-629	(869-032-00116-2)	33.00	July 1, 1997	●1000-End	(869-028-00167-0)	45.00	Oct. 1, 1996
●630-699	(869-032-00117-1)	22.00	July 1, 1997	●44	(869-028-00168-8)	31.00	Oct. 1, 1996
●700-799	(869-032-00118-9)	28.00	July 1, 1997	45 Parts:			
●800-End	(869-032-00119-7)	27.00	July 1, 1997	*●1-199	(869-032-00166-9)	30.00	Oct. 1, 1997
33 Parts:				*●200-499	(869-032-00167-7)	18.00	Oct. 1, 1997
●1-124	(869-032-00120-1)	27.00	July 1, 1997	●500-1199	(869-032-00168-5)	29.00	Oct. 1, 1997
●125-199	(869-032-00121-9)	36.00	July 1, 1997	●1200-End	(869-028-00172-6)	36.00	Oct. 1, 1996
●200-End	(869-032-00122-7)	31.00	July 1, 1997	46 Parts:			
34 Parts:				●1-40	(869-028-00173-4)	26.00	Oct. 1, 1996
●1-299	(869-032-00123-5)	28.00	July 1, 1997	●41-69	(869-028-00174-2)	21.00	Oct. 1, 1996
●300-399	(869-032-00124-3)	27.00	July 1, 1997	●70-89	(869-032-00172-3)	11.00	Oct. 1, 1997
●400-End	(869-032-00125-1)	44.00	July 1, 1997	●90-139	(869-028-00176-9)	26.00	Oct. 1, 1996
●35	(869-032-00126-0)	15.00	July 1, 1997	●140-155	(869-028-00177-7)	15.00	Oct. 1, 1996
36 Parts:				●156-165	(869-028-00178-5)	20.00	Oct. 1, 1996
●1-199	(869-032-00127-8)	20.00	July 1, 1997	●166-199	(869-028-00179-3)	22.00	Oct. 1, 1996
●200-299	(869-032-00128-6)	21.00	July 1, 1997	●200-499	(869-032-00177-4)	21.00	Oct. 1, 1997
300-End	(869-032-00129-4)	34.00	July 1, 1997	●500-End	(869-032-00178-2)	17.00	Oct. 1, 1997
●37	(869-032-00130-8)	27.00	July 1, 1997	47 Parts:			
38 Parts:				●0-19	(869-028-00182-3)	35.00	Oct. 1, 1996
●0-17	(869-032-00131-6)	34.00	July 1, 1997	*●20-39	(869-032-00180-4)	27.00	Oct. 1, 1997
●18-End	(869-032-00132-4)	38.00	July 1, 1997	●40-69	(869-028-00184-0)	18.00	Oct. 1, 1996
●39	(869-032-00133-2)	23.00	July 1, 1997	●70-79	(869-028-00185-8)	33.00	Oct. 1, 1996
40 Parts:				●80-End	(869-028-00186-6)	39.00	Oct. 1, 1996
●1-49	(869-032-00134-1)	31.00	July 1, 1997	48 Chapters:			
●50-51	(869-032-00135-9)	23.00	July 1, 1997	●1 (Parts 1-51)	(869-028-00187-4)	45.00	Oct. 1, 1996
52 (52.01-52.1018)	(869-032-00136-7)	27.00	July 1, 1997	●1 (Parts 52-99)	(869-028-00188-2)	29.00	Oct. 1, 1996
52 (52.1019-End)	(869-032-00137-5)	32.00	July 1, 1997	●2 (Parts 201-251)	(869-028-00189-1)	22.00	Oct. 1, 1996
●53-59	(869-032-00138-3)	14.00	July 1, 1997	●2 (Parts 252-299)	(869-028-00190-4)	16.00	Oct. 1, 1996
60	(869-032-00139-1)	52.00	July 1, 1997	●3-6	(869-028-00191-2)	30.00	Oct. 1, 1996
●61-62	(869-032-00140-5)	19.00	July 1, 1997	●7-14	(869-028-00192-1)	29.00	Oct. 1, 1996
●63-71	(869-032-00141-3)	57.00	July 1, 1997	●15-28	(869-028-00193-9)	38.00	Oct. 1, 1996
●72-80	(869-032-00142-1)	35.00	July 1, 1997	●29-End	(869-028-00194-7)	25.00	Oct. 1, 1996
●81-85	(869-032-00143-0)	32.00	July 1, 1997	49 Parts:			
86	(869-032-00144-8)	50.00	July 1, 1997	●1-99	(869-032-00191-0)	31.00	Oct. 1, 1997
●87-135	(869-032-00145-6)	40.00	July 1, 1997	●100-185	(869-028-00196-3)	50.00	Oct. 1, 1996
●136-149	(869-032-00146-4)	35.00	July 1, 1997	186-199	(869-032-00193-6)	11.00	Oct. 1, 1997
●150-189	(869-032-00147-2)	32.00	July 1, 1997	●200-399	(869-028-00198-0)	39.00	Oct. 1, 1996
●190-259	(869-032-00148-1)	22.00	July 1, 1997	●400-999	(869-028-00199-8)	49.00	Oct. 1, 1996
●260-265	(869-032-00149-9)	29.00	July 1, 1997	●1000-1199	(869-028-00200-5)	23.00	Oct. 1, 1996
●266-299	(869-032-00150-2)	24.00	July 1, 1997	●1200-End	(869-028-00201-3)	15.00	Oct. 1, 1996
				50 Parts:			
				●1-199	(869-028-00202-1)	34.00	Oct. 1, 1996
				●200-599	(869-028-00203-0)	22.00	Oct. 1, 1996
				●600-End	(869-028-00204-8)	26.00	Oct. 1, 1996

Title	Stock Number	Price	Revision Date	Complete set (one-time mailing)	264.00	1996
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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

⁵ No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.