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RESERVATIONS: 202–523–4538

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Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 63, No. 63
Thursday, April 2, 1998

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1700

General Information, Organization and Functions, and Loan Making Authority

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby revises its description of its functions and responsibilities and delegations of authority to reflect recent changes in organizational structure, update RUS addresses and phone numbers, and add information about electronic availability of information. These revisions are intended to guide and assist the public.

EFFECTIVE DATE: April 2, 1998.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 4034–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. Telephone: 202–720–0736. FAX 202–720–4120. e-mail fheppe@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*) required the Secretary of Agriculture to establish and maintain the Rural Utilities Service (RUS) within the Department. On October 20, 1994, Secretary's Memorandum 1010–1, abolished the Rural Electrification Administration (REA) and established RUS as its successor and as required by the Reorganization Act.

The functions of RUS include administration of the electric and telecommunications loan programs formerly administered by the Rural Electrification Administration, and of the water and waste disposal loan and grant programs formerly administered by the Rural Development Administration. This rule describes the current organizational structure of RUS and the methods by which its functions are channeled.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon are not required, this rule may be effective immediately. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12866 and Executive Order 12988. Finally, this is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (the Act), and therefore, the Act does not apply.

List of Subjects in 7 CFR Part 1700

Authority delegations (Government agencies), Community development, Community facilities, Electric power, Freedom of information, Grant programs—communications, Grant programs—education, Grant programs—housing and community development, Loan progams—communications, Loan programs—education, Loan programs—energy, Loan Program—housing and community development, Organization and functions (Government agencies), Rural areas, Telecommunications, Telephone, Waste treatment and disposal, Water supply.

Accordingly, 7 CFR part 1700 is revised to read as follows:

PART 1700—GENERAL INFORMATION

Subpart A—General

Subpart B—Agency Organization and Functions

Subpart C—Loan and Grant Approval Authorities

Authority: 5 U.S.C. 301, 552; 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*; 7 CFR 2.7.

Subpart A—General

§ 1700.1 General.

(a) The Rural Electrification Administration (REA) was established by Executive Order No. 7037 on May 11, 1935. Statutory authority was provided by the Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 901). The RE Act established REA as a lending agency with responsibility for developing a program for rural electrification.

(b) On October 28, 1949, the RE Act was amended to authorize REA to make loans to improve and extend telephone service in rural areas. The Rural Telephone Bank (RTB), an agency of the United States, was established by amendment to the RE Act, approved May 7, 1971. The Administrator of RUS serves as the Bank's chief executive with the title of Governor.

(c) The Secretary of Agriculture (Secretary) established the Rural Utilities Service (RUS) on October 20, 1994, pursuant to the Department of Agriculture Reorganization Act of 1994, (7 U.S.C. 6941 *et seq.*). RUS was assigned responsibility for administering electric and telecommunications loan and loan guarantee programs previously administered by REA, including programs of the Rural Telephone Bank (RTB), and water and waste loans and grants previously administered by the Rural Development Administration, along with other functions as the Secretary determined appropriate. The rights, interests, obligations, duties, and contracts previously vested in REA were transferred to, and vested in RUS.

§ 1700.2 Availability of information.

(a) The offices of RUS are located in the South Building of the United States Department of Agriculture at 1400 Independence Avenue, SW,

Washington, DC 20250–1500. Hours of operation are from 8:15 AM to 4:45 PM, Eastern time on Federal Government business days.

(b) Information about RUS is available for public inspection and copying as required by the Freedom of Information Act, 5 U.S.C. 552 *et seq.* Information about availability and costs of agency publications and other agency materials is available from the Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, Room 4034–S, 1400 Independence Avenue, SW, STOP 1522, Washington, DC 20250–1522. Phone 202–720–0736. FAX 202–720–4120.

(c) RUS issues indexes of publications in conformance with the Freedom of Information Act and Department of Agriculture regulations at 7 CFR part 1. Many RUS issuances, including regulations, delegations of authority for headquarters and field staff, and other documents, are available on the world wide web at http://www.usda.gov/rus. Single hard copies of publications, forms, forms of basic loan and security instruments, and other materials are available either directly from RUS, from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402, or from another source as identified. Costs for these publications are established in conformance with 7 CFR part 1.

§ 1700.3 Requests under the Freedom of Information Act.

Department of Agriculture procedures for requests for official records under the Freedom of Information Act are found at 7 CFR part 1. Requests must be in writing and may be submitted in person or by mail to United States Department of Agriculture, Rural Development, Room 0164–S, 1400 Independence Avenue, SW, STOP 0742, Washington, DC 20250–0742; or by FAX to 202–720–1915. As set forth in 7 CFR 1.16, fees may be charged for processing of requests for records. An appeal of the agency determination concerning the request for official records shall be made in writing to the Administrator, Rural Utilities Service, United States Department of Agriculture, Room 4051–S, 1400 Independence Avenue, SW, STOP 1510, Washington, DC 20250–1500.

§ 1700.4 Public comments on proposed rules.

RUS requires that all persons submitting comments to a proposed rule or other document published by the agency in the **Federal Register** submit, in hard copy, a signed original and three copies of their comments to the address shown in the preamble to the proposed rule. Copies of comments submitted are available to the public in conformance with 7 CFR part 1.

§§ 1700.5–1700.24 [Reserved]

Subpart B—Agency Organization and Functions

§ 1700.25 Office of the Administrator.

The Administrator, who also serves as Governor of the RTB, is appointed by the President, with the advice and consent of the Senate. The Under Secretary, Rural Development delegated to the Administrator, in 7 CFR part 2, responsibility for administering the programs and activities of RUS and RTB. The Administrator is aided directly by Deputy Administrators and by Assistant Administrators for the electric program, telecommunications program, the water and environmental programs, and program accounting and regulatory analysis, and by other staff offices. The work of the agency is carried out as described in this part.

§ 1700.26 Deputy Administrators.

Deputy Administrators aid and assist the Administrator. The Deputy Administrator, Program Policy and Telecommunications, provides overall policy direction to all RUS programs and directs and coordinates the telecommunications programs. The Deputy Administrator, Water and Environmental Programs, directs and coordinates the agency's water and waste disposal programs. The Deputy Administrators review agency policies in these areas and, as necessary, implement changes, and participate with the Administrator and other officials in planning and formulating the programs and activities of the agency, including the making and servicing of loans and grants.

§ 1700.27 Electric Program.

RUS, through the Electric Program, makes loans and loan guarantees for rural electrification and the furnishing of electric service to persons in rural areas.

(a) *The Assistant Administrator, Electric Program*, directs and coordinates the rural electrification programs, participating with the Administrator, and others, in planning and formulating the programs and activities of the agency, and performs other activities as the Administrator may prescribe from time to time.

(b) *Primary point of contact with borrowers.* Two regional divisions, one for the Northern Region and one for the Southern Region, are the primary points of contact between RUS and its electric distribution borrowers. Each office administers the rural electric program for its assigned geographical area through headquarters staff and general field representatives. The Power Supply Division is the primary point of contact between RUS and its electric power supply borrowers.

(c) *Staff office.* The Electric Staff Division is responsible for engineering aspects of RUS' standards, specifications and other requirements for design, construction, and technical operation and maintenance of RUS borrowers' electric systems. The Electric Staff Division oversees the activities of Technical Standards Committees ''A'' and ''B'', Electric, which determine whether engineering specifications, drawings, material and equipment are acceptable for use in RUS borrowers' electric systems. The Office of the Assistant Administrator prepares analyses of loan making activities and the business and regulatory environment of RUS borrowers and recommends policies and procedures.

§ 1700.28 Telecommunications Program.

RUS and RTB, through the Telecommunications Program, make loans and loan guarantees to furnish and improve telecommunications service in rural areas.

(a) *The Assistant Administrator, Telecommunications Program*, directs and coordinates the rural telecommunications programs, including the distance learning and telemedicine program, and in conjunction with the Administrator and Deputy Administrator, and others, the planning and formulating of programs and activities of the agency, and performs other activities as the Administrator may prescribe from time to time.

(b) *Primary point of contact with borrowers.* Three area offices, (Eastern, Northwest, and Southwest Areas), are the primary points of contact between RUS and all telecommunications program borrowers. Each office administers the rural telecommunications program for its assigned geographical area with assistance of field representatives located in areas assigned to them.

(c) *Staff office.* The Telecommunications Staff Division is responsible for engineering aspects of design, construction, and technical operation and maintenance of rural telecommunications systems and facilities, including the activities of Technical Standards Committees ''A'' and ''B'', Telecommunications, which determine whether engineering

specifications, drawings, material, and equipment are acceptable for use in RUS financed telecommunications systems.

§ 1700.29 Water and Environmental Programs.

RUS, through the Water and Environmental Programs, provides loan and grant funds for water and waste disposal projects serving the most financially needy rural communities.

(a) *The Assistant Administrator, Water and Environmental Programs,* develops and institutes plans, procedures, and policies for the effective, efficient, and orderly management of Water and Environmental Programs responsibilities; provides leadership to ensure execution of policies and procedures by the Water and Waste Disposal programs and support functions; and performs other activities as the Administrator or Deputy Administrator may prescribe from time to time.

(b) *Primary point of contact.* The State Rural Development Offices are the primary points of contact between RUS and loan and grant recipients.

(c) *The Engineering and Environmental Staff* is responsible for engineering staff activities at all stages of Water and Waste Disposal programs implementation, including review of preliminary engineering plans and specifications, procurement practices, contract awards, construction monitoring, and system operation and maintenance. This staff develops agency engineering practices, policies, guidelines, and technical data relating to the construction and operation of water and waste disposal systems, and for implementing the National Environmental Policy Act, and other environmental requirements as they apply to all agency programs and activities.

§ 1700.30 Distance Learning and Telemedicine Loan and Grant Program.

RUS, through the Telecommunications Program, makes grants and loans to furnish and improve telemedicine services and distance learning services in rural areas.

(a) *The Assistant Administrator, Telecommunications Program,* directs and coordinates the distance learning and telemedicine program.

(b) *Primary point of contact with borrowers.* The three area offices, described in § 1700.28(b) support the distance learning and telemedicine program. Each office administers the distance learning and telemedicine program for its assigned geographical area with assistance of field representatives located in areas assigned to them.

§ 1700.31 Program Accounting and Regulatory Analysis.

RUS, through Program Accounting and Regulatory Analysis, monitors and administers applicable regulations, RUS policy, and accounting requirements. The staffs assist the Assistant Administrator with respect to management, information systems, budgets, and other such matters.

(a) *The Assistant Administrator, Program Accounting and Regulatory Analysis,* directs and coordinates program accounting and financial services with respect to electric and telecommunications borrowers and directs and coordinates the regulatory actions of the agency.

(b) This division monitors borrowers' accounting operations in order to ensure compliance with applicable statutory and regulatory requirements and with the requirements of the Office of Management and Budget.

(c) The two regional branches (the Northern Region and the Southern Region) work directly with borrowers. Each regional office has a staff of headquarters and field accountants. The Technical Accounting and Auditing Staff monitors industry developments, including the standards of the Financial Accounting Standards Board, and recommends Agency policies and procedures.

(d) Program Development and Regulatory Analysis directs and administers the preparation, clearance, processing, and distribution of RUS submissions to the Office of the **Federal Register** in the form of proposed and final rules and notices and RUS bulletins and staff instructions.

§ 1700.32 Financial Services Staff.

The Financial Services Staff evaluates the financial condition of financially troubled borrowers in order to protect the Government's interests.

§§ 1700.33—1700.49 [Reserved]

Subpart C—Loan and Grant Approval Authorities

§§ 1700.50—1700.52 [Reserved]

§ 1700.53 Persons serving as Acting Administrator.

The following persons are authorized, in descending order, to act for the Administrator when he or she is not on official duty in the Washington, DC, Metropolitan Area, is sick, has resigned, or is deceased. That is, if the first person on the list is also not on official duty in the Washington, DC, Metropolitan Area, is sick, has resigned, or is deceased, the second person on the list is authorized to act for the Administrator and so on down the list. Persons on this list may not redelegate the authority to act as the Administrator. The Administrator may in his or her discretion in writing, on a case-by-case basis, delegate authority to act as Administrator in his or her absence outside of this specified order.

(1) Deputy Administrator, Program Policy and Telecommunications.

(2) Deputy Administrator, Water and Environmental Programs.

(3) Assistant Administrator, Electric Program.

(4) Assistant Administrator, Telecommunications Program.

(5) Assistant Administrator, Water and Environmental Programs.

(6) Assistant Administrator, Program Accounting and Regulatory Analysis.

§ 1700.54 Electric Program.

(a) *Administrator:* The authority to approve the following loans, loan guarantees, and lien accommodations and subordinations of liens is reserved to the Administrator:

(1) All discretionary hardship loans.

(2) All loans, loan guarantees, and lien accommodations and subordinations of liens to finance operating costs.

(3) All loans, loan guarantees, and lien accommodations and subordinations of liens of more than $20,000,000 for distribution borrowers or more than $50,000,000 for power supply borrowers.

(4) All loans, loan guarantees, and lien accommodations and subordinations of liens for distribution borrowers that are members of a power supply borrower that is in default of its obligations to the Government or that is currently assigned to the Financial Services Staff, unless otherwise determined by the Administrator.

(5) All loans, loan guarantees, and lien accommodations and subordinations of liens that require an Environmental Impact Statement.

(6) Certifications and findings required by the RE Act or other applicable laws and regulations, the placing and releasing of conditions precedent to the advance of funds, and all security instruments, loan contracts, and all other necessary documents relating to the authorities reserved in this section.

(7) Execution of all loan contracts, security instruments, and all other documents in connection with loans, loan guarantees, and lien accommodations approved by the Administrator.

(b) *The Assistant Administrator, Electric Program,* has the authority to

approve the following loans, loan guarantees, and lien accommodations and subordinations of liens, except for those approvals reserved to the Administrator:

(1) Loans, loan guarantees, and lien accommodations and subordinations of liens for distribution borrowers in amounts not exceeding $20,000,000.

(2) Loans, loan guarantees, and lien accommodations and subordinations of liens for power supply borrowers in amounts not exceeding $50,000,000.

(3) Execution of all loan contracts, security instruments, and all other documents in connection with loans, loan guarantees, and lien accommodations approved by the Assistant Administrator, Electric Program.

(c) *Directors, Regional Divisions,* have the authority to approve, for distribution borrowers:

(1) Loans, loan guarantees, and lien accommodations and subordinations of liens in amounts not exceeding $15,000,000 except for those approvals reserved to the Administrator.

(2) All certifications and findings required by the RE Act or other applicable laws and regulations, the imposing and releasing of conditions precedent to the advance of loan funds, and all security instruments, loan contracts, and all other documents relating to the delegations set forth in paragraph (c)(1) of this section.

(d) *Director, Power Supply Division,* has the authority to approve for power supply borrowers:

(1) Loans, loan guarantees, and lien accommodations and subordinations of liens in amounts not exceeding $30,000,000, except for those approvals reserved to the Administrator.

(2) All certifications and findings required by the RE Act or other applicable laws and regulations, the placing and releasing of conditions precedent to the advance of funds, and all security instruments, loan contracts or all other documents relating to the delegations set forth in paragraph (d)(1) of this section.

§ 1700.55 Telecommunications Program.

(a) *Administrator:* The authority to approve the following loans, loan guarantees, and lien accommodations is reserved to the Administrator:

(1) All loans, loan guarantees, and lien accommodations and subordinations of liens to finance operating costs.

(2) All loans, loan guarantees, or lien accommodations and subordinations of liens of $25,000,000 or more.

(3) Loans and loan guarantees with acquisition costs of $5,000,000 or more.

(4) Loans and loan guarantees containing funds to refinance outstanding debt of more than $5,000,000.

(5) All loan contracts, security instruments, and all other documents to be executed in connection with loans and loan guarantees approved by the Administrator.

(b) *Assistant Administrator, Telecommunications Program,* has the authority to approve the following loans, loan guarantees, and lien accommodations, except for those approvals reserved to the Administrator:

(1) Loans, loan guarantees, and lien accommodations and subordinations of liens not to exceed $25,000,000 except for those reserved to the Administrator.

(2) Loans and loan guarantees with acquisition costs where the acquisition portion of the loan is less than $5,000,000.

(3) Loans and loan guarantees including refinancing amounts that do not exceed $5,000,000.

(4) Distance learning and telemedicine loans and loan guarantees that do not exceed $5,000,000.

(5) Loan contracts, security instruments, and other documents to be executed in connection with loans and loan guarantees approved by the Assistant Administrator, Telecommunications Program.

(c) *Area Directors* have the authority to approve the following loans, loan guarantees, and lien accommodations, except for those approvals reserved to the Administrator:

(1) Loans, loan guarantees, and lien accommodations and subordinations of liens of less than $10,000,000.

(2) Loans and loan guarantees with acquisition costs of less than $2,000,000.

(3) Loans and loan guarantees including refinancing amounts of less than $2,000,000.

(4) Any modifications in the method of carrying out loan purposes.

§ 1700.56 Water and Environmental Programs.

The State Rural Development Offices have the responsibility for making and servicing water and waste loans and grants.

§ 1700.57 Distance Learning and Telemedicine Loan and Grant Program.

(a) *Administrator:* The authority to approve the following loans and lien accommodations is reserved to the Administrator:

(1) Grants or loan and grant combinations.

(2) The number selected from each state for financial assistance for grant approval and loans or grants approved.

(3) Extension of principal and interest repayments for rural development purposes.

(4) Loan contracts, security instruments, and all other documents to be executed in connection with loans and loan guarantees approved by the Administrator.

(b) *Assistant Administrator, Telecommunications Program,* has the authority to approve the following loans and lien accommodations and subordinations of liens:

(1) Loans, that do not also include requests for grant funds, except for those reserved to the Administrator.

(2) Loan contracts, security instruments, and all other documents to be executed in connection with loans and loan guarantees approved by the Assistant Administrator, Telecommunications Program.

Dated: March 24, 1998.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 98–8588 Filed 4–1–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1942 and 1951

Rural Utilities Service Water and Waste Program Regulations

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural utilities Service (RUS) hereby amends the regulations utilized to administer the water and waste loan and grant programs. This rule removes references to forms no longer required for use by the Agency and to add reference to RUS Bulletin 1780–12, ''Water and Waste Grant Agreement.''

EFFECTIVE DATE: April 2, 1998.

FOR FURTHER INFORMATION CONTACT: Jerry W. cooper, Loan Specialist, Water and Waste Division, Rural utilities Service, USDA, Room 2229, STOP 1570, 1400 Independence Avenue, Washington, DC 20250–1570, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. This action is not published for proposed rulemaking because it involves only internal Agency management and publication for notice and comment is unnecessary.

Environmental Impact Statement

This document has been reviewed in accordance with RD Instruction 1940–G, ''Environmental Program.'' The agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Programs Affected

The Catalog of Federal Domestic Assistance programs impacted by this action are:

10.760 Water and Waste Disposal Systems for Rural Communities
10.763 Emergency Community Water Assistance Grants
10.765 Watershed Protection and Flood Prevention Loans
10.770 Water and Waste Disposal Loans and Grants (Section 306C)

Intergovernmental Consultation

This program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Civil Justice Reform

The final rule has been reviewed under Executive order 12988, civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11), must be exhausted before bringing suit in court challenging action taken under this rule.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0015, in accordance with the paperwork Reduction Act of 1995. This rule does not impose any new information collection requirements.

List of Subjects

7 CFR Part 1942

Community development, Community facilities, Loan programs,—Housing and community development, Loan security, Rural areas, Water treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1951

Accounting servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—Community Facility Loans

2. 7 CFR Part 1942 is amended by removing the words ''District Director'' or ''District Directors'' wherever they appear and adding in their place, the words ''Rural Development Manager'' or ''Rural Development Managers'' respectively in the following places.

a. § 1942.5(a)(1)(iii);
b. § 1942.5(b)(1);
c. § 1942.5(c) introductory text;
d. § 1942.5(c)(2); and
e. § 1942.5(c)(3).

3. Section 1942.5 is amended by removing paragraph (b)(1)(ii)(D) and redesignating paragraphs (b)(1)(ii) (E) through (L) as paragraphs (b)(1)ii) (D) through (K) and in newly redesignated paragraph (b)(1)(ii)(G) by revising the reference ''paragraph (b)(1)(ii)(G)'' to read ''paragraph (b)(1)(ii)(F)'' in two places.

PART 1951—SERVICING AND COLLECTIONS

4. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

5. Section 1951.211 is amended by adding the sentence ''A civil rights impact analysis is required.'' at the end of the paragraph.

6. Section 1951.214 is amended by changing the word ''FmHA'' to ''Government.''

7. Section 1951.215 (a)(1) is revised to read as follows:

§ 1951.215 Grants.

* * * * *

(a) * * *

(1) Servicing actions will be carried out in accordance with the terms of the ''Association Water or Sewer System Grant Agreement,'' and RUS Bulletin 1780–12, ''Water and Waste Grant Agreement'' (available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, D.C. 20250–1500). Grant agreements with a revision date on or after January 29, 1979, require that the grantee request disposition instructions from the Agency before disposing of property which is no longer needed for original grant purposes.

* * * * *

Dated: March 17, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–8589 Filed 4–1–98; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Airworthiness Standards for Acceptance Under the Primary Category Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Airworthiness Standards for Acceptance of the Dragonfly Model 333 Helicopter Under the Primary Category Rule.

SUMMARY: This document announces the approval of final airworthiness standards for acceptance of the Dragonfly Model 333 helicopter under the primary category rule. The final airworthiness standards are provided in this document.

DATES: This final airworthiness standard is effective March 10, 1998.

FOR FURTHER INFORMATION CONTACT: Scott Horn, Aerospace Engineer, Rotorcraft Standards Staff, Rotorcraft Directorate, Aircraft Certification Service, Federal Aviation Administration, Fort Worth, Texas 76193–0110; telephone number (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this information by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**.

Background

The primary category rule was created specifically for the simple, low performance personal aircraft. Potential applicants are permitted to propose airworthiness standards considered appropriate for the intended product. Accordingly, the applicant, Dragon Fly, submitted a request to include the Italian airworthiness authority's Very Light Rotorcraft (VLR) rules into primary category for rotorcraft.

Dragon Fly justifies this request by noting that the Italian airworthiness authority has approved the applicant's aircraft in Italy under the VLR rules. The FAA reviewed the submittal and chose to list the Italian VLR rules as the equivalent 14 CFR parts 27 and 33 (parts 27 and 33) rules and, in some cases, added paragraphs to increase the requirement.

The FAA issued the proposed airworthiness standards; request for comments, on September 3, 1997 (62 FR 49175, September 19, 1997). One comment was received. The commenter concurs with the proposed airworthiness standards. However, the commenter states that additional airworthiness requirements are needed to require the manufacturer to provide data on the response of the helicopter to flight control inputs and to require operational limitations or other measures for those aircraft that are highly responsive. The FAA does not agree that additional requirements are needed. The response of the rotor and helicopter to various flight control inputs will be fully investigated under the current requirements. To investigate the need for operational limitations, the FAA requires a Flight Standardization Board on all light helicopters. Primary category helicopters are included in this requirement.

Additionally, after the publication of the proposed airworthiness standards, the FAA met with Dragon Fly to discuss the certification. The applicant provided further details of their design which affect the airworthiness standards to be listed in the certification basis. Section 27.2 is not required since the safety belt and shoulder harness requirements will be addressed in § 27.785. Sections 27.65(b) determination of Vy, 27.141(c) requirements for night operation, 27.303 a safety factor of 1.5 for loads, 27.775 windshield and window requirements, and 27.1519 weight and center of gravity limitation requirements will be added. A wind velocity of 17 knots from all azimuths will be added to PCR.143(c) making it equivalent to 27.143(c). Paragraph 27.143(c) will replace PCR.143(c). The helicopter will not be configured with wheels, tires, brakes, floats, cargo or baggage compartments, skis, or shock absorbers. Therefore, §§ 27.475, 27.477, 27.479, 27.481, 27.483, 27.485, 27.493, 27.497, 27.505, 27.521, 27.731, 27.733, 27.735, 27.737, 27.751, 27.753, 27.755, and 27.787 will be removed. The applicant also requested VFR night operation. Therefore, §§ 27.1381, 27.1383, 27.1385, 27.1387, 27.1389, 27.1391, 27.1393, 27.1395, 27.1397, and 27.1399, will be added. Section 27.923(l), as published in the ''Request for Comments'' (62 FR 49175, September 19, 1997), should have read 27.923(i). Section 27.923(h) has been added because paragraph (h) was part of the original Dragon Fly Registro Aeronautico Italiano (RAI) VLR certification.

The authority citation for these airworthiness standards is as follows:

42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44708, 44711, 44713, 44715, 45303.

Airworthiness Standards for Acceptance Under the Primary Category Rule (PCR)

PCR.1 Applicability

(a) This document prescribes airworthiness standards for the issue of a type certificate and changes to that type certificate for the Dragon Fly Model 333, a Primary Category rotorcraft and its engine.

(b) Each person who applies under part 21 for a change to this certificate must show compliance with these requirements. 27.21; 27.25(a) and (b); 27.27; 27.29; 27.31; 27.33; 27.45(a), (b), (c), and (d); 27.51; 27.65(b); 27.71; 27.73(a)(1)(i), (a)(1)(iii), and (a)(2)(i); 27.75(a)(1), (a)(2)(i), and (a)(3); 27.79(a), and (b)(1); 27.141(a), (b)(2), (b)(3) and (c); 27.143(a), (b), (c), (d), and (e); 27.151; 27.161; 27.171; 27.173; 27.175; 27.177; 27.231; 27.235; 27.239; 27.241; 27.251; 27.301; 27.303; 27.305; 27.307; 27.309; 27.321; 27.337; 27.339; 27.341; 27.351; 27.361; 27.391; 27.395; 27.397; 27.399; 27.411; 27.427; 27.471; 27.473; 27.501; 27.547; 27.549; 27.561(a), (b)(1), and (c);

PCR.561(b)(2) Each occupant and each item of mass inside the cabin that could injure an occupant are restrained when subjected to the following ultimate inertial load factors relative to the surrounding structure: (i) Upward—3g. (ii) Forward—9g. (iii) Sideward—3g. (iv) Downward—9g. 27.571(a), (b), and (c); 27.601; 27.603; 27.605; 27.607; 27.609; 27.611; 27.613(a);

PCR.613(b) The design values must be so chosen that the probability of any structure being understrength because of material variations is extremely remote.

(c) Values contained in MIL–HDBK–5, MIL–HDBK–17 Part I, ANC–17 Part II, ANC–18, MIL–HDBK–23 Part I, and ANC–23 Part II must be used unless shown to be inapplicable in a particular case.

(d) The strength, detail design, and fabrication of the structure must minimize the probability of disastrous fatigue failure. 27.619; 27.621; 27.623; 27.625;

PCR.625(d) Each seat and safety belt with harness attachment to the structure must be shown by analysis, tests, or both, to be able to withstand the inertia forces prescribed in PCR.561(b)(2) multiplied by a fitting factor of 1.33. 27.629; 27.653; 27.659; 27.661; 27.663; 27.671; 27.673; 27.675; 27.679; 27.681; 27.683; 27.685; 27.687; 27.691; 27.723; 27.725; 27.727; 27.771; 27.773; 27.775; 27.777; 27.779; 27.783; 27.785 (a), (b), (c), (e), (f), (g), (h), (i), and (j); 27.807 (a), (b), and (c); 27.831; 27.853(a), (b), and (c)(1); 27.855; 27.859(a) and (b); 27.861; 27.863; 27.871; 27.873; 27.901;

PCR.903(a) Engine type certification. The engine must have an approved type certificate or meet the requirements provided in this document for the engine. The engine must be qualified in accordance with 33.49(d) or be otherwise approved for the intended usage. 27.903(b); 27.907; 27.917; 27.921; 27.923(a), (b), (c), (d), (f), (g), (h) and (i); 27.927; 27.931; 27.935; 27.951; 27.955(a)(1), (2), (3), (4), (5), (6);

PCR.955(a)(7) The fuel filter required by 27.997 must be blocked to the degree necessary to provide the highest pressure drop across the filter prior to the filter going into bypass. 27.955(b) and (c); 27.959; 27.961; 27.963 [Amdt. 27–23];

PCR.965 Fuel Tank Tests Each fuel tank must be able to withstand, without failure or leakage:

(a) For each conventional metal tank and nonmetallic tank with walls not supported by the rotorcraft structure, a pressure of 3.5 p.s.i.

(b) For each integral tank, the pressure developed during the maximum limit acceleration of the rotorcraft with a full tank, with simultaneous application of the critical limit structure loads.

(c) For each nonmetallic tank with walls supported by the rotorcraft structure and with actual support conditions, a pressure of 2.0 p.s.i. The supporting structure must be designed for the critical loads occurring in the flight or landing condition combined with the fuel pressure loads resulting from the corresponding accelerations. 27.969;

PCR.971 Fuel Tank Sump. (a) Each fuel tank must have a drainable sump with an effective capacity in any ground

attitude to be expected in service of 0.10 percent of the tank capacity or 120 cc, whichever is greater, unless—

(1) The fuel system has a sediment bowl or chamber that is accessible for preflight drainage and has a minimum capacity; and

(2) Each fuel tank drain is located so that in any ground attitude to be expected in service, water will drain from all parts of the tank to the sediment bowl or chamber.

(b) Each sump, sediment bowl, and sediment chamber drain required by this section must comply with the drain provisions of paragraph 27.999(b). 27.973; 27.975; 27.977; 27.991; 27.993; 27.995; 27.997; 27.999;

PCR.1011 Engine Oil System: General.

(a) Each engine must have an independent oil system that can supply it with the appropriate quantity of oil at a temperature not above that safe for continuous operation.

(b) The usable capacity of each oil system may not be less than the product of the endurance of the rotorcraft under critical operating conditions and the maximum oil consumption of the engine under the same conditions.

(c) If an engine depends upon a fuel/oil mixture for lubrication, then a reliable means of providing it with the appropriate mixture must be established. 27.1013; 27.1015; 27.1017; 27.1019(b); 27.1021; 27.1027; 27.1041; 27.1043; 27.1045; 27.1091; 27.1093; 27.1121; 27.1123; 27.1141; 27.1143; 27.1145; 27.1147; 27.1163; 27.1183; 27.1185; 27.1187; 27.1189; 27.1191; 27.1193 (a), (b), (c), (d), and (e); 27.1194; 27.1301; 27.1303; 27.1305 (a), (c) through (m). Paragraph (r) is deleted from this Notice. It was inadvertently included in the request for comments but applies to turbine installations only.

PCR.1305(b) A cylinder head temperature warning device to indicate when the temperature exceeds a safe value. 27.1307; 27.1309 (a) and (c); 27.1321 (a) and (c); 27.1322; 27.1323 (a) and (b); 27.1325 (a), (c), and (d); 27.1327; 27.1337; 27.1351; 27.1353; 27.1357; 27.1361 (a) and (c); 27.1365; 27.1367; 27.1381; 27.1383; 27.1385; 27.1387, 27.1389; 27.1391; 27.1393; 27.1395; 27.1397; 27.1399; 27.1401; 27.1411; 27.1413; 27.1461; 27.1501; 27.1503; 27.1505; 27.1509; 27.1519; 27.1521; 27.1523; 27.1525; 27.1527; 27.1529; 27.1541; 27.1543; 27.1545; 27.1547; 27.1549; 27.1551; 27.1553; 27.1555; 27.1557 (a), (b), and (d);

PCR.1557(c) Fuel and Oil Filler Openings Marking. The following apply:

(1) Fuel filler openings must be marked at or near the filler cover with—

(i) The word ''fuel';

(ii) For reciprocating engine powered rotorcraft, the minimum fuel grade; and

(iii) For each two stroke engine without a separate oil system, the fuel/oil mixture.

(2) Oil filler openings must be marked at or near the filler cover with the word ''oil.''

27.1559; 27.1565; 27.1581; 27.1583; 27.1585; 27.1587; 27.1589; 33.5; 33.7 (a) and (b); 33.8; 33.15; 33.17 (a), (b), (c), and (e);

PCR.33.19 Engine design and construction must minimize the development of an unsafe condition of the engine between overhaul periods. 33.21; 33.23; 33.25; 33.29(a); 33.31; 33.33; 33.35; 33.37; 33.39;

PCR.33.39(d) For engine lubrication depending upon oil premixed with fuel in a declared fixed percentage, it must be demonstrated that this mixture can assure appropriate engine lubrication, throughout the range of conditions in which the rotorcraft is expected to operate, to include reduced fuel consumption conditions. 33.41; 33.42;

PCR.33.43 Vibration test. Each engine must undergo a vibration survey when installed in the airframe to show compliance with 27.907 and 33.33. The survey must be conducted throughout the expected operating range of rotational speed and power of the engine. Each accessory drive and mounting attachment must be loaded with the maximum loads expected in service. 33.45; 33.47;

PCR.33.49 Endurance Test

(a) The engine must be subjected to an endurance test that includes a total of 50 hours of operation and consists of the cycles specified in (b) below.

(b) Each cycle consists of 120 minutes of run time and must be conducted as follows:

(1) A start and idle period of 5 minutes.

(2) Increase to takeoff torque and maximum speed for takeoff torque and maintain the takeoff condition for a period of 5 minutes.

(3) Decrease to idle and maintain the idle condition for 5 minutes.

(4) Increase to takeoff torque and maximum speed for takeoff torque and maintain the takeoff condition for a period of 5 minutes.

(5) Decrease to idle and maintain the idle condition for 5 minutes.

(6) Increase to takeoff torque and maximum speed for takeoff torque and maintain the takeoff condition for a period of 5 minutes.

(7) Decrease to idle and maintain the idle condition for 5 minutes.

(8) Increase to 75 percent of maximum continuous torque and maximum speed for 75 percent of maximum continuous torque and maintain this condition for a period of 15 minutes.

(9) Decrease to idle and maintain the idle condition for 5 minutes.

(10) Increase to maximum continuous torque and maximum speed for maximum continuous torque and maintain this condition for a period of 60 minutes.

(11) Decrease to idle and maintain the idle condition for 5 minutes.

(12) Perform an engine shutdown.

(c) During or following the endurance test the fuel and oil consumption must be determined. 33.51; 33.53; 33.55; 33.57.

Noise requirements of FAR Part 36 Noise Standards Appendix J amended by amendments 36–1 through the latest amendment in effect at the time of Type Certification.

Issued in Fort Worth, Texas, on March 10, 1998.

Eric Bries,

Assistant Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–7411 Filed 4–1–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–207–AD; Amendment 39–10436; AD 98–07–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes, that requires interchanging the location of the hydraulic fuse and the flow limiter of the standby hydraulic system of the leading edge. This amendment also requires replacing the existing hydraulic fuses in the standby hydraulic system with new fuses. This amendment is prompted by reports of a performance test of the hydraulic fuses, which revealed that the positioning of the flow limiter in the existing configuration, and excessive fusing volumes of some of the fuses in extreme cold environment, can adversely affect the operation of the fuse. The actions specified by this AD are intended to

prevent such adversely affected operation of the fuse, which could result in the loss of all standby hydraulic system pressure and consequent severely reduced controllability of the airplane during certain flight phases.

DATES: Effective May 7, 1998.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of May 7, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes was published in the **Federal Register** on January 7, 1997 (62 FR 947). That action proposed to require interchanging the location of the hydraulic fuse and the flow limiter of the standby hydraulic system of the leading edge so that the hydraulic fuse is positioned upstream of the flow limiter. That action also proposed to require replacing the existing hydraulic fuses in the standby hydraulic system with new fuses that are not affected by low temperature operation.

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

Support for the Proposal

One commenter supports the proposed rule.

Requests to Revise the Compliance Times of the Proposed Interchange and Replacement Actions

The Air Transport Association (ATA) of America states that one commenter generally supports the proposed action; however, this commenter requests an amended compliance time of 18 months in lieu of 4,000 flight hours specified in paragraph (b) of the proposed AD. The commenter states that such an extension is needed because of an expected large demand for these fuses. A second commenter requests changing the compliance time to 6,000 flight hours or 2 years, whichever occurs first, because the hydraulic fuse manufacturer is unable to support a compliance time of 4,000 flight hours. Another commenter also requests a change in the compliance time to 6,000 flight hours.

The FAA concurs partially with these requests and acknowledges that parts availability and scheduling may present problems. The FAA does not concur with the request to extend the compliance time from 4,000 flight hours to 6,000 flight hours, or the request to change it to 6,000 flight hours or 2 years, whichever occurs first. However, the FAA has considered the need to allow additional time to obtain the number of fuses required for the fleet and to avoid scheduling problems for the replacement of discrepant fuses. Therefore, the FAA has revised paragraph (b) of the final rule to read: ''Within 18 months or 4,000 flight hours after the effective date of this AD, whichever occurs later. . . .'' In addition, for the same reasons, the FAA has revised the compliance time of paragraph (a) of the final rule, which is identical to paragraph (b). The FAA has determined that extending these compliance times will not adversely affect safety.

Requests to Clarify the Summary Section of the Preamble

Two commenters request a number of revisions and additions to clarify the technical content of the ''Summary'' Section of the NPRM.

In that section, one commenter requests that the third sentence be changed from ''* * * and excessive fusing volumes of some of the fuses, can adversely affect * * *'' to ''* * * and excessive fusing volumes of some of the fuses in extreme cold environment, can adversely affect * * *.'' The FAA concurs with this request and has changed the final rule accordingly.

Two commenters request that the statement of unsafe condition be changed from ''* * * in the loss of all hydraulic system pressure and consequent severely reduced controllability of the airplane'' to ''* * * in the loss of all standby hydraulic system pressure and may reduce the controllability of the airplane during certain flight phases.'' The FAA concurs partially with these changes. The FAA has determined that the word ''standby'' and the phrase ''during certain flight phases'' add clarity and has revised the final rule accordingly. However, the FAA does not concur with the proposed addition of ''may reduce the controllability'' to the sentence, because the FAA considers that ''could result in'' is more accurate.

Requests to Clarify Additional Sections of the Preamble

1. ''Discussion'' Section. In the first paragraph of this section, one commenter requests that the second sentence be changed from ''Results of that performance test * * *'' to ''In the existing configuration, the standby leading edge flow limiter is upstream of the standby leading edge fuse. The results of the performance test revealed that this configuration of the flow limiter and fuse assembly adversely affects the operation of the fuse.''

In the second paragraph of this section, one commenter requests deleting the second sentence and changing the third sentence from ''* * * are not affected by this condition * * *'' to ''* * * are not affected by this condition because steady state temperatures keep the fluid warm.''

In the third paragraph of this section, two commenters request changing the second sentence from ''The hydraulic fuse is designed to prevent total loss of the hydraulics systems after a certain volume of fluid passes through the fuse within a specified time following the development of a leak downstream of the fuse * * *'' to ''Hydraulic fuses are designed to prevent total loss of the hydraulics system after a certain volume of fluid (continually/continuously) passes through the fuse following the development of a leak downstream of the fuse.''

2. Explanation of Relevant Service Information. In the second paragraph of this section, two commenters request changing the first sentence from ''* * * new fuses that are not affected by low temperature operation'' to ''* * * new fuses that function in low temperatures.'' These commenters also request changing the second sentence from ''* * * as a result of fluid depletion if a leak occurs downstream of the fuses'' to ''* * * as a result of a fuse failing to set following a leak downstream of the fuses.''

3. Explanation of Requirements of Proposed Rule. In the first paragraph of this section, two commenters request changing the second sentence from ''* * * new fuses that are not affected by low temperature operation'' to ''* * * new fuses that function at/in low temperatures.''

Although the FAA acknowledges that the commenters' suggested wording in these sections of the preamble adds technical clarity, the FAA has determined that these changes are not relevant because these sections do not appear in the final rule.

Requests to Clarify the Body of the AD

One commenter requests changing paragraph (b) to read: ''For airplanes listed in Boeing Service Bulletin 737–29–1071 (line numbers 2001 through 2791). * * *'' The FAA does not concur with this request for two reasons. First, the line number ''2001'' is incorrect, and the correct number (1001) is shown in the applicability of the proposed AD. Second, because the line numbers are included in the applicability of the AD, it is unnecessary to include them elsewhere in the AD.

Two commenters request changing paragraph (b) to read ''* * * with new fuses that are not adversely affected during low temperature operation. * * *'' The FAA has determined that this change adds clarity and has changed the wording of the final rule accordingly.

Conclusion

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

Cost Impact

There are approximately 1,791 Boeing Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 596 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that it will take approximately 2 work hours per airplane to accomplish the required interchange of the hydraulic fuse and the flow limiter, and that the average labor rate is $60 per work hour. The cost for required parts will be minimal. Based on these figures, the cost impact of the required interchange on U.S. operators is estimated to be $71,520, or $120 per airplane.

The FAA also estimates that it will take approximately 4 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $143,040, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–07–16 Boeing: Amendment 39–10436. Docket 95–NM–207–AD.

Applicability: Model 737–300, –400, and –500 series airplanes having line numbers 1001 through 2791 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent adversely affected operation of the fuse, which could result in the loss of all standby hydraulic system pressure and consequent severely reduced controllability of the airplane during certain flight phases, accomplish the following:

(a) For airplanes listed in Boeing Service Bulletin 737–29–1070, dated June 8, 1995: Within 18 months or 4,000 flight hours after the effective date of this AD, whichever occurs later, interchange the location of the hydraulic fuse and the flow limiter of the standby hydraulic system of the leading edge so that the hydraulic fuse is positioned upstream of the flow limiter, in accordance with Boeing Service Bulletin 737–29–1070, dated June 8, 1995.

(b) For airplanes listed in Boeing Service Bulletin 737–29–1071, dated May 16, 1996: Within 18 months or 4,000 flight hours after the effective date of this AD, whichever occurs later, replace the existing hydraulic fuses in the standby hydraulic system with new fuses that are not adversely affected during low temperature operation, in accordance with Boeing Service Bulletin 737–29–1071, dated May 16, 1996.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

(e) The actions shall be done in accordance with Boeing Service Bulletin 737–29–1070, dated June 8, 1995, and Boeing Service Bulletin 737–29–1071, dated May 16, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)

and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 7, 1998.

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager,

Transport Airplane Directorate,

Aircraft Certification Service.

[FR Doc. 98–8352 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–119–AD; Amendment 39–10432; AD 98–07–12]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that currently requires repetitive tightening of the screws and quick-release fasteners on the wing/body fairing panels. This action will continue to require the repetitive tightening of these parts on certain airplanes. This amendment requires the installation of new fastener systems for those panels on certain airplanes and the application of new torque values. Accomplishment of these actions will terminate the requirement for repetitive tightening of the screws and fasteners of those airplanes. In addition, the AD will limit the applicability of the existing AD by removing certain airplanes. This amendment is prompted by the manufacturer's development of new fastener systems that will not vibrate and loosen. The actions specified by this AD are intended to prevent separation of loosened wing/body fairing panels from the airplane, which, if not corrected, could lead to structural damage to the horizontal or vertical stabilizer, and potential injury to persons on the ground.

DATES: Effective May 7, 1998.

The incorporation by reference of Dornier Service Bulletin SB–328–53–144, evision 2, dated September 18, 1996, as listed in the regulations, is approved by the Director of the Federal Register as of May 7, 1998.

The incorporation by reference of Dornier Alert Service Bulletin ASB–328–53–004, dated August 2, 1994, including Figures 1 and 2 of Annex 1, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 26, 1994 (59 FR 51361, October 11, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–21–02, amendment 39–9043 (59 FR 51361, October 11, 1994), which is applicable to all Dornier Model 328–100 series airplanes, was published in the **Federal Register** on June 17, 1997 (62 FR 32699). The action proposed to supersede AD 94–21–02 to continue to require repetitive tightening of the screws and quick-release fasteners on the wing/body fairing panels. For certain airplanes, the proposed AD also would require the installation of new fastener systems for those panels, and the application of new torque values. Accomplishment of these actions would terminate the requirement for repetitive tightening of the screws and fasteners of those airplanes. In addition, the proposed AD would limit the applicability of the existing AD by removing certain airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. One commenter, an organization representing regional airlines, responded to the invitation for comments extended in the proposal to amend part 39. Due consideration has been given to the comments received from that commenter.

As noted above, the proposed AD would require, for certain airplanes, the installation of new fastener systems and application of new torque values for the affected panels. Upon completion of those modifications, the requirement presently contained in AD 94–21–02 for repetitive tightening of the screws and fasteners would be terminated. Instead of this required terminating action, the commenter requests that those modifications be approved as an optional terminating action. Operators could then choose to complete those modifications or continue performing the inspections presently required by AD 94–21–02. The commenter contends that the inspections currently mandated by AD 94–21–02 have been shown to be highly effective in responding to the airworthiness concern addressed in this AD. The commenter adds that the subject fasteners are highly visible. In addition, the mandated inspection also is supplemented by general daily inspection of the panels. Although the commenter indicates that accomplishment of the modification is critical for continued airworthiness, the ability to accomplish the required inspections, as well as a lack of in-service findings, support the contention that inspections should be allowed to continue.

The FAA does not concur with the commenter's request. The FAA has determined that long term continued operational safety will be better assured by modifications or design changes to remove the source of the problem rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections has led the FAA to consider placing less emphasis on special procedures and more emphasis on design considerations. The FAA, therefore, does not concur that continued reliance on the inspections presently required by AD 94–21–02, as suggested by the commenter, would provide an adequate level of safety.

The commenter also requests that if continued reliance on the inspections presently required by AD 94–21–02 is not permitted, the compliance period for the required modifications should be extended to 24 months after the effective date of the AD. In that regard, the commenter presents economic data provided by an operator of affected aircraft.

The commenter states that the cost impact information contained in the proposed rule only identifies eight affected airplanes. However, the commenter indicates that one operator alone operates 13 affected airplanes, and estimates that, if a 12-month compliance time is adopted, the cost of retrofit for that operator will be over $200,000, including disruption to its airline schedule.

The FAA concurs with the commenter's request to extend the compliance time for accomplishment of the modification. The cost impact of the proposed AD was based on the assumption that eight airplanes would be affected. As the commenter notes, there are now considerably more affected airplanes in service. In light of this, the FAA has revised the cost impact information, below, to specify that 29 airplanes of U.S. registry will be affected by this AD.

The FAA's intent was that the modification be accomplished during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenter, the FAA now recognizes that 24 months will allow the majority of affected operators to accomplish the modification within regularly scheduled maintenance visits. The FAA has revised paragraph (b) of this final accordingly. The FAA does not consider that this extension will adversely affect safety.

Conclusion

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

Cost Impact

There are approximately 29 Dornier Model 328–100 series airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 94–21–02 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $5,220, or $180 per airplane.

The new actions that are required by this new AD will take approximately 120 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $208,800, or $7,200 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9043 (59 FR 51361, ctober 11, 1994), and by adding a new airworthiness directive (AD), amendment 39–10432, to read as follows:

98–07–12 Dornier: Amendment 39–10432. Docket 96–NM–119–AD. Supersedes AD 94–21–02, Amendment 39–9043.

Applicability: All Model 328–100 airplanes having serial number 3005 through 3047 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent structural damage to the horizontal or vertical stabilizer, and potential injury to persons on the ground due to loosened wing/body fairing panels that may separate from the airplane, accomplish the following:

Restatement of the Requirements of AD 94–21–02

(a) Within 25 hours time-in-service after October 26, 1994 (the effective date of AD 94–21–02, amendment 39–9043), tighten the screws and quick-release fasteners on the wing/body fairing panels, in accordance with Dornier Alert Service Bulletin ASB–328–53–004, dated August 2, 1994. Repeat these procedures thereafter at intervals not to exceed 100 hours time-in-service.

Note 2: The proper torque values are specified in the alert service bulletin.

New Requirements of this AD

(b) Within 24 months after the effective date of this AD, modify the left and right top fairing attachments by installing new fastener systems and increasing the torque values applied to these fasteners, in accordance with Dornier Service Bulletin SB–328–53–144, Revision 2, dated September 18, 1996. Accomplishment of this modification constitutes terminating action for the repetitive tightening actions required by paragraph (a) of this AD.

Note 3: Installation of the new fastener systems and the application of new torque values accomplished prior to the effective date of this AD in accordance with Dornier Service Bulletin SB–328–53–144, dated December 14, 1995, or Revision 1, dated January 18, 1996, is considered acceptable for compliance with the requirements of paragraph (b) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(e) The actions shall be done in accordance with Dornier Service Bulletin SB–328–53–144, Revision 2, dated September 18, 1996, and Dornier Alert Service Bulletin ASB–328–53–004, dated August 4, 1994.

(1) The incorporation by reference of Dornier Service Bulletin SB–328–53–144, Revision 2, dated September 18, 1996, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of a Dornier Alert Service Bulletin ASB–328–53–004, dated August 2, 1994, including Figures 1 and 2 of Annex 1, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 26, 1994 (59 FR 51361, October 11, 1994).

(3) Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in German airworthiness directive 94–009/4, dated February 1, 1996.

(f) This amendment becomes effective on May 7, 1998.

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8351 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–50–AD; Amendment 39–10433; AD 98–07–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200 and –300 series airplanes, that requires a one-time inspection for worn or broken wire bundles in the ceiling above the main passenger door and repair, if necessary; and relocation of the wire bundles to prevent chafing. This amendment is prompted by a report indicating that the opening of the main passenger door caused the door liner and a ceiling panel to chafe and ultimately break wires installed in this area. The actions specified by this AD are intended to prevent these wires from becoming worn or breaking, which could lead to the failure of several systems, such as the fuel shutoff valves, and may contribute to the inability of the flight crew to stop the flow of fuel to the engines in the event of an engine fire.

DATES: Effective May 7, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 7, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767–200 and –300 series airplanes was published in the **Federal Register** on June 6, 1997 (62 FR 31021). That action proposed to require a one-time inspection for worn or broken wire bundles in the ceiling above the main passenger door and repair, if necessary; and relocation of the wire bundles to prevent chafing.

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

Support for the Proposal

Two commenters support the proposed rule.

Request To Add New Service Information

One commenter requests including the phrase ''as amended by Notice of Status Change 767–33–0052 NSC 01, dated May 9, 1996'' in the final rule after each reference to Boeing Service Bulletin 767–33–0052, Revision 1, dated December 8, 1994. This commenter states that the Notice of Status Change (NSC) specifies that a larger wire clamp is required than was specified in Revision 1 of the service bulletin.

The FAA concurs. The FAA has determined that the wire bundle clamp specified in the previously referenced service bulletin may be too small for two of the wire bundles on Model 767–200 and –300 series airplanes. For this reason, the FAA considers that the larger wire clamp specified in the previously referenced NSC will provide operators with the proper size clamp, and has changed the final rule accordingly.

Request To Change Discussion Section of Proposal

One commenter requests two changes to the wording in the Discussion section of the proposal:

1. In the first sentence of the second paragraph, which reads ''Because these wires are connected to such safety systems as the fuel shutoff valves for the engines * * *,'' the commenter requests deleting the word ''safety'' from ''safety system.'' The commenter states that it is incorrect to identify these systems as ''safety systems'' because if any of the systems fail, a second failure would be required to cause a safety problem.

The FAA concurs partially. The FAA does not agree that these systems are unrelated to safety. When evaluating the loss of functions that protect the airplane from hazardous events, the FAA assumes the existence of the

hazard. In the case of worn or broken wiring to the engine fuel shutoff valve, the FAA considers that the inability of the flight crew to close the shutoff valve, given the existence of an engine fire, is a hazardous condition that warrants mandatory corrective action. The FAA considers that changing ''safety systems'' to ''systems related to airplane or passenger safety'' would add clarity to the final rule; however, no change to this final rule is necessary since neither the Discussion section nor the term ''safety systems'' appear in the final rule.

2. In the second sentence of the second paragraph, the commenter states that the following statement should be deleted from the final rule: ''Such failure of the fuel shutoff valves, for example, would prevent the flight crew from stopping the flow of fuel to the engines in the event of a fire.'' The commenter states that this statement is incorrect because ''the subject wiring failure will affect only the fire handle electrical path to the fuel shutoff valve.'' The commenter maintains that the redundant fuel control switch path would be unaffected by this failure and that the valve could be closed in case of an engine fire.

The FAA concurs partially. The FAA does not agree that the valve could be closed in case of an engine fire if the fuel control switch failed; however, the FAA does agree to clarify the wording of the final rule in certain sections.

After evaluating the design of the engine fuel shutoff valve system of the Model 767 series airplane, the FAA has determined the following. First, although in the event of the subject wiring failure, the fuel shutoff valve could be closed via the engine fuel shutoff valve, the ability to close this valve is dependent on the actuation of the fuel control switch by the flight crew before the engine fire handle is pulled, as specified by the Emergency Procedures section of the Model 767 Airplane Flight Manual. Second, the engine fuel shutoff valve cannot be closed if the fire handle is pulled before the fuel control switch is placed in the ''Cutoff'' position.

Because of these findings, the FAA has determined that a procedural deviation, such as pulling the fire handle first, could occur under certain circumstances, which would result in the inability to stop the flow of fuel to an engine fire. Further, the FAA has determined that the final rule should continue to identify the loss of fuel shutoff capability as a possible consequence of the wire chafing condition.

The Discussion section does not appear in the final rule; however, the FAA has changed the wording in the Summary section of this final rule and the section that describes the unsafe condition to address the commenter's concern. In these sections the final rule now reads ''Wire bundle damage may contribute to the inability of the flight crew to stop the flow of fuel to the engines in the event of an engine fire'' instead of ''* * * would prevent the flight crew * * *.''

Conclusion

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

Cost Impact

There are approximately 403 Model 767–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 142 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $8,520, or $60 per airplane.

It will take approximately 57 work hours per airplane to accomplish the required relocation of the wire bundles, at an average labor rate of $60 per work hour. Required parts will cost approximately $200 per airplane. Based on these figures, the cost impact of the required relocation of the wire bundles on U.S. operators is estimated to be $514,040, or $3,620 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–07–13 Boeing: Amendment 39–10433. Docket 97–NM–50–AD.

Applicability: Model 767–200 and –300 series airplanes; as listed in Boeing Service Bulletin 767–33–0052, Revision 1, dated December 8, 1994, as revised by Notice of Status Change 767–33–0052 NSC 01, dated May 9, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent wires in the area above the main passenger door from becoming worn or breaking, which could lead to the failure of several systems, such as the fuel shutoff valves, and may contribute to the inability of the flight crew to stop the flow of fuel to the engines in the event of an engine fire, accomplish the following:

(a) Within 12 months after the effective date of this AD, conduct a one-time inspection to detect worn or broken wires in the wire bundles installed above the main passenger door, in accordance with Boeing Service Bulletin 767–33–0052, Revision 1, dated December 8, 1994, as revised by Notice of Status Change 767–33–0052 NSC 01, dated May 9, 1996. Prior to further flight, repair any worn or broken wires and relocate the wire bundles inboard of this door, in accordance with the service bulletin. Thereafter, no further action is required by this AD.

Note 2: Inspection; repair, if necessary; and relocation of the wire bundles accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 767–33–0052, dated April 2, 1992, is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Seattle ACO.

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

(d) The actions shall be done in accordance with Boeing Service Bulletin 767–33–0052, Revision 1, dated December 8, 1994; as revised by Notice of Status Change 767–33–0052 NSC 01, dated May 9, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 7, 1998.

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8350 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–245–AD; Amendment 39–10435; AD 98–07–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires an internal visual inspection to detect cracks of the skin and internal doublers above main entry door 1 at body station 460, and various follow-on actions. This amendment is prompted by reports indicating that multiple fatigue cracks were found in both internal skin doublers. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in reduced structural integrity of the fuselage and consequent rapid depressurization of the cabin.

DATES: Effective May 7, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 7, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), ransport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on April 25, 1997 (62 FR 20132). That action proposed to require an internal visual inspection to detect cracks of the skin and internal doublers above main entry door 1 at body station 460, and various follow-on actions.

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

Support for the Proposal

One commenter supports the proposed rule.

Request to Revise Method of Counting Accumulated Flight Cycles

One commenter, the manufacturer, requests that the FAA expand the definition of the term ''flight cycles'' as used in the compliance times for this proposed AD. The manufacturer requests that the FAA specify that, for the purposes of this AD, flight cycles that occur while operating with a cabin differential pressure of 2.0 pounds per square inch (psi) or less need not be considered or counted as a flight cycle when determining the number of flight cycles relative to the proposed compliance thresholds. The manufacturer states that the fuselage skin in the upper forward portion of the airplane is almost exclusively subjected to pressure loading, and there are no data to support counting all flight cycles for fatigue or crack growth.

The manufacturer further states that finite element data indicate that more than 97 percent of the loading in this area is directly due to cabin differential pressure. Similarly, strain gages installed common to an adjacent lap splice indicated that ground loading and flight loading are insignificant when compared to pressurization loading.

Additionally, the manufacturer states that if the provision to eliminate counting flight cycles that occur while operating with a cabin differential pressure of 2.0 psi or less is not permitted, several operators that use non-pressurized touch-and-go cycles for crew training will be adversely affected. The manufacturer also points out that if operators are required to count all flight cycles for this rule, some of these airplanes could be approaching the 13,000 cycle threshold, yet actually have less than 2,700 flight cycles that are actually pressurized.

The FAA concurs that, in this case, flight cycles shall be defined as flight cycles that have a cabin differential pressure of more than 2.0 psi. The FAA has reviewed substantiating data submitted by the manufacturer and has determined that the primary fatigue loading at the subject location (on Boeing Model 747 series airplanes) is due to cabin differential pressure cycles

with an insignificant contribution from ground and flight loads. Therefore, the FAA has added a provision to the final rule that specifies the definition of flight cycles for the purposes of this AD.

Request to Shorten the Compliance Time

One group of commenters requests that the FAA shorten the compliance time for the initial internal visual inspection to detect cracks of the skin and internal doublers from 18 months to 9 months in order to ensure the safety of the flying public. The commenters believe that shortening the compliance time will make the AD process more effective and will prevent an event similar to that which occurred in April 1988 on a Model 737 series airplane.

The FAA does not concur that a shorter compliance time is needed. After consideration of all the available information, the FAA concludes that a reduction of the proposed compliance time, without prior notice and opportunity for public comment, is not warranted. In developing an appropriate compliance time, the FAA considered the safety implications and normal maintenance schedules for accomplishment of the various inspections and determined that 18 months was the most cost-effective compliance time. Further, the proposed compliance time of 18 months was arrived at with operator, manufacturer, and FAA concurrence. To reduce the compliance time of the proposal would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule; the time required for that procedure may be as long as four additional months. In comparing the actual compliance date of the final rule after completing such a procedure to the compliance date of this final rule as issued, the increment in time is minimal. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original notice, the FAA has determined that further delay of this final rule action is not appropriate. However, if additional data are presented that would justify a short compliance time, the FAA may consider further rulemaking on this issue.

Conclusion

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

Cost Impact

There are approximately 880 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 143 airplanes of U.S. registry will be affected by this AD. Each of these airplanes has a left- and right-side main entry door 1.

It will take approximately 76 work hours per airplane to accomplish the required internal visual inspection, at an average labor rate is $60 per work hour. Based on these figures, the cost impact of the internal visual inspection required by this AD on U.S. operators is estimated to be $652,080, or $4,560 per airplane.

Should an operator be required to accomplish the specified preventative modification, it will take approximately 100 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,094 per airplane. Based on these figures, the cost impact of the preventative modification (if accomplished) specified in this AD on U.S. operators is estimated to be $1,014,442, or $7,094 per airplane.

It will take approximately 40 work hours per airplane to accomplish the required high frequency eddy current (HFEC) or low frequency eddy current (LFEC) inspection (i.e., post-modification), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the HFEC or LFEC inspection required by this AD on U.S. operators is estimated to be $343,200, or $2,400 per airplane, per inspection cycle.

Should an operator be required to accomplish the specified repair, it will take approximately 212 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,602 per airplane. Based on these figures, the cost impact of the repair (if accomplished) specified by this AD on U.S. operators is estimated to be $2,191,046, or $15,322 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–07–15 Boeing: Amendment 39–10435. Docket 96–NM–245–AD.

Applicability: Model 747 series airplanes, having line numbers 207 through 1088 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the internal skin doublers, which could result in reduced structural integrity of the fuselage and consequent rapid depressurization of the cabin, accomplish the following:

(a) For airplanes identified as Groups 1 through 10, inclusive, in Boeing Service Bulletin 747–53A2396, Revision 1, dated February 22, 1996: Prior to the accumulation of 13,000 flight cycles, or within 18 months after the effective date of this AD, whichever occurs later, perform an internal visual inspection to detect cracks of the skin and internal doublers above main entry door 1 at body station (STA) 460, in accordance with Part 2—Inspection of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2396, Revision 1, dated February 22, 1996. For the purposes of this AD, the number of flight cycles in which cabin differential pressure occurs at 2.0 pounds per square inch (psi) or less need not be counted when determining the number of flight cycles that have occurred on the airplane.

(1) If no crack is detected during the internal visual inspection required by paragraph (a) of this AD, prior to further flight, perform an open hole high frequency eddy current (HFEC) inspection to detect cracks of the skin and internal doublers above main entry door 1, in accordance with Figure 10 of the service bulletin.

(i) If no crack is detected during the open hole HFEC inspection required by paragraph (a)(1) of this AD, prior to further flight, install an external doubler in accordance with Part 4—Modification of the Accomplishment Instructions of the service bulletin.

(ii) If any crack is detected during the open hole HFEC inspection, prior to further flight, perform a visual inspection to detect damage of the adjacent structure within 20 inches of the cracks, in accordance with Part 3—Repair of the Accomplishment Instructions of the service bulletin. If any damage is detected, prior to further flight, repair it in accordance with Part 3—Repair, or the **Note** specified in paragraph G. of Part 2—Inspection of the Accomplishment Instructions of the service bulletin.

(2) If any crack is detected during the internal visual inspection required by paragraph (a) of this AD, prior to further flight, perform a visual inspection to detect damage of the adjacent structure within 20 inches of the cracks, in accordance with Part 3—Repair of the Accomplishment Instructions of the service bulletin. Prior to further flight following accomplishment of this visual inspection, repair any cracked skin or internal doublers, and/or repair adjacent damaged structure, in accordance with Part 3—Repair of the Accomplishment Instructions of the service bulletin.

(b) Perform either an internal surface HFEC or external low frequency eddy current (LFEC) inspection to detect damage of the repaired or modified area, in accordance with Part 6—After-Repair or After-Modification Inspection Program of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2396, Revision 1, dated February 22, 1996; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes identified as Groups 1 through 10, inclusive, in Boeing Service Bulletin 747–53A2396, Revision 1, dated February 22, 1996: Inspect within 15,000 flight cycles following accomplishment of either paragraph (a)(1) or (a)(2) of this AD.

(2) For airplanes identified as Group 11 in Boeing Service Bulletin 747–53A2396, Revision 1, dated February 22, 1996: Inspect prior to the accumulation of 15,000 total flight cycles.

(c) If no damage is detected during any inspection required by paragraph (b) of this AD, repeat the inspections required by paragraph (b) of this AD at the following intervals:

(1) If the immediately preceding inspection was conducted using HFEC techniques, conduct the next inspection within 6,000 flight cycles.

(2) If the immediately preceding inspection was conducted using LFEC techniques, conduct the next inspection within 3,000 flight cycles.

(d) If any damage is detected during any inspection required by paragraph (b) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

(g) The actions shall be done in accordance with Boeing Service Bulletin 747–53A2396, Revision 1, dated February 22, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, ransport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 7, 1998.

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8349 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–62–AD; Amendment 39–10434; AD 98–07–14]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Effective May 7, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 7, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer,

Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes was published in the **Federal Register** on December 9, 1997 (62 FR 64784). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Comments Received

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

Conditional Support for the Proposal

One commenter supports the intent of the proposed rule, but remarks that, if an inherent design problem exists on the affected airplanes to allow flightcrews to select the power levers below the flight idle stop while in flight, the FAA should consider the addition of a mechanical means to preclude such selection. The FAA acknowledges the commenter's concern, and may consider additional rulemaking to address that concern in the future for certain airplanes. However, until such final action is identified, the FAA considers it appropriate to proceed with issuance of this AD. No change to the AD is required.

Proposed Rule Unnecessary: AFM Already Revised

One commenter, an operator, states that the proposal is an inappropriate method of addressing the perceived unsafe condition. The commenter points out that, because the manufacturer has issued a revision to the AFM that contains the exact wording as the proposed rule, the proposed rule is redundant and a waste of taxpayers' money.

The FAA does not concur with the commenter's suggestion that the proposed rule is redundant. Since the issuance of the proposal, the manufacturer has issued Dornier 328–100 Airplane Flight Manual Temporary Revision (TR) 02–099, dated November 18, 1996. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, approved this TR. The FAA acknowledges that the TR contains the exact wording as that specified in paragraph (a) of this final rule. In light of this, the FAA has revised this final rule to include insertion of this TR as an additional method of compliance with the requirements of paragraph (a) of this AD.

As explained in the preamble of the proposed rule, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. Such operation of the propellers in the beta range during flight, if not prevented, could result in an unsafe condition (loss of airplane controllability, or engine overspeed with consequent loss of engine power). The FAA has determined that this unsafe condition could exist or eventually develop on the affected airplanes, and that revising the Limitations Section of the AFM must be mandated to ensure that safety is not degraded. The appropriate vehicle for mandating such action to correct an unsafe condition is the airworthiness directive.

Withdraw Proposed Rule: Pilot Training Needed

This same commenter states that the unsafe condition addressed by the proposal is not a problem with the airplane itself, but rather with lack of education for the pilots regarding the operation of turboprop engines. The FAA infers that the commenter requests that the FAA withdraw the proposed rule.

The FAA does not concur with the commenter's request. The requirements of this final rule will reinforce the education and training of pilots of turboprop airplanes by ensuring that the pilots are aware that the AFM prohibits operating the power levers below the flight idle gate in flight and advises of the consequence of such actions. The FAA finds that the actions required by this final rule will ensure that the pilots are aware of a potential in-flight unsafe condition.

Withdraw Proposed Rule: Issuance of AD May Adversely Affect Airplane Sales

One commenter suggests that the issuance of the AD may create the illusion that a unique and dangerous unsafe condition exists on the airplane. The commenter further suggests that the issuance of the AD could cause an adverse effect on current or future lease and sales of the airplane. The FAA infers that the commenter requests that the proposed rule be withdrawn.

The FAA does not concur. As stated in the preamble of the proposal, the identified unsafe condition has been found to exist on airplanes equipped with turboprop engines, not just the airplanes addressed in this particular AD. The FAA is currently in the process of addressing the identified unsafe condition on other airplanes equipped with turboprop engines. While it is understandable that a manufacturer would like to minimize any adverse implications regarding the safety of its products, the purpose of an AD is to correct an identified unsafe condition in aircraft, regardless of where it is or what it is caused by. The FAA has determined that, because of the identified unsafe condition addressed by this AD, the continued operational safety of the airplanes necessitates issuance of the final rule.

Revise the Cost Estimate

One commenter asserts that the cost estimate provided in the proposal gives an erroneous figure because the cost of an AFM change is not a fixed cost. The commenter further states that, since there is no terminating action for the requirements of the proposed AD, a record must be made and continuously maintained. Further, the commenter notes that additional work and expenses are incurred if a request for an alternative method of compliance is submitted to the FAA.

The FAA does not concur that the cost estimate should be revised. In this case, the FAA considers that once the AFM has been revised in accordance with the final rule, no further action is required. Furthermore, the FAA considers any ''additional expense'' incurred by an operator or the FAA (as a result of requests for approval of an alternative method of compliance) to be negligible when compared to the necessity to ensure the operational safety of the airplane.

Conclusion

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

Cost Impact

The FAA estimates that 60 Dornier Model 328–100 series airplane of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,600, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–07–14 Dornier: Amendment 39–10434. Docket 97–NM–62–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Dornier Model 328–100 Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM, or by inserting Dornier 328–100 Airplane Flight Manual Temporary Revision (TR) 02–099, dated November 18, 1996, into the AFM.

''Power levers selection below Flight Idle (FI) gate is prohibited during flight.

WARNING: Movement of any power lever behind the flight idle (FI) gate during flight could lead to loss of airplane control from which recovery may not be possible.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) Except as provided by paragraph (a) of this AD, the AFM revision shall be done in accordance with Dornier 328–100 Airplane Flight Manual Temporary Revision (TR) 02–099, dated November 18, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 7, 1998.

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8348 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–327–AD; Amendment 39–10445; AD 98–07–23]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to provide the flightcrew with procedures to prevent thrust loss during initial climb. This action also requires installing a new or modified electronic control unit on each engine, which, when accomplished, terminates the requirement for the AFM revision. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent significant thrust loss during initial climb, which could result in an increased risk of collision with obstacles in the initial climb path of the airplane.

DATES: Effective April 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–327–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A340 series airplanes. The DGAC advises that it has received reports of significant power loss during initial climb of the airplane. Such power loss has been attributed to anomalies in the software installed in the electronic control unit (ECU) on each engine. This condition, if not corrected, could result in an increased risk of collision with obstacles in the initial climb path of the airplane.

Explanation of Relevant Service Information

Airbus has issued A340 Airplane Flight Manual (AFM) Temporary Revision 4.03.00/14, dated October 18, 1996, which provides the flightcrew with revised takeoff procedures to prevent thrust loss during initial climb. The revised takeoff procedures involve turning off one bleed pack and all engine bleeds prior to takeoff, and turning them on after thrust reduction following takeoff. Airbus also has issued Service Bulletin A340–73–4012, Revision 1, dated August 25, 1997, which describes procedures to replace the existing ECU on each engine with a new ECU or modify the existing ECU on each engine. Accomplishment of the actions in Airbus Service Bulletin A340–73–4012 eliminates the need for the AFM revision. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified the AFM temporary revision and service bulletin as mandatory and issued French airworthiness directive 97–166–065(B), dated July 30, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent significant thrust loss during initial climb, which could result in an increased risk of collision with obstacles in the initial climb path. This AD requires revising the Normal Procedures Section of the FAA-approved AFM by incorporating the previously described temporary AFM revision. This AD also requires accomplishment of the actions specified in the service bulletin described previously. Accomplishment of the specified actions constitutes terminating action for the AFM revision.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the AFM revision, at an average labor rate of $60 per work hour. Based on this estimate, the cost impact of this action would be $60 per airplane.

It would take approximately 12 work hours to accomplish replacement of the existing ECU's with new ECU's, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on this figure, the cost impact of the replacement required by this AD would be $720 per airplane.

Should an operator elect the option of modifying the existing ECU's instead of replacing them with new units, the FAA estimates that 8 work hours per airplane would be required to modify the existing ECU's, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the modification required by this AD would be $480 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–327–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–07–23 Airbus Industrie: Amendment 39–10445. Docket 97-NM–327-AD.

Applicability: Model A340–211, –212, –213, –311, –312, and –313 series airplanes; on which Airbus Modification 45504 (reference Airbus Service Bulletin A340–73–4012, evision 1, dated August 25, 1997) has not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent significant thrust loss during initial climb, which could result in an increased risk of collision with obstacles in the initial climb path of the airplane, accomplish the following:

(a) Within 5 days after the effective date of this AD, revise the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the information specified in Airbus A340 AFM Temporary Revision 4.03.00/14, dated October 18, 1996, to provide the flightcrew with procedures to prevent thrust loss during initial climb, as specified in the temporary revision; and operate the airplane in accordance with those limitations and procedures.

Note 2: This may be accomplished by inserting a copy of Temporary Revision 4.03.00/14 into the AFM. When this temporary revision has been incorporated into general revisions of the AFM, the general revisions may be inserted into the AFM, provided the information contained in the general revision is identical to that specified in Temporary Revision 4.03.00/14.

(b) Within 6 months after the effective date of this AD, replace the existing electronic control unit (ECU) on each engine with a new ECU, or modify the existing ECU on each engine; in accordance with Airbus Service Bulletin A340–73–4012, Revision 1, dated August 25, 1997. After the replacement or modification has been accomplished, Airbus A340 AFM Temporary Revision 4.03.00/14, dated October 18, 1996, may be removed from the AFM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(e) The AFM revision shall be done in accordance with Airbus A340 Airplane Flight Manual Temporary Revision 4.03.00/14, dated October 18, 1996. The replacement or modification shall be done in accordance with Airbus Service Bulletin A340–73–4012, Revision 1, dated August 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 97–166–065(B), dated July 30, 1997.

(f) This amendment becomes effective on April 17, 1998.

Issued in Renton, Washington, on March 26, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8542 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–338–AD; Amendment 39–10446; AD 98–07–24]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340 series airplanes. This action requires a rototest inspection for fatigue cracking of the vertical support beam at the upper first fastener row of the actuator attachment fitting of the center landing gear (CLG), and follow-on actions. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent fatigue cracking in the vertical support beam that supports

the CLG actuator attachment fitting, which could result in reduced structural integrity of the airplane.

DATES: Effective April 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–338–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A340 series airplanes. The DGAC advises that, during full-scale fatigue tests on a test article, cracks were found at 22,849 flight cycles at frame 53.2, zones 147 and 148, on the vertical support beam that supports the actuator attachment fitting of the center landing gear (CLG). Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A340–53–4043, Revision 02, dated July 18, 1997, which describes procedures for a rototest inspection (i.e., eddy-current rotating probe) to detect cracking of the vertical support beam at the upper first fastener row of the actuator attachment fitting of the CLG (zones 147 and 148).

In addition, Airbus has issued Service Bulletin A340–53–4030, Revision 1, dated February 22, 1996, which describes procedures for replacement of the CLG actuator attachment fitting with new parts at frame 53.2, zones 147 and 148, and reinforcement of the vertical support beam by adding one stiffening fitting on each side. Accomplishment of the actions specified in Airbus Service Bulletin A340–53–4030, Revision 1, is intended to adequately address the identified unsafe condition.

The DGAC classified Airbus Service Bulletin A340–53–4043 as mandatory and issued French airworthiness directive 96–105–043(B)R1, dated July 30, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Rule and Service Bulletins

Operators should note that, although Airbus Service Bulletin A340–53–4043 specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

In addition, operators should note that, for certain airplanes, this AD mandates the modification described in Airbus Service Bulletin A340–53–4030 as terminating action for the repetitive inspections described in Airbus Service Bulletin A340–53–4043. [Incorporation of the terminating actions specified in Airbus Service Bulletin A340–53–4030 is optional in French airworthiness directive 96–105–043(B)R1, dated July 30, 1997.]

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The replacement and reinforcement requirements of this AD are in consonance with these conditions.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the inspection specified in this AD, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection required by this AD would be $120 per airplane, per inspection cycle.

It would require approximately 11 work hours to accomplish the modifications specified in this AD, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,912 per airplane. Based on these figures, the cost impact of the modifications required by this AD would be $3,572 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to

comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–338–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–07–24 Airbus Industrie: Amendment 39–10446. Docket 97–NM–338–AD.

Applicability: Model A340 series airplanes on which Airbus Modification 42606 has not been accomplished, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the vertical support beam that supports the actuator attachment fitting of the center landing gear (CLG), which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 6,400 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a rototest inspection for fatigue cracking of the vertical support beam at the upper first fastener row of the CLG actuator attachment fitting (zones 147 and 148), in accordance with Airbus Service Bulletin A340–53–4043, Revision 02, dated July 18, 1997.

(b) If the inspection accomplished in paragraph (a) of this AD reveals no cracking, accomplish either paragraph (b)(1) or (b)(2) of this AD:

(1) Prior to further flight, replace the CLG actuator attachment fitting with new parts, and reinforce the vertical support beam by adding one stiffening fitting on each side, in accordance with Airbus Service Bulletin A340–53–4030, Revision 1, dated February 22, 1996. Accomplishment of the replacement and reinforcement constitutes terminating action for the requirements of this AD. Or

(2) Prior to the accumulation of 11,100 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later: Repeat the rototest inspection of the vertical support beam at the upper first fastener row of the CLG actuator attachment fitting (zones 147 and 148), in accordance with Airbus Service Bulletin A340–53–4043, Revision 02, dated July 18, 1997.

(i) If the inspection accomplished in paragraph (b)(2) of this AD reveals no cracking: Prior to further flight, replace the CLG actuator attachment fitting with new parts, and reinforce the vertical support beam by adding one stiffening fitting on each side, in accordance with Airbus Service Bulletin A340–53–4030, Revision 1, dated February 22, 1996. Accomplishment of the replacement and reinforcement constitute terminating action for the requirements of this AD.

(ii) If the inspection accomplished in paragraph (b)(2) of this AD reveals any cracking: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate.

(c) If the inspection accomplished in paragraph (a) of this AD reveals any cracking: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(f) The inspections and modifications required by this AD shall be done in accordance with the following Airbus service bulletins, which contain the specified list of effective pages:

Service bulletin referenced and date	Page number	Revision level shown on page	Date shown on page
A340–53–4043, Revision 02, July 18, 1997	1–15	02	July 18, 1997.
A340–53–4030, Revision 1, February 22, 1996	1, 2, 8–9, 17	1	February 22, 1996.
	3–7, 10–16	Original	March 13, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–105–043(B)R1, dated July 30, 1997.

(g) This amendment becomes effective on April 17, 1998.

Issued in Renton, Washington, on March 26, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8543 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–48–AD; Amendment 39–10447; AD 98–07–25]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–500 series airplanes. This action requires a one-time inspection to measure the gap between the lower fairing of the rudder horn and the vertical stabilizer, and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent interference between the rudder horn and the vertical stabilizer, which could cause the rudder to jam, and consequent reduced controllability of the airplane.

DATES: Effective April 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–500 series airplanes. The DGAC advises that interference between the lower fairing of the rudder horn and the vertical stabilizer has been found on an in-service airplane. Because this condition has been traced to quality control problems that occurred during manufacture, similar interference may exist on other airplanes of this type. Such interference, if not detected and corrected, could cause the rudder to jam, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletin ATR42–55–0007, dated November 13, 1997, which describes procedures for performing a one-time visual inspection to measure whether the gap between the lower fairing of the rudder horn and the vertical stabilizer is within certain specified limits. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 97–328–072(B)R1, dated November 19, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent interference between the rudder horn and the vertical stabilizer, which could cause the rudder to jam, consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the AD and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of inspection results that are outside certain specified limits, this AD requires the repair of such conditions to be accomplished in accordance with a method approved by the FAA.

In addition, unlike the procedure described in the service bulletin, this AD would not permit further flight on

an interim basis following removal of the rudder fairing. The FAA has determined that, because of the safety implications and possible aerodynamic or airplane performance consequences associated with flight with the rudder fairing removed, any gap between the lower fairing of the rudder horn and the vertical stabilizer that is outside the specified limits must be repaired or modified prior to further flight, in accordance with a method approved by the FAA.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 5 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $300 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–48–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–07–25 Aerospatiale: Amendment 39–10447. Docket 98–NM—48–AD.

Applicability: Model ATR42–500 series airplanes, as listed in Aerospatiale Service Bulletin ATR42–55–0007, dated November 13, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent interference between the rudder horn and the vertical stabilizer, which could cause the rudder to jam, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, measure the gap between the lower fairing of the rudder horn and the vertical stabilizer, in accordance with Aerospatiale Service Bulletin ATR42–55–0007, dated November 13, 1997.

(1) If the gap is within the limits specified in the service bulletin, no further action is required by this AD.

(2) If the gap is outside the limits specified in the service bulletin, prior to further flight, modify the lower fairing of the rudder horn, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection shall be done in accordance with Aerospatiale Service Bulletin ATR42–55–0007, dated November 13, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–328–072(B)R1, dated November 19, 1997.

(e) This amendment becomes effective on April 17, 1998.

Issued in Renton, Washington, on March 26, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8565 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–03–AD; Amendment 39–10440; AD 98–07–19]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Helicopter Systems Model 369F and 369FF Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Helicopter Systems (MDHS) Model 369F and 369FF helicopters, that requires removing the tail rotor control rod assembly (rod assembly) and replacing it with an airworthy rod assembly. This amendment is prompted by a failure of a rod assembly during a proof-load test conducted by the manufacturer. The actions specified by this AD are intended to prevent buckling of the rod assembly when subjected to ultimate jam loads, loss of tail rotor control, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Cecil, Aerospace Engineer, ANM–120L, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712, telephone (562) 627–5229, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to MDHS Model 369F and 369FF helicopters was published in the **Federal Register** on August 20, 1997 (62 FR 44245). That action proposed to require removing the rod assembly and replacing it with an airworthy rod assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 17 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,080.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket maintained in the Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–07–19 McDonnell Douglas Helicopter Systems: Amendment 39–10440. Docket No. 97–SW–03–AD.

Applicability: Model 369F and 369FF helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 300 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent buckling of the tail rotor control rod assembly (rod assembly) when subjected to ultimate jam loads, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the rod assembly, part number (P/N) 369D27516, and replace it with an airworthy rod assembly, P/N 369D27516–5. Replacement of the rod assembly with an airworthy rod assembly, P/N 369D27516–5, constitutes a terminating action for the requirements of this AD.

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

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

obtained from the Los Angeles Aircraft Certification Office.

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

Issued in Fort Worth, Texas, on March 25, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–8584 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–13–AD; Amendment 39–10441; AD 98–07–20]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332C, L, and L1 helicopters that have not been modified in accordance with Eurocopter France Modifications 332A07–41.569 and 332A07–66.150. This action requires revisions to the Limitations section of the Rotorcraft Flight Manual (RFM) to prohibit flight into meteorological conditions that may produce lightning for helicopters that are not equipped with lightning-resistant tail rotor blades. A terminating action is provided in the AD by the installation of tail rotor blades having a lightning-resistant system. This amendment is prompted by the forced ditching of a Model AS 332 helicopter after experiencing a lightning strike. The actions specified in this AD are intended to prevent damage to the tail rotor blades that could result in loss of a tail rotor blade and subsequent loss of control of the helicopter.

DATES: Effective April 17, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–13–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Générale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, L, and L1 helicopters with tail rotor blades, part number (P/N) 33A12.0010 or P/N 33A12.0020, installed. The DGAC advises that due to a ditching in the North Sea that was caused by a lightning strike, flight in foreseeable or confirmed stormy areas is prohibited for helicopters not equipped with tail rotor blades that have been reinforced against lightning strike.

Eurocopter France has issued Eurocopter France AS 332 Service Bulletin No. 64.00.22, Revision 1, dated February 23, 1996, which specifies replacing the electrical bonding braids and brackets, and replacing the tail rotor blades with airworthy blades, P/N 332A12.0050.01. The DGAC classified this service bulletin as mandatory, and issued AD 96–099–059(B), dated May 9, 1996, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, and L1 helicopters of the same type design registered in the United States, this AD is being issued to revise the Limitations section of the RFM to prohibit flight into meteorological conditions that may produce lightning for helicopters that are not equipped with tail rotor blades that have been reinforced against lightning strikes. A terminating action is provided in the AD by the replacement of the electrical bonding braids and brackets, and removing the tail rotor blades and replacing them with improved lightning-resistant tail rotor blades.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the RFM revision is required within 30 calendar days and this AD must be issued immediately.

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

The FAA estimates that 4 helicopters of U.S. registry will be affected by this proposed AD, that it will take approximately 1 work hour per helicopter to revise the RFM, and 6 work hours to replace the electrical bonding braids and brackets, including removal and replacement of the tail rotor blades, and that the average labor rate is $60 per work hour. Required parts will cost approximately $12,000 to replace all five tail rotor blades, or $1000 per blade to reinforce the blades against lightning strikes, and $490 to replace the electrical bonding braids and brackets. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,850 per helicopter, assuming all affected tail rotor blades and components are replaced and the RFM is not revised.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic,

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–13–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–07–20 Eurocopter France: Amendment 39–10441. Docket No. 97–SW–13–AD.

Applicability: Model AS 332C, L, and L1 helicopters with tail rotor blades, part number (P/N) 33A12.0010 or P/N 33A12.0020, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 30 calendar days after the effective date of this AD, unless accomplished previously.

To prevent damage to the tail rotor blades that could result in loss of a tail rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Revise the Limitations section of the Rotorcraft Flight Manual (RFM) to include the following statement:

FLIGHT INTO METEOROLOGICAL CONDITIONS THAT MAY PRODUCE LIGHTNING IS PROHIBITED FOR AIRCRAFT THAT ARE NOT EQUIPPED WITH TAIL ROTOR BLADES THAT HAVE BEEN REINFORCED AGAINST LIGHTNING STRIKES.

This revision may be accomplished by inserting a copy of this AD into the RFM.

(b) Installation of tail rotor blades, P/N 33A12.0050.01, in accordance with Eurocopter France Modification (MOD) 332A07–41.569 on the tail rotor hub modified in accordance with Eurocopter France MOD 332A33–0001.05, and replacement of electrical bonding braids in accordance with MOD 332A07–66.150 is considered terminating action for the requirements of this AD.

(c) Remove the RFM limitation after the installation of modified parts as described in paragraph (b) of this AD.

Note 2: Eurocopter France AS 332 Service Bulletin No. 64.00.22, Revision 1, dated February 23, 1996, pertains to the subject of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

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

(f) This amendment becomes effective on April 17, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–099–059(B), dated May 9, 1996.

Issued in Fort Worth, Texas, on March 25, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–8583 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–321–AD; Amendment 39–10444]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model Viscount 744, 745, 745D, and 810 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all British Aerospace Model Viscount 744, 745, 745D, and 810 series airplanes. This amendment requires repetitive inspections to detect cracking and corrosion of components of the engine nacelle subframe structure, and corrective action, if necessary; and replacement of any component that has reached its life limit (safe life) with a new or serviceable component. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this amendment are intended to ensure periodic replacement of certain engine nacelle subframe components that have reached their maximum life limits. Cracking and

corrosion of these components, if not detected and corrected in a timely manner, could result in reduced structural integrity of the engine nacelle subframe structure, separation of the engine from the airframe, and reduced controllability of the airplane.

DATES: Effective July 1, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–321–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this amendment may be obtained from British Aerospace Regional Aircraft Limited, Chadderton Division, Engineering Support, Greengate, Middleton, Manchester M24 1SA, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace Model Viscount 744, 745, 745D, and 810 series airplanes. The CAA advises that it has received reports of cracking, attributed to fatigue and stress corrosion, found in the engine nacelle subframe structure. Such cracking and corrosion, if not detected and corrected in a timely manner, could result in reduced structural integrity of the engine nacelle subframe structure, separation of the engine from the airframe, and reduced controllability of the airplane.

Explanation of Relevant Service Information

British Aerospace has issued Viscount Alert Preliminary Technical Leaflet (PTL) 500, dated January 1, 1993; including Appendices 1 through 4 inclusive, dated November 1992, and Appendix 5, dated October 1992. This alert PTL describes procedures for the introduction of a program of inspections to detect cracking and corrosion of the components of the engine nacelle subframe structure. The program includes a schedule of the maximum inspection threshold or life limit (safe life), as applicable, for each component; and includes procedures for replacement of any component that has reached its life limit with a new or serviceable component. (A life limit is the operational limit allowed for a part before it must be replaced.) The CAA classified this alert PTL as mandatory and issued British airworthiness directive 008–06–94 (undated) in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this amendment is being issued to prevent reduced structural integrity of the engine nacelle subframe structure, separation of the engine from the airframe, and reduced controllability of the airplane. This amendment requires the actions specified by the alert PTL described previously; except as discussed below.

Differences Between This Amendment and the Service Information

Operators should note that, unlike the procedures described in the alert PTL, this amendment will not permit flight of any airplane having any strut that has exceeded its life limit after the initial inspection specified in the alert PTL. The FAA has determined that, because of the safety implications and consequences associated with exceeding the life of a life-limited part, any strut that is found to have exceeded its life limit must be replaced prior to further flight.

In addition, while the alert PTL specifies that any discrepant part be replaced, this amendment allows operators the option to repair discrepant parts, in accordance with a method approved by the FAA. The FAA has included this option because small amounts of corrosion or fatigue damage may be repairable.

Cost Impact

The FAA estimates that 29 airplanes of U.S. registry will be affected by this amendment.

It would require approximately 200 work hours per airplane to replace all struts when they have reached their life limits, at an average labor rate of $60 per work hour. Required parts would cost approximately $30,000 per airplane. Based on these figures, the cost impact on U.S. operators of this action is estimated to be $1,218,000, or $42,000 per life limit cycle.

Should an operator be required to perform the visual inspection, it would take approximately 2 work hours, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of this action is estimated to be $120 per airplane, per visual inspection cycle.

Should an operator be required to perform the eddy current inspection, it would take approximately 2 work hours, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of this action is estimated to be $120 per airplane, per eddy current inspection cycle.

It would require approximately 200 work hours to perform the detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of this action is estimated to be $348,000, or $12,000 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this amendment were not adopted.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The FAA does not anticipate receipt of adverse or negative comments, since the affected airplanes may not be operated in a manner that would require compliance with this amendment. In accordance with 14 CFR 11.17, unless a written adverse or negative comment, or a written notice of intent to submit an

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–321–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited, Vickers-Armstrongs Aircraft Limited): Amendment 39–10444. Docket 97-NM–321-AD.

Applicability: All Model Viscount 744, 745, 745D, and 810 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the engine nacelle subframe structure, separation of the engine from the airframe, and reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of the number of landings corresponding to a strut's life limit (safe life), as specified in the ''Inspection Threshold Landings'' column of Table One, Two, Three, Four, Five, or Six (hereinafter referred to as ''the applicable Table''), as applicable, provided in British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 500, dated January 1, 1993, including Appendices 1 through 4 inclusive, dated November 1992, and Appendix 5, dated October 1992; or within 100 flight hours after the effective date of this AD; whichever occurs later: Replace any strut that has reached its life limit, as specified in the applicable Table, with a serviceable strut, in accordance with the alert PTL. Thereafter, replace any strut before it exceeds its life limit with a serviceable strut in accordance with the alert PTL, until initiation of the replacement cycle for that strut, as specified in paragraph (d) of this AD.

(b) Prior to the accumulation of the number of landings corresponding to a strut's inspection threshold, as specified in the ''Inspection Period Landings'' column of the applicable Table provided in British Aerospace Alert Viscount PTL 500, dated January 1, 1993, including Appendices 1 through 4 inclusive, dated November 1992, and Appendix 5, dated October 1992; or within 100 flight hours after the effective date of this AD; whichever occurs later: Perform a visual inspection to detect cracking of the strut end fittings, in accordance with paragraph 2.1, Part One, Accomplishment Instructions, of the alert PTL. Repeat the inspection thereafter at intervals not to exceed 100 flight hours, until initiation of the inspection cycle for the respective component, as specified in paragraph (d) of this AD.

(c) Prior to the accumulation of the number of landings corresponding to a strut's inspection threshold, as specified in the ''Inspection Period Landings'' column in the applicable Table provided in British Aerospace Viscount Alert PTL 500, dated January 1, 1993, including Appendices 1 through 4 inclusive, dated November 1992, and Appendix 5, dated October 1992; or within 200 flight hours after the effective date of this AD; whichever occurs later: Perform an eddy current inspection to detect cracking of the strut end fittings, in accordance with paragraph 2.1, Part One, Accomplishment Instructions, of the alert

PTL. Repeat the inspection thereafter at intervals not to exceed 200 flight hours, until initiation of the inspection cycle for the respective component, as specified in paragraph (d) of this AD.

(d) Within 6 months after the effective date of this AD, perform an inspection (surface eddy scan, rotating eddy bore, internal surface eddy scan, or radiographic, as applicable) to detect cracking and corrosion of components of the engine nacelle subframe; and replace any component that has exceeded its life limit; in accordance with paragraph 2.2, Part Two, Accomplishment Instructions, of British Aerospace Viscount Alert PTL 500, dated January 1, 1993, including Appendices 1 through 4 inclusive, dated November 1992, and Appendix 5, dated October 1992. Repeat the inspection(s) and replacement(s) thereafter at intervals not to exceed the inspection threshold or safe life for the applicable component, as specified in the ''Inspection Period Landings'' or the ''Inspection Threshold Landings'' column (respectively) of the applicable Table of the alert PTL. Accomplishment of the initial inspections/replacements for all struts as required by this paragraph constitutes terminating action for the inspection/replacement requirements of paragraphs (a), (b), and (c) of this AD.

(e) If any crack or corrosion is found during any inspection required by this AD: Prior to further flight, accomplish the actions required by either paragraph (e)(1) or (e)(2) of this AD, and continue to follow the inspection and replacement schedule in accordance with the applicable Table.

(1) Replace the discrepant component with a serviceable component. Or

(2) Repair the discrepant part in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(h) The actions shall be done in accordance with British Aerospace Alert Preliminary Technical Leaflet 500, dated January 1, 1993; including Appendices 1 through 4 inclusive, dated November 1992, and Appendix 5, dated October 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft Limited, Chadderton Division, Engineering Support, Greengate, Middleton, Manchester M24 1SA, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 008–06–94 (undated).

(i) This amendment becomes effective on July 1, 1998.

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8538 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–014]

RIN 2115–AE46

Special Local Regulations: Intracoastal Waterway, St. Augustine, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the ''Blessing of the Fleet'' ceremony on the Matanzas River in St. Augustine, Florida. The event will be held from 11 a.m. to 3 p.m. Eastern Standard Time (EST) on April 5, 1998. The regulations are needed to provide for the safety of life on navigable waters during the event because of the expected concentration of participant and spectator craft in a limited area of the Matanzas River.

DATES: These regulations become effective at 9 a.m. and terminate at 3 p.m. EST on April 5, 1998.

FOR FURTHER INFORMATION CONTACT: Ensign G. Watson, Coast Guard Group Mayport, Florida. Tel: (904) 247–7398.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The event requiring this regulation is a ''Blessing of the Fleet'' ceremony. There will be approximately 150 participating vessels in single file, parade style formation, transiting the Intracoastal Waterway on the Matanzas River from the Bridge of Lions south to Daybeacon number #2, and returning north to the Bridge of Lions. Approximately ten spectator craft are expected. The total number of vessels in the regatta area create an extra hazard to the safety of life on the navigable waters, requiring that vessel traffic control be implemented within the area.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The information concerning the event was not received until January 28, 1998, leaving insufficient time to publish proposed rules prior to the event or to provide a delayed effective date.

Regulatory Evaluation

This action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulated area will be in effect for a total of six hours on the date of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities because the regulations are only in effect in a limited area for six hours on the day of the event.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order

12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to section 2.B.2.a (CE #34(h)) of Commandant Instruction M17475.1C that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temproary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. A new temporary section 100.35–T07–014 is added to read as follows:

§ 100.35–TO7–014 Special Local Regulations; Intracoastal Waterway; St. Augustine, FL.

(a) *Regulated area.* The regulated area is located in the waters of the Matanzas River, Intracoastal Waterway, St. Augustine, Florida. Its northern boundary is formed by the Bridge of Lions. The western boundary begins where the Bridge of Lions meets the west bank of the Matanzas River and runs along the west bank of the river to approximate position 29–52.1N, 081–18.2W. The southern boundary is formed by a line, perpendicular to the centerline of the Matanzas River, drawn from Fish Island Mariana Daybeacon #2, (LLNR 39080), in approximate position 29–52.IN, 081–18.2W (near the entrance of the San Sebastian River), to the west bank of the Matanzas River. the eastern boundary is formed by the eastern bank of the Matanzas River. All coordinates referenced use Datum: NAD 83.

(b) *Special local Regulations.* (1) Entry into this regulated area, by other than parade participants or spectator craft, is prohibited, unless authorized by the Patrol Commander. After termination of the ''Blessing of the Fleet'' ceremony, all vessels may resume normal operations.

(2) Spectator craft will be allowed to enter the regulated area; however, vessel mooring, anchoring, and movement restrictions will be directed by Coast Guard and local law enforcement officials.

(3) The Bridge of Lions will remain in the closed position during the event.

(c) *Date.* This section becomes effective at 9 a.m. and terminates at 3 p.m. EST on April 5, 1998.

Dated: March 18, 1998.

[FR Doc. 98–8255 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7–98–017]

RIN 2115–AE46

Special Local Regulations; Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the start of the Fort Lauderdale-Baltimore leg of the 1997–98 Whitbread Round the World Sailboat Race. The event will be held offshore of Fort Lauderdale on April 19, 1998. The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 12 p.m. and terminate at 1 p.m. EDT on April 19, 1998.

FOR FURTHER INFORMATION CONTACT: QMCS Thomas E. Kjerulff, Coast Guard Group Miami, Florida at (305)535–4492.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Whitbread Race Americas Inc., is sponsoring the start of the Fort Lauderdale to Baltimore leg of the 1997–98 Whitbread Round the World Sailboat Race. The event will be held on April 19, 1998: from 12:10 p.m. to 1 p.m. These regulations will create two regulated areas one mile offshore of Fort Lauderdale, Florida, for the start and turning point of the race involving the ten 60 foot offshore racing sailboats participating. Entry into the regulated areas will be prohibited to non-participating vessels. These regulations are necessary for the protection of life on the navigable waters of the United States, as there will be approximately two thousand spectator craft in the vicinity.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would have been impracticable, as there was not sufficient time remaining after notice of the event to publish proposed rules or to provide for a delayed effective date.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Cost Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 3 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities as the regulations will only be in effect for approximately 3 hours in a limited area off Fort Lauderdale.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to section 2.B.2.a (CE#34(h)) of Commandant Instruction M16475.1C that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows.

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T07–017 is added to read as follows:

§ 100.35–T07–017 Whitbread Race; Fort Lauderdale, FL

(a) *Regulated Areas* (all coordinates reference Datum: NAD 1983). (1) A regulated area is established for the starting line by a line joining the following corner points: Corner point 1: 26–07.9N—080–04.4W, Corner point 2: 26–07.1N—080–04.4W, Corner point 3: 26–07.9N—080–05.6W, Corner point 4: 26–07.1N—080–05.6W.

(2) A regulated area is established for the turning point by a line joining the following corner points: Corner point 1: 26–10.1N—080–04.6W, Corner point 2: 26–10.1N—080–05.2W, Corner point 3: 26–10.9N—080–04.6W, Corner point 4: 26–10.9N—080–05.2W.

(b) *Special local regulations*. (1) Entry into the regulated area by other than event participants is prohibited unless otherwise authorized by the Patrol Commander. After departure of participants from the regulated area, traffic may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Dates*. This section is effective at 12 p.m. and terminates at 1 p.m. EDT on April 19, 1998.

Dated: March 18, 1998.

Norman T. Saunders,

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

[FR Doc. 98–8254 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–97–004]

RIN 2115–AA97

Security Zone: Dignitary Arrival/ Departure Logan International Airport, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent, four-sector security zone on the waters around Logan International Airport, above the Callahan Tunnel, Sumner Tunnel, Ted Williams Tunnel, and around any designated vessel, to protect the President, Vice President and visiting heads of foreign states or foreign governments during their arrival, departure and transits to and from Logan International Airport.

DATES: This rule is effective on June 1, 1998.

ADDRESSES: The comments and other material referred to in this preamble are available for inspection or copying at the Marine Safety Office, Boston, MA, during normal working hours between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Michael H. Day or MSTC Daniel J. Dugery, Coast Guard Marine Safety Office, Boston, MA; telephone (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 8, 1998, the Coast Guard published a Notice of Proposed Rulemaking titled ''Security Zone: Dignitary Arrival/Departure Logan International Airport, Boston, MA'' in the **Federal Register** (63 FR 1089). The comment period ended March 9, 1998. The Coast Guard received two letters commenting on this proposal. These comments have been incorporated into this final rule. No public hearing was requested and none was held.

Background and Purpose

Boston Massachusetts is visited by the President or Vice President of the United States, or visiting heads of foreign states or foreign governments an average of 24 times per year. Often these visits are on short notice. The President, Vice President, and visiting heads of foreign states or foreign governments require Secret Service protection. The President, Vice President, and visiting heads of foreign states or foreign governments arrive at Logan International Airport and then transit to locations throughout Boston by car or boat. Due to the sensitive nature of these visits, a security zone is needed. Standard security procedures are enacted to ensure the proper level of protection to prevent sabotage or other subversive acts, accidents, or other activities of a similar nature. In the past, temporary security zones were requested by the U.S. Secret Service with limited notice for preparation by the U.S. Coast Guard. This regulation establishes a permanent four-sector security zone that can be activated upon the request of the U.S. Secret Service pursuant to their authority under 18 U.S.C. 3056. The security zone sections will be as follows:

Sector one will go into effect 15 minutes prior to the scheduled landing or takeoff of the aircraft carrying the President, Vice President, or visiting heads of foreign states or foreign governments at Logan International Airport. Sector one will preclude all vessels from approaching within three hundred yards of the Logan International Airport shoreline, bound on the west by a line drawn between positions 42°22′45″N, 071°01′05″W and 42°21′48″N, 071°01′45″W (NAD 1983).

Sector two will go into effect 15 minutes before the vehicle carrying the President, Vice President, or visiting heads of foreign states or foreign governments enters the Callahan Tunnel or Sumner Tunnel. Sector two may preclude vessels, as necessary, from entering an area of the main ship channel, Boston Inner Harbor, fifty yards in all directions from a point directly above the Callahan Tunnel or the Sumner Tunnel.

Sector three will go into effect 15 minutes before the vehicle carrying the President, Vice President, or visiting heads of foreign states or foreign governments enters the Ted Williams Tunnel. Sector three may preclude vessels, as necessary, from entering an area of the main ship channel, Boston Inner Harbor, fifty yards in all directions from a point directly above the Ted Williams Tunnel.

Sector four will go into effect 15 minutes before the President, Vice President, or visiting heads of foreign states or foreign governments board the designated transport vessel. Sector four will preclude all vessels from approaching within three hundred yards in all directions from the designated vessel transporting the dignitaries between Logan International Airport and any location in Boston Harbor.

The activation of a particular sector of this security zone will be announced via Safety Marine Information Broadcasts and/or by locally issued notices.

Discussion of Comments and Changes

Responses to the Notice of Proposed Rulemaking provided a number of specific comments on the proposed rule. The letters expressed concern over the potential impact this rule could have on the port community.

One comment expressed a concern of local shipping agencies that this rule would close the waters over the Callahan Tunnel, Sumner Tunnel, and Ted Williams Tunnel for extended periods of time. In response to this comment, the wording of sections two and three of the security zone has been changed from ''will preclude all vessels'' to ''may preclude vessels, as necessary.'' In the past, when enforcing a temporary security zone over these tunnels, the Coast Guard vessel(s) on scene had the option whether to allow vessels to transit through the temporary security zone or to close the waterway to all vessel transits. This option remains.

Another comment expressed concern that the security zone around the designated transport vessel moving the President, Vice President, or visiting heads of foreign states or foreign governments could cause obstructions and delays to commercial deep draft vessels transiting Boston Inner harbor.

Discussions with the U.S. Secret Service and an examination of past temporary security zone enforcement practices has shown that transport vessels moving the President, Vice President, or visiting heads of foreign states or foreign governments across the harbor have allowed commercial vessels to transit through the area rather than impede the transit of a commercial vessel.

The last comment indicated that a security zone, two hours in duration, would place an unnecessary delay on vessels transiting the port. In view of this comment, the wording under *Regulatory Evaluation* has been changed from ''less than two hour duration'' to ''less than one half-hour duration.'' This reflects the average time temporary security zones have been in effect for inbound and outbound transits to Logan Airport.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The Coast Guard anticipates that this security zone will be activated an average of 24 times per year. Costs resulting from these regulations, if any, will be minor and have no significant adverse financial effect on vessel operators as the activation of any one of the sectors of this security zone will be less than one half-hour duration. Deep draft vessel traffic, fishing vessels, and tour boats may experience slight delays in departures or arrivals, however, the delays are minimal relative to the highly significant national security interest in protecting the President, Vice President, and visiting heads of foreign states or foreign governments visiting Boston.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard finds that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under section 2.B.2.e.(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis Checklist are included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.113, is added to read as follows:

§ 165.113 Security zone: Dignitary arrival/departure Logan International Airport, Boston, MA

(a) *Location.* The permanent security zone consists of four sectors that may be activated in part, or in whole, upon the request of the U.S. Secret Service. These zones are for the protection of the President or Vice President of the United States, as well as visiting heads of foreign states or foreign governments arriving at, or departing from, Logan International Airport and as determined by the transit route across Boston Harbor. The security zone will be as follows:

(1) Sector one will go into effect 15 minutes prior to the scheduled landing or takeoff of the aircraft carrying either the President, Vice President, or visiting heads of foreign states or foreign governments at Logan International Airport. Sector one will preclude all vessels from approaching within three hundred yards of the Logan International Airport shoreline, bound on the west by a line drawn between positions 42°22′45″N, 071°01′05″W and 42°21′48″N, 071°01′45″W (NAD) 1983).

(2) Sector two will go into effect 15 minutes before the vehicle carrying the President, Vice President, or visiting heads of foreign states or foreign governments enters the Callahan Tunnel or Sumner Tunnel. Sector two may preclude vessels, as necessary, from entering an area of the main ship channel, Boston Inner Harbor; fifty yards in all directions from a point directly above the Callahan Tunnel or Sumner Tunnel.

(3) Sector three will go into effect 15 minutes before the vehicle carrying the President, Vice President, or visiting

heads of foreign states or foreign governments enters the Ted Williams Tunnel. Sector three may preclude vessels, as necessary, from entering an area of the main ship channel, Boston Inner Harbor, fifty yards in all directions from a point directly above the Ted Williams Tunnel.

(4) Sector four will go into effect 15 minutes before the President, Vice President, or visiting heads of foreign states or foreign governments board the designated transport vessel. Sector four will preclude all vessels from approaching within three hundred yards in all directions from the designated vessel transporting the President, Vice President, or visiting heads of foreign states or foreign governments between Logan International Airport and any location in Boston Harbor.

(5) The activation of a particular sector of this security zone will be announced via Safety Marine Information Broadcasts and/or by locally issued notices.

(b) *Regulations.* (1) The general regulations covering security zones contained in 33 CFR 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 18, 1998.

J. L. Grenier,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 98–8259 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF JUSTICE

48 CFR Chapter 28

Justice Acquisition Regulations; Implementation of the Federal Acquisition Reform Act, the Federal Acquisition Streamlining Act and the National Performance Review Recommendations

AGENCY: Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ) has rewritten 48 CFR Chapter 28, the Justice Acquisition Regulations, in its entirety in order to implement regulatory changes resulting from the Federal Acquisition Reform Act, the Federal Acquisition Streamlining Act and to implement recommendations of the National Performance Review. This effort creates a new JAR that is simpler and less burdensome. This 1998 version of the JAR supersedes the 1985 version and all amendments (Justice Acquisition Circulars 85–1 through 97–1) issued prior to the date of publication of this final rule.

EFFECTIVE DATE: April 2, 1998.

FOR FURTHER INFORMATION CONTACT:

Janis Sposato, Procurement Executive, Justice Management Division (202) 514–3103.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises 48 CFR chapter 28 in its entirety. A proposed rule with request for comments was published in the **Federal Register** on January 9, 1998. The final rule differs from the proposed rule to make editorial corrections and incorporate comments as appropriate.

No comments were received from other than DOJ components. The comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Justice certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the amendment sets forth internal departmental procedures.

C. Paperwork Reduction Act

The final rule imposes no new information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). All information collection requirements have been submitted to OMB. In those cases where an OMB control number has been assigned, the control number is included in the regulation.

List of Subjects in 48 CFR Parts 2801 through 2852

Government procurement.

Stephen R. Colgate,

Assistant Attorney General for Administration.

For the reasons set out in the preamble, Chapter 28 of Title 48 of the Code of Federal Regulations is revised as set forth below.

CHAPTER 28—DEPARTMENT OF JUSTICE

Subchapter A—General

Part 2801—Department of Justice Acquisition Regulations System

Subpart 2801.1—Purpose, Authority, Issuance

Subpart 2801.2—Administration

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2801.1—Purpose, Authority, Issuance

2801.101 Purpose.

(a) The Justice Acquisition Regulations (JAR) in this chapter are established to provide procurement regulations that supplement the Federal Acquisition Regulation (FAR), 48 CFR chapter 1. As such, the regulations contained in the JAR will include coverage of only those areas where agency implementation is required by the FAR, or where Department of Justice (DOJ) policies and procedures exist that supplement FAR coverage and directly affect the contractual relationship between the Department and potential or existing contractors. The JAR will not repeat FAR coverage.

(b) The FAR contains many references to agency procedures. If the JAR does not include supplemental guidance under the corresponding part or subpart, it is because the FAR language is considered to be sufficient. In those instances where the JAR states ''in accordance with bureau procedures,'' it does not mean that the bureau must have a procedure. It is intended that the bureau procedures are to be followed if they exist, however, it does not mean that the bureau must have a formal written procedure. Where both the JAR and bureau procedures do not address a FAR subject, the FAR guidance is to be followed.

(c) The JAR is not a complete system of regulations and must be used in conjunction with the FAR.

2801.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and the Office of Management and Budget's (OMB) implementing regulations at 5 CFR part 1320, require that reporting and record keeping requirements affecting 10 or more members of the public be cleared by that office. The OMB control number for the collection of information under 48 CFR chapter 28 is 1103–0018.

Subpart 2801.2—Administration

2801.270–1 Revisions.

In addition to changes published in the **Federal Register**, the JAR will be amended by issuance of Justice Acquisition Circulars (JACs) containing loose-leaf replacement pages which revise parts, subparts, sections, subsections, paragraphs or subparagraphs. A vertical bar (edit bar) at the beginning or end of a line indicates that a change has been made within that line.

Subpart 2801.3—Agency Acquisition Regulations

2801.304 Agency control and compliance procedures.

Pursuant to FAR 1.304, the Procurement Executive (PE) is responsible for ensuring that bureau acquisition regulations and directives do not restrain the flexibilities found in the FAR. For this reason, bureau acquisition regulations shall be forwarded to the PE upon issuance. The PE reserves the right to revoke the regulations and directives in this chapter if they are determined to be restrictive.

Subpart 2801.4—Deviations From the FAR and JAR

2801.403 Individual deviations.

Individual deviations from the FAR or the JAR shall be approved by the head of the contracting activity (HCA). A copy of the deviation shall be included in the contract file. Copies of all deviations will be provided to the PE.

2801.404 Class deviations.

Requests for class deviations from the FAR or the JAR shall be submitted to the PE. The PE will consult with the chairperson of the Civilian Agency Acquisition Council, as appropriate, and send his/her recommendations to the Assistant Attorney General for Administration (AAG/A). The AAG/A will grant or deny requests for such deviations. For the purposes of this chapter, requests for deviations involving basic ordering agreements, master type contracts, or situations where multiple awards are made from one solicitation, are considered to involve more than one contract and therefore considered to be class deviation requests.

2801.470 Requests for class deviations.

Requests for approval of class deviations from the FAR or the JAR shall be forwarded to the PE. Such requests will be signed by the Bureau Procurement Chief (BPC). Requests for class deviations shall be submitted as far in advance as the exigencies of the situation permit and shall contain sufficient written justification to evaluate the request.

Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities

2801.601 General.

(a) In accordance with Attorney General Order 1687–93, the authority vested in the Attorney General with respect to contractual actions, for goods and services, is delegated to the following officials:

(1) AAG/A (for the offices, boards, and divisions (OBDs);

(2) Director, Federal Bureau of Investigation;

(3) Director, Federal Bureau of Prisons;

(4) Commissioner, Federal Prison Industries;

(5) Commissioner, Immigration and Naturalization Service;

(6) Administrator, Drug Enforcement Administration;

(7) Assistant Attorney General, Office of Justice Programs;

(8) Director, U.S. Marshals Service;

(9) Inspector General, Office of the Inspector General.

(b) The acquisition authority delegated to the officials in 2801.601(a) may be redelegated to subordinate officials as necessary for the efficient and proper administration of the Department's acquisition operations. Such redelegated authority shall expressly state whether it carries the power of redelegation of authority.

(c) The redelegation of contracting authority directly to specific persons without regard for intermediate organizational levels only establishes authority to represent the Government in its commercial business dealings. It is not intended to affect the organizational relationship between the contracting officers and higher administrative and supervisory levels in the performance of their duties.

2801.602 Contracting officers.

2801.602–3 Ratification of unauthorized commitments.

The HCA may delegate the authority to ratify unauthorized commitments to the chief of the contracting office, except for those actions effected by his or her office. Dollar thresholds for delegations made under this section will be determined by the HCA. Copies of all ratifications are to be provided to the PE.

2801.603 Selection, appointment and termination of appointment.

2801.603–1 Department of Justice Acquisition Career Management Program.

(a) Each Bureau Procurement Chief shall develop and manage an acquisition career management program for contracting personnel in his or her component, consistent and uniform with this section and the Department of Justice Acquisition Procurement Career Management Program.

(b) The program shall cover all contracting personnel in the following categories:

(1) General Schedule (GS–1102) Contracting Series;

(2) Contracting officers, regardless of General Schedule Series, with contracting authority above the simplified acquisition threshold;

(3) Purchasing Series (GS–1105), other individuals performing purchasing duties and individuals with contracting authority between the micro purchase and simplified acquisition thresholds.

(4) All Contracting Officer Representatives/Contracting Officer Technical Representatives, or equivalent positions.

(c) The program shall include:

(1) *Management information system.* Standardized information on the acquisition workforce will be collected and maintained. To the maximum extent practicable, such data requirements shall conform to the standards established by the Office of Personnel Management for the Central Personnel Data File and shall be compatible with the Department of Justice acquisition workforce management information system.

(2) *Individual assessments and development plans for personnel in the GS–1102 contracting series.* (i) An individual assessment by a supervisor of each covered employee's state of competence to perform the full range of potential duties of his or her job; and

(ii) An individual development plan to schedule classroom, on-the-job training, or other training to develop the employee's skill level to an appropriate level in each area of competence necessary to perform his or her job.

(iii) Individual assessments and development plans should be designed to fit the needs of the component, but they should be built upon the units of competence and instruction prepared by the Federal Acquisition Institute whenever feasible. Individual development plans should attempt to bring the employee to an appropriate level of skill in all necessary competencies in the field of procurement. In general, a proficiency skill level of 3, as defined in Attachment 1 to Office of Federal Procurement Policy (OFPP) Policy Letter 92–3, shall be obtained for any contracting duty that is actually required to be performed on the job. Individual assessments and development plans should be reviewed annually and revised as appropriate, until the employee reaches the full competency level of his or her job.

(iv) Employees who perform only purchasing duties, regardless of occupational series, shall be required to obtain the requisite level of skill only in competencies involving simplified acquisitions. If the employee's duties are expanded to include contracting duties, then skill in procurement competencies must be assessed and developed.

(v) Individual assessments of covered employee skills shall be completed within 90 days of the employee's entry on duty.

(3) *Mandatory training.* Training shall be provided for the identified categories of contracting personnel to meet the minimum standards identified in OFPP Policy Letter 97–01.

(4) *Skills currency.* Contract Specialists (GS–1102) and contracting officers with authority to obligate funds above the micro-purchase threshold that have satisfied the mandatory training requirements, shall be provided the equivalent of at least 40 hours of continuing procurement and acquisition related education and training every two years for the purpose of maintaining the currency of acquisition knowledge and skills.

(5) *Program funding.* Bureau Procurement Chiefs are responsible for assessing the funding needs to provide for the education and training of their acquisition workforce and requesting such funding in the annual budget process.

2801.603–3 Appointment.

Contracting officers whose authority will be limited to micro-purchases shall be appointed in writing and include any limitations to that authority.

Subpart 2801.70—Contracting Officer's Technical Representative

2801.7001–701 General.

Contracting officers may appoint individuals selected by program offices to act as authorized representatives in the monitoring and administration of a contract. Such officials shall be designated as Contracting Officers' Technical Representatives (COTR's).

2801.7001–702 Selection, appointment, and limitation of authority.

(a) *COTR standards program.* This subpart sets forth policies and procedures for establishing standards for COTR's in DOJ. The program sets forth minimum standards for individuals to be eligible for an appointment as a COTR.

(b) *Applicability.* The eligibility requirements of this subpart apply to all individuals who are designated by the contracting officer as COTR's.

(c) *Eligibility standards.* To be determined eligible for an appointment as a DOJ COTR, the following standards must be met:

(1) The candidate must attend and successfully complete a minimum of a 16-hour basic COTR course; and

(2) The candidate must attend a minimum of 1 hour training specifically in procurement ethics, either through courses offered periodically by the Department, the bureaus, or a Government or commercial vendor.

(d) *Limitations.* Each COTR appointment made by the contracting officer shall clearly state that the representative is not an authorized contracting officer and does not have the authority under any circumstances to:

(1) Award, agree to award, or execute any contract, contract modification, notice of intent, or other form of binding agreement;

(2) Obligate, in any manner, the payment of money by the Government;

(3) Make a final decision on any contract matter which is subject to the clause at FAR 52.233–1, Disputes; or

(4) Terminate, suspend, or otherwise interfere with the contractor's right to proceed, or direct any changes in the contractor's performance that are inconsistent with or materially change the contract specifications.

(e) *Termination.* Termination of the COTR's appointment shall be made in writing by the contracting officer and shall give the effective date of the termination. The contracting officer shall promptly modify the contract once a COTR termination notice has been issued. A termination notice is not required when the COTR's appointment

terminates upon expiration of the contract.

(f) *Waivers.* No individual may serve as a COTR on any contract without the requisite training and signed COTR certificate for the file. In the rare event that there is an urgent requirement for a specific individual to serve as a COTR and the individual has not successfully completed the required training, the BPC may waive the training requirements and authorize the individual to perform the COTR duties, for a period of time not to exceed 120 days. The waiver will be granted in accordance with bureau procedures.

(g) *COTR clause.* The clause at 2852.201–70 is required in all contracts where a COTR is designated.

PART 2802—DEFINITIONS OF WORDS AND TERMS

Subpart 2.1—Definitions

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2.1—Definitions

2802.101 Definitions.

Throughout this chapter, the following words and terms are used as defined in this subpart unless the context in which they appear clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part.

(a) *Bureaus* means contracting activities. (See *contracting activity* in this subpart.)

(b) *Bureau procurement chief* means that supervisory official who is directly responsible for supervising, managing and directing all contracting offices of the bureau.

(c) *Chief of the contracting office* means that supervisory official who is directly responsible for supervising, managing and directing a contracting office.

(d) *Contracting activity* means a component within the Department which has been delegated procurement authority to manage contracting functions associated with its mission. See 2801.601(a).

(e) *DOJ* means the Department of Justice.

(f) *HCA* means head of the contracting activity i.e. those officials identified in 2801.601(a) having responsibility for supervising, managing, and directing the operations of the contracting activities.

(g) *JAR* means the Department of Justice Acquisition Regulations in 48 CFR chapter 28.

(h) *JMD* means the Justice Management Division.

(i) *OBDs* means the offices, boards, and divisions within the Justice Department.

(j) *PE* means the Procurement Executive for the Department of Justice.

PART 2803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2803.1 Safeguards

Subpart 2803.2—Contractor Gratuities to Government Personnel

Subpart 2803.3—Reports of Suspected Antitrust Violations

Subpart 2803.9—Whistleblower Protections for Contractor Employees

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2803.1—Safeguards

2803.101–3 Agency regulations.

The DOJ regulations governing Standards of Conduct are contained in 5 CFR part 2635.

2803.104 Procurement integrity.

2803.104–10 Violations or possible violations.

(a) Upon receipt of information of a violation or possible violation of section 27 of the Act, the contracting officer must do the following:

(1) Refer the matter to the Office of the Inspector General or other office designated in Attorney General Order 1931–94; and

(2) Make the determination required by FAR 3.104–10(a) and follow the procedures prescribed therein.

(b) The individual referenced in FAR 3.104–10(a)(1) is the Bureau Procurement Chief.

(c) The HCA must follow the criteria contained in FAR 3.104–10(g) when designating authority under this subpart.

(d) The HCA, or designee, shall refer information regarding actual or possible violations of section 27 of the Act to the Office of the Inspector General or other office designated in Attorney General Order 1931–94 for guidance before taking action.

(e) If the HCA, or designee, receiving the information of a violation, or possible violation, determines that award is justified by urgent and compelling circumstances, or is otherwise in the interest of the Government, then the contracting officer may be authorized to award the contract after notification to the Office of the Inspector General or other office designated in Attorney General Order 1931–94.

(f) The contracting officer will be advised, or directed by the HCA, or designee, as to the action to be taken. The types of actions that would normally be taken when a violation has occurred that affected the outcome of a procurement are listed in FAR 3.104–11(d).

(g) The PE shall be advised of all instances where violations have been determined to have occurred. Information must describe the violation as well as actions taken.

§ 2803.104–70 Ethics program training requirements.

It is the responsibility of the bureaus to provide training for ''procurement officials'' concerning the requirements of FAR 3.104. The bureau procurement training efforts should be coordinated with the Department's Ethics Official, who is responsible for developing agency ethics training plans, to include briefings on ethics and standards of conduct for employees who are contracting officers and procurement officials. The Ethics Official should be contacted directly to schedule training.

Subpart 2803.2—Contractor Gratuities to Government Personnel

2803.203 Reporting suspected violations of the gratuities clause.

DOJ personnel shall report suspected violations of the gratuities clause to the contracting officer or chief of the contracting office in writing. The report shall clearly state the circumstances surrounding the incident, including the nature of the gratuity, the behavior or action the gratuity was to influence, and the persons involved. The contracting officer, after review, shall forward the report along with his or her recommendations regarding the treatment of the violation in accordance with FAR 3.204(c) to the HCA or designee.

2803.204 Treatment of violations.

(a) The HCA or designee shall determine whether adverse action against the contractor in accordance with FAR 3.204(c) should be taken. In reaching a decision, the HCA or designee shall consult with the

contracting activity's legal advisor and the Office of the Inspector General or other office designated in Attorney General Order 1931–94.

(b) Prior to taking any action against the contractor the HCA or designee shall allow the contractor the opportunity to present opposing arguments in accordance with FAR 3.204(b).

(c) The PE shall be advised of all instances where violations have been determined to have occurred. Information must describe the violation as well as actions taken.

Subpart 2803.3—Reports of Suspected Antitrust Violations

2803.301 General.

Reports of suspected antitrust violations shall be referred to the AG and PE in accordance with bureau procedures.

Subpart 2803.9—Whistleblower Protections for Contractor Employees

2803.905 Procedures for investigating complaints.

(a) The Inspector General shall conduct an investigation and provide a written report of findings to the HCA.

(b) The HCA will ensure that the Inspector General provides the report of finding as specified in FAR 3.905(c).

(c) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the HCA. Extensions of time to file a written response may be granted by the HCA.

(d) The HCA may at any time request additional investigative work be done on the complaint.

2803.906 Remedies.

(a) Upon determination that a contractor has subjected one of its employees to a reprisal for providing information, the HCA may take one or more actions specified in FAR 3.906(a).

(b) Whenever a contractor fails to comply with an order, the HCA shall request an action be filed for enforcement of such order in the United States district court.

PART 2804—ADMINISTRATIVE MATTERS

Subpart 2804.4—Safeguarding Classified Information Within Industry

Subpart 2804.5—Electronic Commerce in Contracting

Subpart 2804.6—Contract Reporting

Subpart 2804.8—Government Contract Files

Subpart 2804.9—Information Reporting to the Internal Revenue Service

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2804.4—Safeguarding Classified Information Within Industry

2804.402 General.

Classified acquisitions or contracts which require access to classified material, as defined in FAR 4.401, for their performance shall be subject to the policies, procedures, and instructions contained in departmental regulations and shall be processed in a manner consistent with those regulations.

2804.403 Responsibilities of contracting officers.

For proposed solicitations and contracts which may require access to classified material or where guard services are assigned to safeguard departmental activities in possession of classified information, the contracting officer shall consult with the COTR and the Director, Security and Emergency Planning Staff, JMD, to determine the appropriate security measures to safeguard such material and information.

2804.470 Contractor Personnel Security Program.

2804.470–1 Policy.

It is the policy of the Department of Justice that all acquisitions which allow unescorted contractor access to Government facilities or sensitive information contain, as appropriate, requirements for appropriate personnel security screening by the contractor. To the maximum extent practicable, contractors shall be made responsible for the performance of personnel security screening. The personnel security screening may vary from one acquisition to another, depending upon the type, context, duration and location of the work to be performed. Classified contracts are exempted from the requirements of this section because they are governed by the requirements of Executive Order 12829 (January 6, 1993).

2804.470–2 Responsibilities.

(a) The primary acquiring component, together with its Security Program Manager, is responsible for providing the contracting officer with the appropriate contractor personnel security screening requirements (including waiver requirements, if appropriate) to be included in the statement of work.

(b) The contracting officer is responsible for including in the contract file for all such acquisitions, a certification made by the responsible Security Program Manager that the personnel security requirements of the contract are adequate to ensure the security of Departmental operations, information and personnel.

(c) The Security Program Manager for the acquiring component is responsible for monitoring and ensuring that the contractor personnel security requirements of the contract are accomplished.

(d) For purposes of this section, the term Contracting Officer includes anyone empowered to place orders under Blanket Purchase Agreements (BPA) or any other existing contract vehicle and/or through the use of the government-wide commercial purchase card.

Subpart 2804.5—Electronic Commerce in Contracting

2804.506 Exemptions.

Pursuant to FAR 4.506(b), all determinations that FACNET processing is not cost-effective or practicable for the contracting officer, or portions thereof, shall be initiated by the HCA and submitted to the PE for processing to the Attorney General for signature.

Subpart 2804.6—Contract Reporting

2804.602 Federal Procurement Data System.

(a) Federal Procurement Data System (FPDS) reports shall be submitted to the Procurement Policy and Review Group (PPRG) within 20 days of the close of each of the first three quarters of the fiscal year and within 30 days after the close of the fourth quarter. Specific preparation procedures are contained in the FPDS Reporting Manual and the Product and Service Code Manual.

(b) Bureaus shall submit periodic reports of their subcontract activities, together with copies of their Standard Forms 295 and 294 to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) as required by that office.

(c) BPCs shall provide to the PE, the name, office, mailing address, and

telephone number of the individual who will provide day-to-day operational contact within the bureau for the implementation of the FPDS. Changes and updates shall be forwarded to PPRG within 10 days after they occur. It is the responsibility of the bureau contacts to ensure that all actions are reported and submitted to PPRG in a timely manner and that all statistics and reports are accurate, current, and complete. BPCs shall be responsible for validating the data.

Subpart 2804.8—Government Contract Files

2804.805 Storage, handling, and disposal of contract files.

In accordance with FAR 4.805, each bureau shall prescribe procedures for the handling, storing, and disposing of contract files.

Subpart 2804.9—Information Reporting to the Internal Revenue Service

2804.901 Definitions.

Classified contract, as used in this subpart, means a contract such that the fact of its existence of its subject matter has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive Order, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

Confidential contract, as used in this subpart, means a contract, the reporting of which to the Internal Revenue Service (IRS) as required under 26 U.S.C. 6050M, would interfere with the effective conduct of a confidential law enforcement activity, such as contracts for sites for undercover operations or contracts with informants, or foreign counterintelligence activity.

2804.902 Contract information.

(a) Pursuant to FAR 4.902, the HCA, or delegate, shall certify to the PE, in the format specified in this section, under penalty of perjury, that such official has examined the information submitted by that bureau as its FPDS data, that the data has been prepared pursuant to the requirement of 26 U.S.C. 6050M, and that, to the best of such official's knowledge and belief it is complied from bureau records maintained in the normal course of business for the purpose of making a true, correct and complete return as required by 26 U.S.C. 6050M.

(b) The following certification will be signed and dated by the HCA, or delegate, and submitted with each bureau quarterly FPDS report (as specified by 2804.602).

CERTIFICATION

I, _____ (Name), _____(Title) under the penalties of perjury have examined the information to be submitted by _____ (Bureau) to the Procurement Executive, for making information returns on behalf of the Department of Justice to the Internal Revenue Service, and certify that this information has been prepared pursuant to the requirements of 26 U.S.C. 6050M and that it is to the best of my knowledge and belief, a compilation of bureau records maintained in the normal course of business for the purpose of providing true, correct and complete returns as required by 26 U.S.C. 6050M.

Signature _____

Date _____

(c) The PE will certify the consolidated FPDS data for the Department, transmit the data to the Federal Procurement Data Center (FPDC) and authorize the FPDC to make returns to the IRS on behalf of the agency.

2804.970 Special reporting exceptions.

(a) The Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) amended 26 U.S.C. 6050M to allow exceptions to the reporting requirements for certain classified or confidential contracts.

(b) The head of the agency has determined that the filing of information returns, as required by 26 U.S.C. 6050M, on confidential contracts, which involve law enforcement or foreign counterintelligence activities, would interfere with the effective conduct of those confidential law enforcement or foreign counterintelligence activities, and that the special reporting exceptions added to 26 U.S.C. 6050M by The Technical and Miscellaneous Revenue Act of 1988 to these types of contracts.

Subchapter B—Competition and Acquisition Planning

PART 2805—PUBLICIZING CONTRACT ACTIONS

Subpart 2805.2—Synopses of Proposed Contract Actions

2805.201–70 Departmental notification.

Subpart 2805.3—Synopses of Contract Awards

2805.302–70 Department notification.

Subpart 2805.5—Paid Advertisements

2805.502 Authority.
2805.503–70 Procedures.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2805–2—Synopses of Proposed Contract Actions

2805.201–70 Departmental notification.

(a) A copy of each synopsis of a proposed contract action sent to the Department of Commerce, shall be furnished to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Justice Management Division (JMD).

(b) Contracting officers shall document, in the contract file, that a copy of the notice has been forwarded to the OSDBU. A ''cc'' to the OSDBU on the file copy of the Commerce Business Daily (CBD) notice shall be considered adequate documentation.

Subpart 2805.3—Synopses of Contract Awards

2805.302–70 Departmental notification.

(a) The contracting officer shall forward a copy of the synopsis of contract award, as prepared under FAR 5.302, to the Director, OSDBU, JMD.

(b) Contracting officers shall document in the contract file that a copy of the notice has been forwarded to the OSDBU. A ''cc'' to the OSDBU on the file copy of the CBD notice shall be considered adequate documentation.

Subpart 2805.5—Paid Advertisements

This subpart provides policies and procedures for the procurement of paid advertising as covered by 5 U.S.C. 302, 44 U.S.C. 3701, 3702, and 3703, and Title 7, Chapter 5–25.2, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

2805.502 Authority.

(a) Authorization for paid advertising is required for newspapers only. Pursuant to 28 CFR 0.14, the authority to approve publication of paid advertisements in newspapers has been delegated to the officials listed in 2801.601(a). This authority may be redelegated as appropriate.

(b) Authority to purchase paid advertising must be granted in writing by an official delegated such authority. No advertisement, notice, or proposal will be published prior to receipt of advance written authority for such publication. No voucher for any such advertisement or publication will be paid unless there is presented, with the voucher, a copy of such written authority. Authority shall not be granted retroactively.

2805.503–70 Procedures.

(a) Agency officials exercising the authority delegated by 2805.502(a) and

(b) shall do so in accordance with the procedures set forth in FAR 5.503 and those in this subsection.

(b) Requests for procurement of advertising shall be accompanied by written authority to advertise or publish which sets forth justification and includes the names of newspapers or journals concerned, frequency and dates of proposed advertisements, estimated cost, and other pertinent information.

(c) Procedures for payment of vouchers are contained in Title 7, Chapter 5–25.2, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

PART 2806—COMPETITION REQUIREMENTS

Subpart 2806.3—Other Than Full and Open Competition

Subpart 2806.5—Competition Advocates

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2806.3—Other Than Full and Open Competition

2806.302 Circumstances permitting other than full and open competition.

2806.302–7 Public interest.

2806.302–70 Determination and findings.

(a) *Procedure.* The determination and findings (D&F) required by FAR 6.302.7(c)(1) shall be prepared in the format provided in paragraph (b) of this subsection. The original D&F and documentation supporting the use of this exception to the requirement for full and open competition shall be submitted to PPRG, JMD, for concurrence and coordination to the Attorney General for signature.

(b) *Format.* The following format shall be used for the D&F:

Department of Justice

Washington, DC 20530

Determination and Findings

Authority To Use Other Than Full and Open Competition:

Upon the basis of the following findings and determination, which I hereby make pursuant to the authority of 41 U.S.C. 253(c)(7), as implemented by FAR 6.302–7, it is in the public interest to provide for other than full and open competition in the contract action described below.

Findings:

1. The (1) proposes to enter into a contract for the acquisition of (2).

2. Use of the authority cited above is necessary and in the public interest for the following reasons: (3)

Determination

For the reasons described above, it is necessary and in the public interest to use other than full and open competition in the proposed acquisition.

Signature _____

Date _____

Notes:

(1) Name of contracting activity.

(2) Brief description of supplies or services.

(3) Explain the need for use of the authority.

2806.303 Justifications.

2806.303–1 Requirements.

Pursuant to FAR 6.303–1(d), a copy of the justification shall be forwarded through the Department's Competition Advocate to the Department's point of contact with the Office of the United States Trade Representative.

2806.303–2 Content.

In addition to the information required by FAR 6.303–2, justifications requiring the approval of the PE shall contain the following documents:

(a) A written Acquisition Plan as required by FAR 7.102 and part 2807 of this chapter. If a plan was not prepared, explain why planning was not feasible or accomplished.

(b) A copy of the CBD announcement or proposed announcement in accordance with the requirements of FAR 5.203.

(c) As part of the description of the supplies or services required in FAR 6.303–2, the justification shall include the statement of need as submitted by the requiring activity and any subsequent changes or revisions to the specifications.

(d) Any additional documentation that may be unique to the proposed procurement and is relevant to the justification.

2806.304 Approval of the justification.

(a) All justifications for contract actions over the contracting officer's approval dollar threshold shall be submitted to the BPC for concurrence before being forwarded to the contracting activity competition advocate for approval. Justifications requiring approval by the PE shall be further submitted for the concurrence of the contracting activity competition advocate and the HCA, or designee, before being forwarded to the PE for approval.

(b) After approval by the PE, the signed original will be returned to the contracting activity and one copy will be retained by the PPRG, JMD.

(c) Pursuant to FAR 6.304(c), a class justification for other than full and open competition shall be approved in accordance with bureau procedures.

Subpart 2806.5—Competition Advocates

2806.501 Requirement.

In accordance with FAR 6.501:

(a) The Assistant Director, Procurement Policy and Review Group, Management and Planning Staff, Justice Management Division, has been designated as the Competition Advocate for the Department of Justice.

(b) The agency head will appoint, in each bureau, an official to be the contracting activity competition advocate. The contracting activity competition advocates shall be vested with the overall responsibility for competition activities within their contracting activity. No individual in the contracting office at or below the level of chief of the contracting office may serve as the contracting activity competition advocate. An individual at any level above the BPC may serve as contracting activity competition advocate.

2806.502 Duties and responsibilities.

In addition to the duties and responsibilities set forth in FAR 6.502(b) and elsewhere in this chapter, contracting activity competition advocates shall:

(a) Actively enforce the Department's Competition Advocacy Program within the contracting activity and ensure that systems are established for the effective internal control of contracting activity functions and activities which implement the Department's Competition Advocacy Program.

(b) Implement specific goals and objectives to enhance competition and the acquisition of commercial items.

(c) Prepare and submit to the DOJ Competition Advocate, by November 30 of each year, an annual report of competition advocacy activities conducted during the prior fiscal year.

PART 2807—ACQUISITION PLANNING

Subpart 2807.1—Acquisition Plans

Subpart 2807.5—Inherently Governmental Functions

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2807.1—Acquisition Plans

2807.102 Policy.

(a)(1) In accordance with FAR 7.1, DOJ contracting activities shall perform acquisition planning and conduct market research for all acquisitions in order to promote and provide for:

(i) Full and open competition (see FAR part 6);

(ii) Maximum practicable competition for those acquisitions where full and open competition is not required by FAR part 6; and

(iii) The acquisition of commercial items or, when commercial items are not available, nondevelopmental items to the maximum extent practicable.

(2) The degree of planning and market research may vary, depending on such factors as the acquisition's size, scope and complexity.

(b) Acquisition planning shall be the joint responsibility of both the contracting and program offices. All acquisition plans shall be prepared sufficiently in advance of solicitation release dates to ensure that requirements are presented in a way that promotes full and open competition and provides sufficient time for the identification and resolution of impediments that could delay the acquisition or lead to increased cost or technical risk.

2807.102–70 Applicability.

(a) Planning commensurate with the complexity and dollar value of the individual requirement shall be performed for all acquisitions, except for those acquisitions listed in paragraph (c) of this subsection which may be exempt from the planning process. Heads of contracting activities may authorize the use of oral plans for simple and/or small dollar acquisitions. When oral plans are used, the file should be documented with the name of the individual who approved the plan.

(b) Written acquisition plans shall be prepared for all major systems acquisitions as defined in 2834.002.

(c) The following types of acquisitions may be exempt from the acquisition planning program;

(1) Architect-engineering services;

(2) Unsolicited proposals (when deemed innovative and unique in accordance with FAR 15.5);

(3) Regulated utility services where services are available from only one source;

(4) Acquisitions made from or through other Government agencies; and

(5) Contract modifications which exercise an option or add funds to an incrementally funded contract (provided there is an approved acquisition planning document for the original action and there is no significant deviation from that plan).

2807.103 Agency-head responsibilities.

The AAG/A may establish acquisition planning criteria and thresholds for those bureaus who:

(a) Fail to allow ample time for conducting competitive acquisitions;

(b) Develop a pattern of awarding urgent requirements that generally restrict competition;

(c) Fail to identify identical or like requirements that, where appropriate, can be combined under one solicitation and miss opportunities to obtain lower costs through volume purchasing, reduce administrative costs in processing one contract action versus multiple actions, and standardize goods and services.

2807.103–70 Other officials' responsibilities.

(a) In accordance with FAR 7.1, the HCA shall develop an acquisition planning program for all acquisitions to ensure that its needs are met in the most effective, economical, the timely manner.

(b) Heads of contracting activities have the flexibility to develop programs that are best suited to their individual needs. Criteria and thresholds shall be established at which increasingly greater detail and formality in the planning process is required. DOJ components are encouraged to keep paperwork to a minimum and to put a premium on simplicity.

(c) HCAs shall ensure that, during the acquisition planning phase, requirements personnel consider the use of:

(1) The metric system of measurement consistent with 15 U.S.C. 2205(b); and

(2) Environmentally preferable and energy-efficient products and services.

2807.105 Contents of written acquisition plans.

(a) HCAs shall prescribe format and content of acquisition planning documents that are commensurate with the complexity and dollar value of the individual acquisition (sample acquisition planning documents for both simple and complex acquisitions will be make available by PPRG, JMD, and may be used or modified as appropriate).

(b) HCAs shall include, at a minimum, the content elements at FAR 7.105 and 7.106 for all major systems acquisitions as defined in 2834.002.

Subpart 2807.5—Inherently Governmental Functions

2807.503 Policy.

The requirements official shall provide the contracting officer, concurrent with the transmittal of the statement of work (or modification thereof), a written determination that none of the functions to be performed are inherently governmental. Any disputes concerning this determination shall be resolved by the contracting officer, after consultation with the requirements official. The contracting officer's determination shall be final.

PART 2808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 2808.8—Acquisition of Printing and Related Supplies

2808.802 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2808.8—Acquisition of Printing and Related Supplies

2808.802 Policy.

The Director, Facilities and Administrative Services Staff, has been designated to serve as the central printing authority for the Department.

PART 2809—CONTRACTOR QUALIFICATIONS

Subpart 2809.4—Debarment Suspension, and Ineligibility

2809.402 Policy.
2809.404 List of parties excluded from Federal procurement and nonprocurement programs.
2809.405 Effect of listing.
2809.405–1 Continuation of current contracts.

Subpart 2809.5—Organizational and Consultant Conflict of Interest

2809.503 Waiver.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2809.4—Debarment, Suspension, and Ineligibility

2809.402 Policy.

Contracting activities shall:

(a) Consider debarment or suspension of a contractor when cause is shown as listed under FAR 9.406–2 and FAR 9.407–2. Contracting staffs should consult with their appropriate legal counsel prior to making a decision to initiate debarment or suspension proceedings. If a determination is made that available facts do not justify beginning debarment or suspension proceedings, the file should be documented accordingly. This determination should be subject to

reconsideration if new information or additional fact-finding so justifies.

(b) If the decision is made to initiate debarment and/or suspension of a contractor, immediately prepare a notice in accordance with FAR 9.406–3(c) of FAR 9.407–3(c). The draft notice, along with the administrative file containing all relevant facts and analysis shall be forwarded to the PE, as the debarring and suspending official, following review by the activity's legal counsel and BPC.

(c) The PE shall:

(1) Review the notice and administrative file for sufficiency and provide for review by other DOJ officials as considered appropriate;

(2) If it is determined that action is warranted, give the contractor prompt notice of the proposed debarment or suspension, in accordance with FAR 9.406–3(c) or FAR 9.407–3(c);

(3) Direct additional fact-finding as necessary when material facts are in dispute.

(4) Notify the contractor of the final decision to debar or suspend, including a decision not to debar or suspend, in accordance with FAR 9.406–3(c) and FAR 9.407–3(c).

2809.404 List of parties excluded From Federal procurement and nonprocurement programs.

(a) The PE shall:

(1) Provide GSA notification of the information set forth in FAR 9.404(b) within five working days after debarring or suspending a contractor or modifying or rescinding such an action.

(2) Maintain agency-wide records of debarred or suspended contractors in accordance with FAR 9.404.

(b) Contracting activities shall provide an effective system to ensure that contracting staff consult the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' prior to soliciting offers from, awarding or extending contracts to, or consenting to subcontracts with contractors on the list.

2809.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and bureaus shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the HCA determines that there is a compelling reason for such action and the PE approves such determinations.

(b) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the HCA determines in writing that there is a compelling reason to consider the bid and the PE approves such action.

(c) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the HCA determines in writing that there is a compelling reason to do so and the PE approves such action.

2809.405–1 Continuation of current contracts.

(a) In accordance with FAR 9.405–1, contracting activities may continue contracts or subcontracts in existence at the time a contractor is suspended or debarred unless it is determined that termination of the contract is in the best interest of the Government. In making this determination, contracting activities shall consider the seriousness of the act or omission leading to the debarment or suspension, the effect of debarment or suspension on the contractor's ability to continue operations, and the Department's ability to safeguard its interests and receive satisfactory performance.

(b) Contracting activities shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the HCA states, in writing, the compelling reasons for renewal or extension and the PE approves such action.

Subpart 2809.5—Organizational and Consultant Conflicts of Interest

2809.503 Waiver.

The HCA may waive any general rule or procedure of FAR 9.5 by determining that its application in a particular situation would not be in the Government's interest.

PART 2811—DESCRIBING AGENCY NEEDS

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

2811.001 Definitions.

Dual systems means the use of both inch-pound and metric systems. For example, an item is designed, produced and described in inch-pound values with soft metric values also shown for information or comparison purposes.

Hybrid systems means the use of both inch-pound and standard metric values in specifications, standards, supplies, and services; e.g., an engine with internal parts in metric dimensions and external fittings or attachments in inch-pound dimensions.

Metric system means the International System of Units established by the General Conference of Weights and Measures in 1960.

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents in specifications, standards, supplies, and services. The physical dimensions are not changed.

2811.002 Policy.

Consistent with the policy expressed in FAR 11.002(b), solicitations must include specifications and purchase descriptions stated in metric units of measurement whenever metric is the accepted industry system. Whenever possible, commercially developed metric specifications and internationally, or domestically developed voluntary standards, using metric measurements, must be adopted. While an industry is in transition to metric specifications, solicitations must include requirements documents stated in soft metric, hybrid, or dual systems, except when impractical or inefficient.

Subpart 2811.1—Selecting and Developing Requirements Documents

2811.103 Market acceptance.

Pursuant to FAR 11.103, the HCA or designee at a level not lower than the BPC has the authority to require offerors to demonstrate that the items offered meet the criteria set forth in FAR 11.103(a).

2811.104–70 Brand-name or equal description.

When a brand-name or equal description is used, the clause set forth in 2852.211–70, Brand-name or Equal, shall be inserted into the solicitation.

Subpart 2811.6—Priorities and Allocations

2811.603 Procedures.

The PE is the agency official delegated authority to exercise priority authority on behalf of the Department. Any request for a priority rating on a contract or order must be submitted to PPRG, JMD, in accordance with the procedures in this subpart.

(a) The requesting activity shall submit, to the PE, a description of the

supplies or services requiring a priority rating and a complete justification for the necessity of a rated order including the method and type of contract and the anticipated award date. The justification must also state the level of priority rating requested and comply with the requirements of the Defense Priorities and Allocations System.

(b) Upon receipt, the PPRG shall review the request for completeness and establish appropriate liaison with the Department of Commerce (DOC), the administering agency. Depending on the nature of the requirement, the PPRG may schedule a meeting with DOC officials to present the proposal. In such cases, a representative from the requiring activity may be requested to attend.

(c) DOJ activities requesting rated orders that concern classified material shall call PPRG before submitting their request to ensure appropriate transmission and handling between the requesting activity and PPRG.

PART 2812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 2812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

2812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Pursuant to FAR 12.302(c), the HCA or designee at a level not lower than the BPC is authorized to approve clauses or additional terms or conditions for inclusion in solicitations or contracts for commercial items that are inconsistent with customary commercial practices.

Subchapter C—Contracting Methods and Contract Types

PART 2813—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 2813.3—Simplified Acquisition Methods

Subpart 2813.70—Certified Invoice Procedure

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

Subpart 2813.3—Simplified Acquisition Methods

2813.305 Imprest funds and third party drafts.

Regulations governing the operation and procedures of the imprest fund shall be contained in internal bureau regulations. Individuals delegated the authority to withdraw from the imprest fund are further subject to the limitations contained in their delegation memorandum.

2813.307 Forms.

In accordance with FAR 13.307, bureaus may use order forms other than Standard Form (SF) 1449, OF 347 and 348 and may print on those forms, clauses considered to be suitable for purchases.

(a) Contracting activities using the SF 44 will be responsible for instructing authorized users as to the limitations and procedures for use of the form as outlined in FAR 13.306.

(b) Since the SF 44 is an accountable form, a record shall be maintained of: serial numbers of the forms; to whom issued; and, the date issued. SF 44s shall be kept securely under lock and key to prevent unauthorized use. A reservation of funds shall be established to cover total anticipated expenditures prior to use of the SF 44.

Subpart 2813.70—Certified Invoice Procedure

2813.7001 Policy.

Under limited circumstances as described in this subpart, supplies or services directly related to mission accomplishment, may be acquired on the open market from local suppliers at the site of the work or use point, using vendor's invoices under the certified invoice procedure, instead of issuing purchase orders. Certified invoice procedures may not be used to place orders under established contracts.

2813.7002 Procedure.

(a) Purchases utilizing the certified invoice procedure shall be effected only in accordance with FAR part 13 and this part 2813, subject to the following:

(1) The amount of any one purchase does not exceed the micro-purchase threshold;

(2) A purchase order is not required by either the supplier or the Government;

(3) Appropriate invoices can be obtained from the supplier; and,

(4) The items to be purchased shall be domestic source end products, except as provided in FAR subpart 25.1.

(b) Use of the certified invoice procedures does not eliminate the requirements in FAR part 13 or this part 2813 that are applicable to purchases of this dollar threshold.

(c) The chief of the contracting office, as defined in 2802.101(c), shall delegate the authority to use the certified invoice procedure. Each delegation must specify any limitations placed on the individual's use of these procedures, such as limits on the amount of each purchase, or limits on the commodities, or services which can be procured.

(d) Each individual using this purchasing technique shall require the supplier to immediately submit properly prepared invoices which itemize property or services furnished. Upon receiving the invoice, the individual making the purchase shall annotate the invoice with the date of receipt, verify the arithmetic accuracy of the invoiced amount and verify on the invoice that the supplies and/or services have been received and accepted. If the invoice is correct, the individual making the purchase shall sign the invoice indicating acceptance and immediately forward it to the appropriate administrative office. The invoice shall be approved by the appropriate administrative office and forwarded to the Finance Office for payment within 5 workdays after receipt of the invoice, or acceptance of supplies or services, whichever is later. Before forwarding the invoice to Finance, the administrative office shall place the following statement on the invoice, along with the accounting and appropriation data:

I certify that these goods and/or services were received on _____ (date) an accepted on _____ (date). Oral purchase was authorized and no confirming order has been issued.

Signature _____
Date _____

_____
Printed or Typed Name and Title

PART 2814—SEALED BIDDING

Subpart 2814.4—Opening of Bids and Award of Contract

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2814.4—Opening of Bids and Award of Contract

2814.407 Mistakes in bids.

2814.407–3 Other mistakes disclosed before award.

(a) The authority to make determinations under paragraphs (a), (b), (c), and (d) of FAR 14.407–3 is delegated to the HCA or designee at a level not lower that the BPC.

(b) The following procedures shall be followed when submitting doubtful cases of mistakes in bids to the Comptroller General for an advance decision:

(1) Requests for advance decisions submitted to the Comptroller General in cases of mistakes in bids shall be made by the HCA.

(2) Requests for advance decisions shall be in writing, dated, signed by the requestor, addressed to the Comptroller General of the United States, General Accounting Office, Washington, D.C. 20548, and contain the following:

(i) The name and address of the party requesting the decision;

(ii) A statement of the question to be decided, a presentation of all relevant facts, and a statement of the requesting party's position with respect to the question; and

(iii) Copies of all pertinent records and supporting documentation.

2814.407–4 Mistakes after award.

Proposed determinations under FAR 14.407 shall be coordinated with legal counsel in accordance with bureau procedures.

2814.409 Information to bidders.

2814.409–2 Award of classified contracts.

In accordance with FAR 14.409–2, the contracting officer shall advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with bureau procedures.

PART 2815—CONTRACTING BY NEGOTIATION

Subpart 2815.2—Solicitation and Receipt of Proposals and Information

Subpart 2815.4—Contract Pricing

Subpart 2815.6—Unsolicited Proposals

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2815.2—Solicitation and Receipt of Proposals and Information

2815.205 Issuing solicitations.

Solicitations involving classified information shall be handled in accordance with the policies and procedures contained in Departmental regulations and other offices, boards, divisions, and bureaus (OBDBs) prescribed policies and regulations that supplement Departmental regulations.

2815.207 Handling proposals and information.

Classified proposals and quotations shall be handled in accordance with the current DOJ Order agency regulations and any supplemental directives or orders implemented by the OBDBs. Such supplemental regulations must have the prior approval of the AAG/A before implementation in accordance with the Departmental regulations.

Subpart 2815.4—Contract Pricing

2815.404 Proposal analysis.

2815.404–2 Information to support proposal analysis.

All requests for field pricing support shall be made by the contracting officer directly to the cognizant audit agency. A copy of the request for such services shall be sent to the Department of Justice Office of the Inspector General (OIG) at the address shown in this subsection at the time it is mailed to the cognizant audit agency. A copy of each report received shall also be sent to the OIG. Requests for other audit assistance may be made to the Assistant Inspector General for Audits, Suite 5000, 1425 New York Avenue, N.W., Washington, D.C. 20530.

2815.404–4 Profit.

If a contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions to negotiate a reasonable price or profit or fee without success, the contracting officer shall then refer the contract action to the HCA or designee.

2815.407–4 Should-cost review.

In acquisitions for which a program should-cost review is conducted, the required should-cost review team report shall be prepared in accordance with bureau procedures.

Subpart 2815.6—Unsolicited Proposals

2815.606 Agency procedures.

(a) Each contracting activity shall designate a point of contact for the receipt and handling of unsolicited proposals. Generally, the official designated shall be the BPC or immediate subordinate.

(b) The designated point of contact for each contracting activity shall provide for and coordinate receipt, review, evaluation, and final disposition of unsolicited proposals in accordance with FAR subpart 15.6.

PART 2816—TYPES OF CONTRACTS

Subpart 2816.5—Indefinite-Delivery Contracts

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

Subpart 2816.5—Indefinite-Delivery Contracts

2816.505 Ordering.

(a) In accordance with FAR 16.505(b)(4), the Department of Justice Task Order and Delivery Order Ombudsman is the DOJ Competition Advocate.

(b) Heads of contracting activities shall designate a contracting activity Task Order and Delivery Order Ombudsman. This person may be the contracting activity competition advocate and must meet the qualification requirements of 2806.501(b).

(c) Contracting activity ombudsman shall review and resolve complaints from contractors concerning task or delivery orders placed by the contracting activity.

(d) Contractors not satisfied with the resolution of a complaint by a contracting activity ombudsman may request the Departmental Ombudsman to review the complaint.

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2816.601 Time-and-material contracts.

In addition to the limitations listed in FAR 16.601(c), a time-and-materials contract may be used only after the contracting officer receives written approval from the chief of the contracting office. When the contracting officer is also the chief of the

contracting office, the approval to use a time-and-materials type contract will be made at a level above the contracting officer.

2816.602 Labor-hour contracts.

The limitations set forth in 2816.601 for time-and-material contracts also apply to labor-hour contracts.

2816.603 Letter contracts.

2816.603–2 Application.

In cases where the contracting officer and the contractor cannot negotiate the definitization of a letter contract within 180 days after the date of the letter contract, or before completion of 40 percent of the work to be performed, the contracting officer may, with the written approval of the PE, revise and extend the definitization schedule. However, in no event shall the extension of the definitization schedule extend beyond the lesser of an additional 180 day period or the completion of 80 percent of the work to be performed. If at the end of the extension, the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach an agreement on price or fee, the procedures set forth in FAR 51.216–25, 16.603–2, 15.8, and part 31 shall be followed, as applicable.

2816.603–3 Limitations.

A letter contract may be used only after the express written approval of the Procurement Executive. Requests for approval shall contain the rationale explaining why no other contract is suitable and shall include the approval of the HCA or designee. Under circumstances of compelling urgency which do not permit the time needed for written approval, oral approval must be obtained; however, written documentation to support the award and confirm the oral approval must be submitted as soon as practicable after award.

PART 2817—SPECIAL CONTRACTING METHODS

Supart 2817.1—Multiyear Contracting

Subpart 2817.6—Management and Operating Contracts

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j); and 28 CFR 0.76(j).

Subpart 2817.1—Multiyear Contracting

2817.108 Congressional notification.

Pursuant to FAR 17.108(a), the original congressional notification shall be submitted to PPRG, JMD, for concurrence, coordination to the Attorney General, and subsequent transmission to the appropriate congressional committees.

Subpart 2817.6—Management and Operating Contracts

2817.605 Award, renewal, and extension.

In accordance with FAR 17.605(b), the contracting officer, following bureau procedures, shall review each management and operation contract, at appropriate intervals and at least once every 5 years.

Subchapter D—Socioeconomic Programs

PART 2819—SMALL BUSINESS PROGRAMS

Subpart 2819.2—Policies

Subpart 2819.5—Set-Asides for Small Business

Subpart 2819.6—Certificates of Competency and Determinations of Eligibility

Subpart 2819.70—Forecasts of Expected Contract Opportunities

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2819.2—Policies

2819.201 General policy.

(a) The Office of Small and Disadvantaged Business Utilization (OSDBU) is organizationally attached to the Office of the Deputy Attorney General in accordance with 28 CFR 0.18a, but is located in JMD for administrative purposes.

(b) The Director, OSDBU, is responsible for the administration of the DOJ small and disadvantaged business programs in accordance with the duties described in 28 CFR 0.18a.

Subpart 2819.5—Set-Asides for Small Business

2819.506 Withdrawing or modifying set-asides.

(a) Before a contracting officer may withdraw or modify a small business set-aside, the contracting officer shall seek the concurrence of the Director, OSDBU.

(b) If the contracting officer and the Director, OSDBU, are unable to agree on the proposed withdrawal or modification, the Director, OSDBU shall:

(1) Forward the mater to the Small Business Administration (SBA) procurement center representative assigned to the Department of Justice for resolution; or,

(2) Forward the matter to the PE for resolution if an SBA procurement center representative is not assigned to the Department of Justice.

Subpart 2819.6—Certificates of Competency and Determinations of Eligibility

2819.602 Procedures.

2819.602–1 Referral.

In accordance with FAR 19.602–1(a)(2), the matter shall be submitted to the Director, OSDBU, for subsequent referral to the cognizant SBA Regional Office.

Subpart 2819.70—Forecasts of Expected Contract Opportunities

2819.7001 General.

Section 501 of Public Law 100–656, the Business Opportunity Development Reform Act of 1988, requires executive agencies having contract actions in excess of $50 million in Fiscal Year 1988 or later to prepare an annual forecast of expected contract opportunities, or classes of contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing.

2819.7002 Procedures.

The content and format of bureau annual forecasts of contract opportunities, as well as the updates to their contracting forecasts shall be as specified by the Director, OSDBU.

PART 2822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2822.1—Basic Labor Policies

Subpart 2822.4—Labor Standards for Contracts Involving Construction

Subpart 2822.13—Special Disabled and Vietnam Era Veterans

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2822.1—Basic Labor Policies

2822.101 Labor relations.

2822.101–1 General.

All matters regarding labor relations shall be handled in accordance with bureau procedures.

2822.101–3 Reporting labor disputes.

The office administering the contract shall report, directly to the contracting officer, any potential or actual labor disputes that may interfere with performing any contracts under its cognizance.

2822.103 Overtime.

2822.103–4 Approvals.

The inclusion of a dollar amount greater than zero in paragraph (a) of the FAR clause 52.222–2, Payment For Overtime Premiums, must be approved at a level above the contracting officer. Such approval shall be reflected by the signature of the approving official on the contracting officer's written determination made in accordance with FAR 22.103–4.

Subpart 2822.4—Labor Standards for Contracts Involving Construction

2822.406 Administration and enforcement.

2822.406–8 Investigations.

Pursuant to FAR 22.406–8(d), the contracting officer shall prepare and forward the report of violations to the HCA or designee at a level not lower than the BPC. That official shall be responsible for processing the report in accordance with FAR 22.406–8(d)(2).

Subpart 2822.13–Special Disabled and Vietnam Era Veterans

2822.1303 Waivers.

In accordance with FAR 22.1303, all requests for waivers shall be forwarded from the HCA to PPRG, JMD, for processing to the Attorney General.

PART 2823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 2823.1—Pollution Control and Clean Air and Water

2823.107 Compliance responsibilities.

Subpart 2823.3—Hazardous Material Identification and Material Safety Data

2823.303–70 Departmental contract clause.

Subpart 2823.4—Use of Recovered Materials

2823.403 Policy.
2823.404 Procedures.
2823.404–70 Affirmative procurement program for recycled materials.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2823.1—Pollution Control and Clean Air and Water

2823.107 Compliance responsibilities.

If a contracting officer becomes aware of noncompliance with clean air, water or other affected media standards in facilities used in performing nonexempt contracts, that contracting officer shall notify the Department of Justice Environmental Executive (DOJEE).

Subpart 2823.3—Hazardous Material Identification and Material Safety Data

2823.303–70 Departmental contract clause.

The contracting officer shall insert the clause at 2852.223–70, Unsafe Conditions Due to the Presence of Hazardous Material, in all solicitations and contracts, as appropriate, if the contract will require the performance of services on Government-owned or Government-leased facilities.

Subpart 2823.4—Use of the Recovered Materials

2823.403 Policy.

It is the policy of DOJ that its contracting activities and contractors that procure on behalf of DOJ, acquire EPA designated items in accordance with EPA's Comprehensive Procurement Guideline For Products Containing Recovered Materials (CPG) (40 CFR part 247). The recommended minimum recovered materials content of EPA designated items is set forth in EPA's Recovered Materials Advisory Notices (RMANs) and in E.O. 12873 as amended. These publications are available from the DOJEE.

2823.404 Procedures.

(a) The program office initiating the acquisition is responsible for determining if recovered materials should be included in the specification. Procurement offices are responsible for informing program offices of the requirement for writing specifications for designated items that include minimum content standards specified in the RMANs.

(b) If the program office chooses to procure designated items containing less than the minimum content standards, and program office must justify that decision in writing and include a copy of the signed justification with the procurement request package. FAR 23.404(b)(3) sets forth the only acceptable justifications for acquiring EPA designated items which do not meet the minimum content standard. The contracting officer is the approving official for justifications made pursuant to FAR 23.404(b)(3). Contracting officers are responsible for including a signed copy of the justification in the acquisition file and submitting a copy of the approved justification to the DOJEE.

2823.404–70 Affirmative procurement program for recycled materials.

(a) *Recovered materials preference program.* Preference will be given to procuring and using products containing recovered materials rather than products made with virgin materials when adequate competition exists, and when price, performance and availability are equal.

(b) *Promotion program.* The DOJEE has primary responsibility for actively promoting the acquisition of products containing recycled materials throughout DOJ. Technical and procurement personnel will cooperate with the DOJEE to actively promote DOJ's Affirmative Procurement Program (APP).

(c) *Procedures for vendor estimation, verification and certification.*

(1) *Estimation.* The contractor shall provide estimates of the total percentage(s) of recovered materials for EPA designated items to be used in products or services provided.

(2) *Certification.* Contracting officers shall provide copies of all vendor and subcontractor certifications required by FAR 23.405(b) to the DOJEE.

(3) *Verification.* The DOJEE is responsible for periodically reviewing vendor certification documents and waivers as part of the annual review and monitoring process to determine if DOJ is in compliance with E.O. 12873 and subsequent amendments.

PART 2824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2824.2—Freedom of Information Act

2824.202 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2824.2—Freedom of Information Act

2824.202 Policy.

Procedures for processing Freedom of Information Act requests are set forth in Departmental regulations and 28 CFR part 16.

PART 2825—FOREIGN ACQUISITION

Subpart 2825.2—Buy American Act—Construction Materials

2825.203 Evaluating offers.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2825.2—Buy American Act—Construction Materials

2825.203 Evaluating offers.

The HCA, or designee at a level not lower than the BPC, is the agency official authorized to make determination that using a particular domestic construction material would unreasonably increase the cost of the acquisition or would be impracticable.

Subpart 2825.3—Balance of Payments Program

2825.302 Policy.

The HCA, or designee at a level not lower than the BPC, is the agency official authorized to make determinations under FAR 25.302(b)(3), as well as authorize the use of a differential greater than 50 percent, as specified in FAR 25.302(c), for the evaluation of domestic and foreign offers under the Balance of Payments Program. All determinations made under this section shall be in writing and shall set forth the facts and circumstances supporting the determination. Determinations shall be reviewed and concurred in by the contracting activity's legal counsel.

Subpart 2825.9—Additional Foreign Acquisition Clauses

2825.901 Omission of audit clause.

The HCA, or designee at a level not lower than the BPC, is the agency official authorized to make determinations under FAR 25.901(c). All determinations made under this authority shall be reviewed and concurred in by the contracting activity's legal counsel prior to being approved by the authorized agency official.

Subchapter E—General contracting Requirements

PART 2828—BONDS AND INSURANCE

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2828.1—Bonds

2828.106 Administration.

2828.106–6 Furnishing information.

In accordance with FAR 28.106–6(c), the HCA, or designee at a level not lower than the BPC, is the agency official authorized to furnish the certified copy of the bond and the contract.

Subpart 2828.2—Sureties

2828.204 Alternatives in lieu of corporate or individual sureties.

When contractors submit any of the types of security described in FAR 28.204–1 through 28.204–3 in lieu of furnishing sureties, the contracting officer shall enter into an agreement with the contractor covering a bank account, and suitable covenants protecting the Government's interest, in which the securities will be deposited to protect against their loss during the period of the bond obligation.

Subpart 2828.3—Insurance

2828.307–1 Group insurance plans.

Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan to the contracting officer for review and approval. During review, the contracting office should utilize all sources of information available such as audit, industry practices, etc., to determine that acceptance of the group insurance plan, as submitted, is in the Government's best interest.

PART 2829—TAXES

Subpart 2829.3—State and Local Taxes

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2829.3—State and Local Taxes

2829.303 Application of State and local taxes to Government contractors and subcontractors.

(a) It is DOJ policy that DOJ contracts shall not contain clauses expressly designating prime contractors as agents of the Government for the purpose of avoiding State and local taxes.

(b) Although circumstances may exist under which a contractor is an agent of the Government, even in the absence of a contract clause expressly designating a contractor as such, these circumstances should be extremely rare. Before any DOJ contracting activity may contend that any of its contractors are agents of the Government for the purpose of claiming immunity from State and local sales and use taxes, the matter will be referred to the AAG/A for review, and approval to ensure that DOJ policy is complied with and that the contracting activity's contention is fully in accordance with the pertinent legal principles and precedents. Each case forwarded will be reviewed by the HCA before referral to the AAG/A. The referral will include all pertinent data on which the contracting activity's contention is based, together with a thorough analysis of all relevant legal precedents.

(c) Whenever clauses, procedures, and business practices are cited by DOJ contracting activities to support the contention that a contractor is an agent of the Government for the purpose of immunity from a State or local sales or use tax, contracting activities should whenever possible, devise alternative clauses, procedures, and practices for future use which will accomplish their intended purpose without providing the basis for contention that the contractor is an agent of the Government for the purpose of immunity from State and local sales or use taxes. Any referral to the AAG/A for approval under this subpart shall include comments on the extent to which alternative clauses, procedures, or practices may be utilized to accomplish the intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from State and local sales or use taxes.

PART 2830—COST ACCOUNTING STANDARDS (CAS) ADMINISTRATION

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2830.2—CAS Program Requirements

2830.201–5 Waiver

A request for a waiver of the Cost Accounting Standards requirements shall be forwarded to the HCA after the contracting officer has made the

determination required by FAR 30.201–5.

PART 2831—CONTRACT COST PRINCIPLES AND PROCEDURES

SUBPART 2831.1 Applicability

SUBPART 2831.2 Contracts With Commercial Organizations

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2831.1—Applicability

2831.101 Objectives.

(a) The PE is the official authorized to grant individual deviations from the cost principles of FAR part 31. All requests for individual deviations must cite the facts and circumstances surrounding the request as well as attempts to negotiate contractor compliance.

(b) Requests for class deviations from the cost principles set forth in FAR part 31 will be forwarded through the PE prior to submission to the Civilian Agency Acquisition Counsel. Requests must contain the information required in paragraph (a) of this section.

2831.109 Advance agreements.

(a) The DOJ and bureau contracting officers are encouraged to negotiate advance agreements concerning the treatment of special or unusual costs to avoid possible subsequent disputes or disallowance of costs based upon unreasonableness or nonallowability. All such agreements shall be negotiated in accordance with FAR 31.109 prior to the contractor incurring such costs. Contracting officers are not authorized to agree to a treatment of costs which would be inconsistent with FAR part 31.

(b) Prior to negotiating an advance agreement, contracting officers shall make a written determination setting forth the reasons and rationale for entering into such agreements. In addition, the determination will set forth the nature, the duration, and which contract or contracts are covered by the proposed agreement. All determinations required by this subpart will be reviewed and approved at a level above the contracting officer prior to negotiation of the proposed agreement. The approved determination will be placed in the contract file.

(c) All advance agreements shall be in writing and shall set forth the nature, duration, and contract or contracts covered by the agreements. Advance agreements will be signed by both the contractor and the contracting officer, and made a part of the contract file. Copies of executed advance agreements will be distributed to the cognizant audit office when applicable.

(d) All advance agreements will be incorporated in full in the subsequent contract(s) to which they pertain, prior to award.

SUBPART 2831.2—Contracts With Commercial Organizations

2831.205 Selected costs.

2831.205–32 Precontract costs.

(a) Precontract cost authorizations shall be used only on cost reimbursement contracts, contain no provisions for payment of fees, and be treated as advance agreements in accordance with the provisions of FAR 31.109 and 2831.109.

(b) The following limitations apply to the execution of precontract cost authorizations.

(1) Contracts which are estimated to be greater than the simplified acquisition threshold may contain a precontract cost authorization providing the authorization is for a period of 60 days or less and the dollar amount does not exceed the lesser of the simplified acquisition threshold or one third of the total estimated costs (including fee if any) of the contract.

(2) the limitation expressed under paragraph (b) of this section may be increased in unusual circumstances as appropriate, with the written approval of the HCA, but in no event shall they exceed one-third of the total estimated costs (including fee if any) of the contract or be for periods of time which exceed 90 days.

PART 2832—CONTRACT FINANCING

Subpart 2832.1—Non-Commercial Item Purchase Financing

Subpart 2832.4—Advance Payments for Non-commercial Items

SUBPART 2832.9—Prompt Payment

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2832.1—Non-Commercial Item Purchase Financing

2832.114 Unusual contract financing.

The HCA, or designee at a level not lower than the BPC, is the official authorized to approve unusual contract financing as set forth in FAR 31.114.

Subpart 2832.4—Advance Payments for Non-Commercial Items

2832.402 General.

(a) The authority to sign written determinations and findings with respect to making advance payments is vested in the HCA.

(b) Prior to awarding a contract which contains provisions for making advanced payments, the contract terms and conditions concerning advance payments must be approved at a level above the contracting officer, with advice and consent of the bureau's legal counsel.

(c) The contracting officer shall coordinate with the activity that is to provide contract financing for advance payments, the bureau's disbursing or finance office, or the Treasury Department, as appropriate, to ensure that all FAR and departmental requirements are met.

2832.407 Interest.

In cases where advance payments may be made on an interest free basis (FAR 32.407(d)), the intent to make such interest free advance payments, and the circumstance permitting interest free advance payments, shall be set forth in the original determination and findings and be approved in accordance with 2832.402.

Subpart 2832.9—Prompt Payment

2832.903 Policy.

The HCA is responsible for promulgating policies and procedures to implement FAR 32.9 and to ensure that, when specifying due dates, full consideration will be given to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract.

PART 2833—PROTESTS, DISPUTES, AND APPEALS

Subpart 2833.1—Protests

Subpart 2833.2—Disputes and Appeals

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2833.1—Protests

2833.101 Definitions.

(a) *Agency Protest Official* means the official, other than the contracting officer, designated to review and decide procurement protests filed with a contracting activity of the Department of Justice.

(1) This person will be at a level above that of the Contracting Officer, will be knowledgeable about the acquisition process in general and will have no programmatic interest in the procurement.

(2) This official shall be an individual designated by the head of the contracting activity and may be the Competition Advocate.

(b) *Deciding Official* means the person chosen by the protestor to decide the agency protest; it may be either the Contracting Officer or the Agency Protest Official.

(c) *Interested Party* means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

2833.102 General.

(a) This part describes policies and procedures for processing protests to the Department of Justice in accordance with Executive Order 12979, Agency Procurement Protests, dated October 25, 1995, and FAR 33.103. They are intended to be flexible and to provide for fair, quick, and inexpensive resolution of agency protests.

(b) Interested parties have the option of protesting to the Contracting Officer or to the Agency Protest Official.

(c) Contracting officers and potential protestors are encouraged to use their best efforts to resolve concerns through frank and open discussion, as required by FAR 33.103(b). In resolving concerns and/or protests, consideration should be given to the use of alternative dispute resolution techniques where appropriate.

(d) Responsibilities:

(1) Contracting Officers: (i) Include the provision at 2852.233–70 in all solicitations that are expected to exceed the simplified acquisition threshold.

(ii) If the protestor requests that the Contracting Officer decide the protest, or if the protest is silent on this issue, the Contracting Officer decides the protest using the procedures in this subpart and FAR 33.103.

(iii) If the protestor requests that the Agency Protest Official decide the protest, the Contracting Officer must ensure that the Agency Protest Official receives a copy of the materials served on the Contracting Officer within one business day after the filing date.

(2) Agency Protest Official: If the protestor requests that the Agency Protest Official decide the protest, the Official must use the procedures in this subpart and FAR 33.103 to provide an independent review of the issues raised in the protest.

2833.103 Protests to the agency.

(a) The filing time frames in FAR 33.103(e) apply. An agency protest is filed when the protest complaint is received at the location the solicitation designates for serving protests.

(b) An interested party filing an agency protest has the choice of requesting either that the Contracting Officer or the Agency Protest Official decide the protest.

(c) In addition to the information required by FAR 33.103(d)(2), the protest must:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the Contracting Officer.

(3) State whether the protestor chooses to have the Contracting Officer or the Agency Protest Official decide the protest. If the protest if silent on this matter, the Contracting Officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the deciding official.

(d) The decision by the Agency Protest Official is an alternative to a decision by the Contracting Officer on a protest. The Agency Protest Official will not consider appeals from a Contracting Officer's decision on an agency protest.

(e) The deciding official must conduct a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for oral or written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(f) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(g) The protestor has only one opportunity to support or explain the substance of its protest. Department of Justice procedures do not provide for any discovery. The deciding official has discretion to request additional information from either the agency or the protestor. However, the deciding official will normally decide protests on the basis of information provided by the protestor and the agency.

(h) The preferred practice is to resolve protests through informal oral discussion.

(i) An interested party may represent itself or be represented by legal counsel. The Department of Justice will not reimburse the protester for any legal fees related to the agency protest.

(j) If an agency protest is received before contract award, the Contracting Officer must not make award unless the Head of the Contracting Activity makes a determination to proceed under FAR 33.103(f)(1). Similarly, if an agency protest is filed within ten (10) days after award, the Contracting Officer must stay performance unless the Head of the Contracting Activity makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the protest is decided, dismissed, or withdrawn.

(k) The deciding official must make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be oral or written. If oral, the deciding official must send a confirming letter within three (3) days after the decision using a means that provides receipt. The confirming letter must include the following information:

(1) State whether the protest was denied, sustained or dismissed.

(2) Indicate the date the decision was provided.

(l) If the deciding official sustains the protest, relief may consist of any of the following:

(1) Recommendation that the contract be terminated for convenience or cause.

(2) Recompeting the requirement.

(3) Amending the solicitation.

(4) Refraining from exercising contract options.

(5) Awarding a contract consistent with statute, regulation, and the terms of the solicitation.

(6) Other action that the deciding official determines is appropriate.

(m) If the Agency Protest Official sustains a protest, then within 30 days after receiving the Official's recommendations for relief, the Contracting Officer must either:

(1) Fully implement the recommended relief; or

(2) Notify the Agency Protest Official in writing of any recommendations have not been implemented and explain why.

(n) Proceedings on an agency protest may be dismissed or stayed if a protest on the same or similar basis is filed with a protest forum outside of the Department of Justice.

Subpart 2833.2—Disputes and Appeals

2833.209 Suspected fraudulent claims.

Contracting officers shall report suspected fraudulent claims to the Office of the Inspector General.

2833.211 Contracting officer's decision.

(a) The Agency Board of Contract Appeals (BCA), which will hear appeals from the decisions of bureau contracting officers, is the Department of Transportation BCA. The procedures set forth in 48 CFR chapter 63 shall apply.

(b) Pursuant to 28 CFR 0.45(i), the contact for all appeals of decisions of DOJ contracting officers which will be forwarded to the BCA under paragraph (a) of this section, is the Deputy Assistant Attorney General, Commercial Litigation Branch, Civil Division.

Subchapter F—Special Categories of Contracting

PART 2834—MAJOR SYSTEM ACQUISITION

Subpart 2834.0—General

2834.002 Policy.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2834.0—General

2834.002 Policy.

In accordance with Pub. L. 98–577, the Small Business and Federal Procurement Competition Enhancement Act of 1984, an executive agency may establish a dollar threshold for the designation of a major system. Accordingly, dollar thresholds for a major system under Office of Management and Budget Circular A–109 are designated in this section.

(a) *Major automated information system.* Within the Department of Justice, a major automated information system is one whose life-cycle cost is in excess of $100 million.

(b) *Major real property system.* (1) By purchase, when the assessed value of the property exceeds $60 million.

(2) By lease, when the annual rental charges, including basic services (e.g., cleaning, guards, maintenance), exceed $1.8 million.

(3) By transfer from another agency at no cost when the assessed value of the property exceeds $12 million.

(c) *Research and Development (R&D) System.* Any R&D activity expected to exceed $0.5 million, for the R&D phase is subject to OMB Circular A–109, unless exempted by the HCA.

(d) *Any other system or activity.* The HCA responsible for the system may designate any system or activity as a Major System under OMB Circular A–109 as a result of Departmental review, e.g., selected systems designed to support more than one principal organizational unit.

(e) *Exemption.* The AAG/A, upon recommendation by the HCA responsible for the system, may determine that because of the routine nature of the acquisition, the system (e.g., an information system utilizing only off-the-shelf hardware or software) will be exempt from the OMB Circular A–109 process, although by virtue of the life cycle costs, it would otherwise be identified as ''major'' in response to OMB Circular A–109.

Subchapter G—Contract Management

PART 2842—CONTRACT ADMINISTRATION

Subpart 2842.15—Contractor Performance Information

2842.1502 Policy.
2842.1503 Procedures.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2842.15—Contractor Performance Information

2842.1502 Policy.

The head of each contracting activity shall be responsible for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

2842.1503 Procedures.

Past performance evaluation procedures and systems shall include, to the greatest practicable extent, the evaluation and performance rating factors set forth in the Office of Federal Procurement Policy best practices guide for past performance.

PART 2845—GOVERNMENT PROPERTY

Subpart 2845.1—General

2845.105 Records of Government property.

Subpart 2845.5—Management of Government Property in the Possession of Contractors

2845.505–14 Report of Government Property.

Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2845.603 Disposal methods.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2845.1—General

2845.105 Records of Government property.

If departmental elements maintain the Government's official property management records, the contract records may be kept as a separate account in the bureau's internal property management system, in which case the contracting officer or formally designated property administrator shall serve as custodian of the account.

Subpart 2845.5—Management of Government Property in the Possession of Contractors

2845.505–14 Report of Government Property.

(a) In compliance with FAR 45.505–14, by January 31 of each year, DOJ contractors shall furnish the cognizant contracting officer an annual report of the DOJ property for which they are accountable as of the end of the calendar year.

(b) By March 1 of each year, bureaus shall submit a summary report of Departmental property furnished under each contract, as of the end of the calendar year, to the Facilities and Administrative Services Staff, Justice Management Division. The report shall be categorized in accordance with FAR 45.505 and shall include contracts for which the bureau maintains the official government records.

Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2845.603 Disposal methods.

Policies pertaining to reutilization and disposal of DOJ property, including requirements for internal screening, waivers, and disposal reporting, are prescribed in the Justice Property Management Regulations Subpart 128–43. Unless otherwise specified, the ''plant clearance officer'' shall be a designated utilization and disposal representative of a bureau's property management office.

PART 2846—QUALITY ASSURANCE

Subpart 2846.6—Material Inspection and Receiving Reports

Subpart 2846.7—Warranties

2846.704 Authority for use of warranties.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2846.6—Material Inspection and Receiving Reports

Bureaus shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports and commercial shipping document/packing lists to evidence Government inspection.

Subpart 2846.7—Warranties

2846.704 Authority for use of warranties.

The use of a warranty in an acquisition shall be approved at a level above the contracting officer.

Subchapter H—Clauses and Forms

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2852.1—Instructions for Using Provisions and Clauses

2852.102 Incorporating provisions and clauses.

2852.102–270 Incorporation in full text.

Subpart 2852.2—Text of Provisions and Clauses

2852.201–70 Contracting Officer's Technical Representative (COTR).

2852.211–70 Brand-name or Equal.

2852.223–70 Unsafe Conditions Due to the Presence of Hazardous Material.

2852.233–70 Protests Filed Directly with the Department of Justice.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c);

28 CFR 0.75(j) and 28 CFR 0.76(j).

Subpart 2852.1—Instructions for Using Provisions and Clauses

2852.102 Incorporating provisions and clauses.

2852.102–270 Incorporation in full text.

JAR provisions or clauses shall be incorporated in solicitations and contracts in full text.

Subpart 2852.2—Text of Provisions and Clauses

2852.201–70 Contracting Officer's Technical Representative (COTR).

As prescribed in subpart 2801.70, insert the following clause:

Contracting Officer's Technical Representative (COTR) (Jan. 1985)

(a) Mr./Ms (Name) of (Organization) (Room No.), (Building), (Address), (Area Code & Telephone No.), is hereby designated to act as Contracting Officer's Technical Representative (COTR) under this contract.

(b) The COTR is responsible, as applicable, for: receiving all deliverable, inspecting and accepting the supplies or services provided hereunder in accordance with the terms and conditions of this contract; providing direction to the contractor which clarifies the contract effort, fills in details or otherwise serves to accomplish the contractual Scope of Work; evaluating performance; and certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment.

(c) The COTR does not have the authority to alter the contractor's obligations under the contract, and/or modify any of the expressed terms, conditions, specifications, or cost of the agreement. If as a result of technical discussions it is desirable to alter/change contractual obligations or the Scope of Work, the Contracting Officer shall issue such changes.

(End of Clause)

2852.211–70 Brand-name or Equal.

As prescribed in 2811.104–70, insert the following clause:

Brand-Name or Equal (Jan. 1985)

(a) The terms ''bid'' and ''bidders'', as used in this clause, include the terms ''proposal'' and ''offerors''. The terms ''invitation for bids'' and ''invitational'', as used in their clause include the terms ''request for proposal'' and ''request''.

(b) If items called for by this invitation for bids have been identified in the schedule by a ''brand name or equal'' description, such identification is intended to be descriptive but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering ''equal'' products (including products of a brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics and requirements listed in the invitation.

(c) Unless the bidder clearly indicates in his/her bid that he/she is offering an ''equal'' product, his/her bid shall be considered as offering the brand name product referenced in the invitation for bids.

(d)(1) If the bidder proposes to furnish an ''equal'' product, the branch name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determinations to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his/her bid as well as other information reasonably available to the purchasing activity. To ensure the sufficient information is available, the bidder must furnish as a part of his/her bid all description material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to: (i) determine whether the product offered meets the salient characteristics requirements of the invitation for bids, and (ii) established exactly what the bidder proposed to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the invitation for bids, he/she shall: (i) include in his/her bid a clear description of such proposed modification, and (ii) clearly mark any description material to show the proposed modifications.

(3) Modifications proposed after the bid opening to make a product conform to a brand name product referenced in the invitation for bids will not be considered.

(End of Clause)

2852.223–70 Unsafe Conditions Due to the Presence of Hazardous Material.

As prescribed in 2823.303–70, insert the following clause:

Unsafe Conditions Due to the Presence of Hazardous Material (June 1996)

(a) ''Unsafe condition'' as used in this clause means the actual or potential exposure of contractor or Government employees to a hazardous material as defined in Federal Standard No. 313, and any revisions thereto during the term of this contract, or any other material or working condition designated by the Contracting Officer's Technical Representative (COTR) as potentially hazardous and requiring safety controls.

(b) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require contractors to appraise its employees of all hazards to which they may be exposed in the course of their employment; proper conditions and precautions for safe use and exposure; and related symptoms and emergency treatment in the event of exposure.

(c) Prior to commencement of work, contractors are required to inspect for and report to the contracting officer or designee the presence of, or suspected presence of, any unsafe condition including asbestos or other hazardous materials or working conditions in areas in which they will be working.

(d) If during the performance of the work under this contract, the contractor or any of its employees, or subcontractor employees, discovers the existence of an unsafe condition, the contractor shall immediately notify the contracting officer, or designee, (with written notice provided not later than three (3) working days thereafter) of the existence of an unsafe condition. Such notice shall include the contractor's recommendations for the protection and the safety of Government, contractor and subcontractor personnel and property that may be exposed to the unsafe condition.

(e) When the Government receives notice of an unsafe condition from the contractor, the parties will agree on a course of action to mitigate the effects of that condition and, if necessary, the contract will be amended. Failure to agree on a course of action will constitute a dispute under the Disputes clause of this contract.

(f) Notice contained in this clause shall relieve the contractor or subcontractors from complying with applicable Federal, State, and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with hazardous material including but not limited to the use, disturbance, or disposal of such material.

(End of Clause)

2852.233–70 Protests filed directly with the Department of Justice.

As prescribed in 2833.102(d), insert a clause substantially as follows:

Protests Filed Directly With the Department of Justice (Jan. 1998)

(a) The following definitions apply in this provision:

(1) ''Agency Protest Official'' means the official, other than the contracting officer, designated to review and decide procurement protests filed with a contracting activity of the Department of Justice.

(2) ''Deciding Official'' means the person chosen by the protestor to decide the agency protest; it may be either the Contracting Officer or the Agency Protest Official.

(3) ''Interested Party'' means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) A protest filed directly with the Department of Justice must:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the Contracting Officer.

(3) State whether the protestor chooses to have the Contracting Officer or the Agency Protest Official decide the protest. If the protestor is silent on this matter, the Contracting Officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the deciding official.

(5) Include the information required by FAR 33.103(a)(2):

(i) Name, address, facsimile number and telephone number of the protestor.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protestor.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protestor is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of this protest.

(c) An interested party filing a protest with the Department of Justice has the choice of requesting either that the Contracting Officer or the Agency Protest Official decide the protest.

(d) The decision by the Agency Protest Official is an alternative to a decision by the Contracting Officer. The Agency Protest Official will not consider appeals from the Contracting Officer's decision on an agency protest.

(e) The deciding official must conduct a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for oral or written arguments in support of the agency protest and for many officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(f) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(g) The protestor has only one opportunity to support or explain the substance of its protest. Department of Justice procedures do not provide for any discovery. The deciding official may request additional information from either the agency or the protestor. The deciding official will resolve the protest through informal presentations or meetings to the maximum extent practicable.

(h) An interested party may rerpresent itself or be represented by legal counsel. The Department of Justice will not reimburse the protester for any legal fees related to the agency protest.

(i) The Department of Justice will stay award or suspend contract Performance in accordance with FAR 33.103(f). The stay or suspension unless over-ridden, remains in effect until the protest is decided, dismissed, or withdrawn.

(j) The deciding official will make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be oral or written.

(k) The Department of Justice may dismiss or stay proceeding on an agency protest if a protest on the same or similar basis is filed with a protest forum outside the Department of Justice.

(End of Clause)

[FR Doc. 98–8335 Filed 4–1–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. NHTSA–98–3668]

RIN 2127–AG37

Side Impact Protection: Side Impact Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document makes two amendments to the specifications for the side impact test dummy and the procedure in NHTSA's side impact protection standard for positioning the dummy in a vehicle for compliance testing purposes. The first amendment adds plastic spacers to the dummy's lumbar spine to prevent a metal cable within the spine from contacting other metal parts in the spine (''snapping''). Some manufacturers believe that such contact can generate large spikes in the data obtained from the dummy. The second amendment specifies a procedure during the positioning of the dummy to fully extend the damper piston in the dummy's ribcage prior to the side impact test. These changes are intended to reduce to the extent possible any potential problems with the consistency of the data obtained from the dummy in a side impact crash test.

DATES: *Effective Date:* The amendments made in this rule are effective September 1, 1998.

Incorporation by Reference Date: The incorporation by reference of the material listed in this document is approved by the Director of the **Federal Register** as of September 1, 1998.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than May 18, 1998.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Mr. Stan Backaitis, Office of Crashworthiness (telephone 202–366–4912). For legal issues: Ms. Deirdre Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION:

Federal Motor Vehicle Safety Standard No. 214, *Side Impact Protection* (49 CFR 571.214), establishes minimum performance requirements for protection of occupants in side impact crashes. The standard specifies a dynamic side impact test using a side impact dummy (SID) instrumented with accelerometer sensors mounted in the thorax and pelvis. The specifications for the side impact dummy are set out at 49 CFR part 572, subpart F. Standard 214 requires that when vehicles are tested in accordance with the standard, the forces (the ''Thoracic Trauma Index'' (TTI(d)) measured by the SID must not exceed specified limits.

This rule amends the part 572 specifications for the SID and the procedure in Standard 214 for positioning the dummy in a vehicle for compliance testing purposes. The amendments were proposed in a September 24, 1996 notice of proposed rulemaking (NPRM). 61 FR 49992. (Docket No. 96–098, Notice 01.) The first amendment adds spacers into the top and bottom plates of the lumbar spine. The second amendment specifies a dummy positioning procedure that involves fully extending the damper piston in the dummy's ribcage. Both of these amendments are intended to reduce to the extent possible any potential problems with the consistency of the data obtained from the SID in a side impact crash test.

Lumbar Spine Inserts

The NPRM was issued in response to concerns that a number of motor vehicle manufacturers raised in connection with spikes in data obtained from side impact

tests that increase the variability and the magnitude of the TTI(d). These concerns, discussed in detail in the NPRM and summarized below, relate to the construction of the SID lumbar spine. The lumbar spine is a molded hollow cylindrical rubber element, with bonded circular metal plates that have a hole in the center at each end. A metal cable passes through the center of the lumbar spine cylinder. The top end of the cable is threaded, and the bottom end is shaped like a ball. The threaded end of the cable is fastened with a nut, which can be tightened to provide the desired compression in the lumbar.

In a June 29, 1994 letter to the agency, the American Automobile Manufacturers Association (AAMA), representing Ford, Chrysler Corporation and General Motors Corporation, raised concerns about the performance of the SID lumbar spine. AAMA said that metal-to-metal contact in the spine—

> Is inducing data spikes that are of long enough time duration to become part of the data when it is filtered according to the requirements of Standard No. 214. Inclusion of these data spikes in the data increases variability and unwarranted higher calculations of TTI(d). The spikes could cause manufacturers to redesign their vehicles for no safety reason other than an artifact of the SID. This redesign would increase business costs with no safety benefit to the customer.

Concerns about data spikes were also raised by Toyota Motor Corporate Services of North America and Mercedes Benz.

To correct the perceived problem, AAMA recommended the use of spacers, made of delrin, a type of plastic, in the top and bottom plates of the lumbar spine. AAMA stated that Ford found that, when the delrin spacers were used, the data spikes were eliminated. AAMA also said that in subsequent crash tests conducted by member companies, no indications of spine ringing were found when the spacers were used.

After receiving these letters and comments, NHTSA reviewed data from its tests with the SID for evidence of spine spikes. The agency determined that none of the available agency experimental or vehicle compliance data indicated definitive evidence of data contamination and/or distortion clearly attributable to spine cable snap. Further, NHTSA believed that it appeared from data submitted by Ford that the ''noise'' that the manufacturer found, while visible primarily in several portions of the raw data traces, would nonetheless be reduced to insignificant values by the specified FIR filter. Also, the noise consisted of extremely short duration spikes occurring earlier or considerably later than the peak acceleration magnitudes in real world crash tests.

While the agency's data did not show that spine noise was affecting the post-filter test results, NHTSA conducted further investigations at the agency's Vehicle Research and Test Center (VRTC) to better understand the manufacturers' concerns. In January 1995, NHTSA determined through component tests of the SID torso that metal-to-metal contact of the SID's spine cable can produce spikes in the data. (A July 1996 memorandum describing the testing is in Docket 88–07, Notice 3.) In the component tests, the SID upper torso part was rocked while the bottom half was held rigid. The rocking tests caused the cable ends to slip, resulting in the generation of low level ''clicking'' and some noise spikes in the ribcage response data. However, none of the rocking motions producing spine cable snap generated spikes that resembled the shape or magnitude of those described by AAMA or Toyota.

NHTSA also found in the rocking tests that the delrin spacers, which AAMA suggested the agency should use in the SID spine, stopped the cable from slipping and eliminated the clicking noise. In a series of sled tests, NHTSA also determined that spines with spacers produce somewhat fewer spikes in the unfiltered data compared to tests without the spacers. In a subsequent series of impact tests, the agency established that the spacers had no appreciable effects on the stiffness of the spine, but resulted in lower magnitudes of spikes in the ''z'' (vertical) acceleration channel. NHTSA also found that the spacers have little, if any, effect on the TTI(d) value measurements. The above tests are described in a July 1996 memorandum in Docket 88–07, Notice 3.

While the agency's data did not support the claims of some manufacturers that spine noise affects the TTI(d) measurements to an extent that compels the possible redesign of their vehicles, NHTSA confirmed that the SID spine cable does move in a ''snap-like'' motion that can produce low level spikes that are clearly visible in unfiltered raw data. The agency tentatively concluded in the NPRM that this ''noise,'' while negligible after FIR filtering, is nonetheless undesirable in itself as part of the crash event. ''Any looseness or snapping of components within the SID can produce rattling or unwarranted snapping effects that could potentially distort the data from the dummy and possibly complicate compliance testing'' (61 FR at 49994). NHTSA therefore proposed that lumbar spine spacers should be required in the SID to prevent such movement.

The agency received comments on this proposal from Volkswagen of America, Toyota Motor Corporation, and AAMA. These commenters supported adding lumbar spine spacers to the SID. Toyota submitted test data showing that after spacers were added to several of its test dummies, ''no remaining appreciable traces of spine ringing remained * * *'' AAMA ''strongly support[ed]'' the proposal:

> This modification to the SID specifications has been shown to prevent metal-to-metal contact in the lumbar spine that under the current specifications, erroneously and randomly adds artificial spikes to the SID acceleration traces during side impact testing.

NHTSA has evaluated the comments and has decided to require the spacers, for the reasons explained in the NPRM. As explained in the proposal, ''noise'' from movement of the spine cable should be minimized to the extent reasonably possible and spacers inserted into appropriate places in the spine are a reasonable means of effectively preventing such movement. The cost of the two spacers is estimated to be $154. Given that on average, a SID can be used in at least 30 tests, the cost of the spacers is at most $5 per impact test.

To incorporate the use of lumbar spine spacers, this rule replaces dummy assembly drawing SA–SID–M050, revision A (dated May 18, 1994) with revision B. Revision B includes reference to:

1. Drawing Lumbar Spacers-Lower SID–SM–001, indicating the spine lower spacer;
2. Drawing Lumbar Spacers-Upper SID–SM–002, indicating the spine upper spacer; and
3. Drawing 78051–243, indicating a washer.

(The drawings for the SID spine lower spacer and upper spacer are depicted in the NPRM as figures 1 and 2, respectively. 61 FR at 49995, 49996.)

The SID users manual is revised to reflect the assembly of the above parts.

Damper Piston Movement

During the sled tests that the agency conducted to evaluate the effect of spacers in the SID lumbar spine, NHTSA observed that the position of the damper piston in the SID ribcage prior to the test had an appreciable effect on the thorax accelerations recorded by the SID. In some tests, some of the thorax responses contained initial short duration damper piston movement in the opposite direction of impact, followed by a longer duration

movement in the direction of impact. Upon closer inspection of the damper piston position in dummies set up for impact, NHTSA noted that the damper position was not fully extended in some of the dummies. The agency subsequently found, through tests with the damper piston position purposely fully extended or partly compressed, that the damper piston's initial position can be an important factor in determining whether the dummy's key thorax sensors will record higher or lower accelerations.

In a side impact test in which contact occurs first at the dummy's hip level, a dummy's ribcage initially moves (relative to the pelvis bone) toward the impact. When the damper piston is partly compressed prior to impact, the damper piston will fully extend itself during impact until it is arrested by the piston bottoming out against the damper body. The test data indicate that this internal ''collision'' of the damper piston against the damper body is the primary cause of inconsistency in data measurements and the determination of acceleration levels. This collision does not occur when the piston is fully extended within the damper body prior to the test.

Prior to these tests, the agency believed that a piston return spring in the SID would develop sufficient force to set the damper piston in the fully extended position. It appeared from the tests, however, that the spring is not stiff enough to set the piston in every dummy in the fully extended position and that steps to ensure extension of the piston are necessary. To better ensure that the impact response measurements are more repeatable and reproducible, NHTSA proposed to specify in Standard 214's SID positioning procedures that the damper piston is in the fully extended position before the test.

In the NPRM, the agency stated that the piston can be fully extended by rocking a seated dummy in the lateral direction immediately prior to a test or by reaching through a partly unzipped SID torso jacket and forcing the piston into a full extension. NHTSA believed these measures will ensure that the damper piston is in the fully extended position at the time of the side impact test. NHTSA tentatively concluded that a visual inspection appears to be adequate to ensure that the piston is fully extended. Comments were requested on whether a position sensor would be needed.

Volkswagen, Toyota and American Honda Motor Co., Inc. supported the proposal to specify in Standard 214's SID positioning procedures to fully extend the damper piston before the test. Honda submitted test data showing that ''Both rib and spine Gs are varied with the initial piston positions, and more than a negligible amount of the difference in TTI is observed.'' Honda said, however, that it is concerned as to how to confirm that the damper piston is fully extended prior to the dynamic test ''since it is not easy to reach and ensure the piston position without affecting the SIDs already correctly positioned in the test vehicle.'' Honda suggested marking the damper piston to show the fully extended position. The mark could be visible through the partially unzipped SID torso jacket without moving the SID. While supporting the proposal, Volkswagen and Toyota said that use of a rib cage position sensor should not be a mandatory part of the specifications.

AAMA opposed the proposal. It said that the damper-related data anomalies NHTSA recorded during sled tests have not been observed in manufacturers' full vehicle crash tests.

> The sled test setup NHTSA used was unrealistic due to the large protruding armrest installed first, to cause an initial pelvic impact and then, to force the upper body to rotate toward the door of the vehicle. Dummy kinematics of this nature are not common in a normal FMVSS–214 crash test. AAMA believes that this unrealistic testing caused the SID to exhibit these damper-induced data anomalies.

AAMA also stated that the fully extended position of the damper piston often cannot be maintained consistently prior to the crash test (''pre-test'') due to the tight fit of the SID chest jacket. ''Considerable time could be spent pre-test trying to maintain the damper position once the jacket is re-zipped.'' In addition, AAMA did not support a requirement for a chest damper position sensor, because the bracket that would be used to mount the sensor can cause metal-to-metal contact with the sternum or spine box. ''Use of the sensor, therefore, should remain optional.''

After considering the comments, NHTSA has decided to amend Standard 214 to adopt a procedure to extend the damper piston prior to dynamic testing. The specification will better ensure the repeatability and reproducibility of test results. As discussed in the NPRM, the agency's testing indicated that the damper piston's initial position can be an important factor in determining whether the dummy's key thorax sensors will record higher or lower accelerations. Honda also found that the initial piston position affected rib and spine Gs and TTI(d) values and that extending the damper piston is needed to ensure that test results are consistent and reproducible. Ensuring that the damper piston is extended will eradicate a possible source of data distortion from the agency's compliance test.

In response to AAMA's comments, the agency acknowledges that the tests at VRTC were designed to show that spikes could be present in data if the damper piston were not fully extended. In the tests, the pelvis was impacted about six inches before the thorax was impacted, to initially force the ribs outward. However, the agency does not agree that the VRTC tests resulted in irrelevant or unrealistic dummy kinematics. NHTSA's side impact test reports indicate that the pelvis of the dummy was impacted approximately 1–7 ms earlier than the ribcage structure in 72 percent of the tests. Also, NHTSA examined the damper position in SIDs that were set up on vehicle seats readied for dynamic side impact testings and found that these showed a piston position up to 7 mm (0.28 inches) from full extension. This suggests that the potential exists that damper piston positioning could affect rib acceleration responses in actual Standard 214 tests. Inasmuch as a damper piston position in tests with dummies in real vehicles is similar to the position in the laboratory set-up, the agency concludes that there is a potential for experiencing a piston collision-related spike problem in actual Standard 214 tests.

While data from NHTSA's vehicle crash tests thus far do not indicate the effects of a damper piston collision, future designs of vehicle interiors, side structure or impact surfaces may exacerbate the motion of the damper piston, artificially increasing acceleration measurements. The agency believes removing this potential complication from compliance testing is a reasonable step toward ensuring the integrity of future side impact tests.

The agency recognizes that some commenters expressed concern about the means by which users can extend the piston. NHTSA stated in the NPRM that the piston can be fully extended by rocking a seated dummy in the lateral direction immediately prior to a test or by reaching through a partly unzipped SID torso jacket and forcing the piston into a full extension (61 FR at 49997). In response, Honda stated that ''it is not easy to reach and ensure the piston position without affecting the SIDs already correctly positioned in the test vehicle.'' AAMA stated that it believed that ''the fully extended position of the damper piston often cannot be maintained consistently prior to the crash test (pre-test) due to the tight fit of the SID chest jacket. Considerable time could be spent pre-test trying to

maintain the damper position once the jacket is re-zipped.''

As a result of these comments, NHTSA undertook testing at VRTC to determine whether there is a simple way of fully extending the piston, other than by rocking the dummy or by reaching through a partially unzipped jacket. Two different side impact dummies were used, both with and without SID chest jackets. Jackets from different manufacturers were used. These jackets were measured both externally and internally to examine differences in sizes between dummies made by different manufacturers. Size differences could result in tighter or looser fits which might have differing influences on the return of the damper piston to its extended position.

NHTSA verified its earlier finding that the return spring on the damper did not always return the damper to its fully extended position, either with or without the chest jacket. The agency also determined that the damper piston could be fully extended on the dummy by holding the dummy's head in place and pushing the non-impact side of the dummy with approximately 15 to 20 lb. force. This procedure repositioned the damper piston at the fully extended position, regardless of whether a chest jacket is used or which type of chest jacket is on the dummy. Copies of the reports discussing the test results have been placed in the docket. ''SID Damper Piston Extension Measurement,'' April 22, 1997, ''SID Damper in Car Positioning Tests,'' May 1, 1997, and ''Table 1. Measurements of SID Damper Potentiometer from Fully Extended Position for Various SID Dummies'' May 5, 1997.

By using a linear potentiometer to measure the extended position of the damper, the agency verified that the procedure consistently extended the damper piston to the fully extended position. Because the procedure attained consistent results, the agency is confident that the procedure achieves the desired end. Thus, the agency believes that a sensor is not needed to confirm that the damper is returned to the fully extended position.

This rule specifies an effective date slightly sooner than 180 days from the date of publication. NHTSA believes the September 1, 1998 effective date is in the public interest. September 1 is the effective date typically chosen by the agency for new performance requirements since September or October is the beginning of a new model year for most vehicle manufacturers. Use of this date ensures that the new requirements apply to all motor vehicles produced in the model year beginning on or about that date. Thus, virtually all model year 1999 vehicles would be tested with the SID modified as specified in this rule. The required modifications to the test dummy adopted by this rule are generally minor and can be implemented by dummy manufacturers within the provided leadtime. While the modifications better ensure the repeatability and reproducibility of side impact test results, the agency anticipates that they will not have a bearing on the compliance of vehicle manufactured today and that vehicles will not need to be redesigned because of today's amendments.

This rule also updates the name and address of the firm referenced in § 572.40(b) from which copies of the SID drawings, users manual and other materials incorporated by reference may be obtained.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''non-significant'' under the Department of Transportation's regulatory policies and procedures. The amendments will not require any vehicle design changes, but will instead require only minor modifications in the test dummy used to evaluate a vehicle's compliance with Standard No. 214. According to Applied Safety Technologies Corporation (formerly Vector Research), a dummy manufacturer, the two delrin spacers (lumbar spine inserts) cost $154. Thus far, these have been precision machined parts aimed to satisfy individual low volume orders. The cost is expected to decrease considerably once the other dummy manufacturer (FTSS) begins manufacturing the spacers. If use of spacers increases, dummy manufacturers may seek to produce them through precision molding, which could further reduce the cost of the spacer. The agency has accordingly determined that the impacts of the amendments will be so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*). I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

The factual basis for the certification (5 U.S.C. § 605(b)) is as follows. The final rule would primarily affect passenger car and light truck manufacturers and manufacturers of dummies. As described above, there will be no significant economic impact on any vehicle manufacturer, whether large or small. Even if the rule were to have a significant economic impact, there is not a substantial number of small entities that manufacture vehicles. The Small Business Administration's (SBA's) size standards are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer. For passenger car and light truck manufacturers, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Because each manufacturer serves a niche market, often specializing in replicas of ''classic'' cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most five hundred cars manufactured per year by U.S. small businesses. In contrast, in 1996, there are approximately nine large manufacturers manufacturing passenger cars and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. NHTSA does not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

SIC Code 3714 ''Motor Vehicle Parts and Accessories'' has a small business size standard of 750 employees or fewer. NHTSA believes dummy manufacturers would fall under SIC Code 3714. There are three dummy manufacturers in this country, all of which are believed to be of a size that constitutes a small business. NHTSA does not believe this rule will have a significant economic impact on these entities. The rule will require only minor modifications (the addition of two delrin spacers) to the side impact dummy. The delrin spacers are relatively inexpensive components, costing approximately $154 for two. Further, NHTSA believes the cost of the spacer will decrease when they are produced in high volumes.

The cost of new passenger cars and light trucks will not be affected by the final rule. Because no price increases will be associated with the rule, small organizations and small governmental units will not be affected in their capacity as purchasers of new vehicles.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 572

Incorporation by reference, Motor vehicle safety.

In consideration of the foregoing, NHTSA amends 49 CFR Parts 571 and 572 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.214 is amended by adding introductory text for S7.1, *Torso,* to read as follows:

§ 571.214 Standard No. 214; side impact protection.

* * * * *

S7.1 *Torso.* For a test dummy in any seating position, hold the dummy's head in place and push laterally on the non-impacted side of the upper torso in a single stroke with a force of 15–20 lb. towards the impacted side.

* * * * *

49 CFR PART 572—ANTHROPOMORPHIC TEST DUMMIES

Subpart F—Side Impact Dummy 50th Percentile Male

3. The authority citation for Part 572 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

4. In § 572.40, paragraph (b) is revised to read as follows:

§ 572.40 Incorporated materials.

* * * * *

(b) The materials incorporated in this part by reference are available for examination in the general reference section of Docket 79–04, Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh St., S.W., Washington, D.C., 20590, telephone (202) 366–4949. Copies may be obtained from Reprographic Technologies, 9000 Virginia Manor Rd., Suite 210, Beltsville, MD, 20705, Telephone (301) 419–5070, Fax (301) 419–5069.

5. In section 572.41, the introductory paragraph of (a), and entire paragraphs (a)(4) and (c) are revised to read as follows:

§ 572.41 General description.

(a) The dummy consists of component parts and component assemblies (SA–SID–M001, revision C, dated September 12, 1996, and SA–SID–M001A, revision B, dated September 12, 1996), which are described in approximately 250 drawings and specifications that are set forth in § 572.5(a) of this chapter with the following changes and additions which are described in approximately 85 drawings and specifications (incorporated by reference; see § 572.40):

* * * * *

(4) The lumbar spine consists of the assembly specified in subpart B (§ 572.9(a)) and conforms to drawing SA 150 M050 and drawings subtended by SA–SID–M050 revision B, dated September 12, 1996, including the addition of Lumbar Spacers-Lower SID–SM–001 and Lumbar Spacers-Upper SID–SM–002 (both dated May 12, 1994), and Washer 78051–243.

* * * * *

(c) Disassembly, inspection, and assembly procedures; external dimensions and weight; and a dummy drawing list are set forth in the Side Impact Dummy (SID) User's Manual, dated May 1994 except for pages 7, 20 and 23, and Appendix A (consisting of replacement pages 7, 20 and 23) dated January 20, 1998 (incorporated by reference; see § 572.40).

6. In § 572.43, paragraph (a) is revised to read as follows:

§ 572.43 Lumbar spine and pelvis.

(a) When the pelvis of a fully assembled dummy (SA–SID–M001A revision B, dated September 12, 1996, (incorporated by reference; see § 572.40) is impacted laterally by a test probe conforming to § 572.44(a) at 14 fps in accordance with paragraph (b) of this section, the peak acceleration at the location of the accelerometer mounted in the pelvis cavity in accordance with § 572.44(c) shall be not less than 40g and not more than 60g. The acceleration-time curve for the test shall be unimodal and shall lie at or above the +20g level for an interval not less than 3 milliseconds and not more than 7 milliseconds.

* * * * *

Issued: March 26, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–8452 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 63, No. 63
Thursday, April 2, 1998

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 LABOR RELATIONS AUTHORITY

5 CFR Chapter XIV

Notice of Opportunity To Submit Comments on Issues Arising Under the Presidential and Executive Accountability Act

AGENCY: Federal Labor Relations Authority

ACTION: Review of regulations, request for comment.

SUMMARY: The Federal Labor Relations Authority (FLRA) is providing an opportunity for all interested persons to comment on issues that have arisen as the agency carries out its responsibilities under the Presidential and Executive Office Accountability Act. The FLRA was directed to issue regulations extending coverage of Chapter 71 of Title 5, United States Code, to the Executive Office of the President no later than October 1, 1998.

DATES: Responses submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Office of Case Control by 5 p.m. on or before April 17, 1998.

ADDRESSES: Mail or deliver written comments to the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW., Room 415, Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Weaver, Director of External Affairs, at the address listed above or by telephone: (202) 482–6500.

SUPPLEMENTARY INFORMATION:

1. Background

The Presidential and Executive Office Accountability Act (Pub. L. 104–331) (the Act) was enacted on October 26, 1996, extending the coverage of eleven civil rights, labor and employment laws to the Executive Office of the President. The Act applies Chapter 71 of Title 5, the Federal Service Labor-Management Relations Statute (the Statute), to the Executive Office of the President and requires the FLRA to promulgate regulations to implement the Act, no later than October 1, 1998. Pursuant to legislative history urging the FLRA to engage in ''extensive rulemaking,'' the FLRA is requesting comments on the issues raised below.

The Executive Office of the President (EOP) is comprised of thirteen separate offices: the White House Office, the Executive Residence at the White House, the Office of the Vice President, the Official Residence of the Vice President, the Office of Policy Development, the Council of Economic Advisors, the Council on Environmental Quality and Office of Environmental Quality, the National Security Council, the Office of Administration, the Office of Management and Budget, the Office of National Drug Control Policy, the Office of Science and Technology, and the Office of the United States Trade Representative.

According to House Report No. 104–820 (110 Stat. 4375), there are roughly 1,700 employees working in the EOP. Less than one-third of these are Title 3 employees, who traditionally serve at the pleasure of the President. The Title 3 employees work in the White House Office, the Office of the Vice President, the Office of Policy Development, the Executive Residence, and the Official Residence of the Vice President. The remaining 1,150 employees are covered by Title 5, and are civil service employees serving under the same laws and regulations as other career executive branch employees. The Title 5 employees work in the other eight EOP offices, which were covered by Chapter 71 of Title 5 prior to the enactment of the Act.

2. Requirements Placed on the FLRA

The Act contains a general requirement that the FLRA issue regulations for the EOP that are the same as the substantive regulations promulgated by the FLRA for all other agencies under its jurisdiction. This general requirement applies differently, however, depending on the Act's classification of the EOP offices.

With respect to the first group of five designated offices (the Council on Environmental Quality, the Office of Administration, the Office of Science and Technology Policy, the Office of the U.S. Trade Representative, and the Official Residence of the Vice President), the Act requires that the FLRA's regulations be the same as the substantive regulations that apply to other agencies, except to the extent that the Authority determines for good cause, or to avoid a conflict of interest (COI) or an appearance of a conflict of interest, that a modification is required. For the remaining eight EOP offices, the Act imposes a third requirement: the FLRA must also consider the impact of its regulations on the President's or Vice President's constitutional responsibilities. This compels the FLRA to review its regulations to determine whether there are constitutional issues that require the FLRA to modify its regulations for four of the eight Title 5 offices. See Table 1–1.

TABLE. 1–1

Office [section 401(a)(4)]	Type of employee	Previously covered by chapter 71	FLRA must review COI & constitutional responsibilities [section 431(d)]
White House Office	Title 3	No	Yes.
Office of the Vice President	Title 3	No	Yes.
Office of Policy Development	Title 3	No	Yes.
Executive Residence at the White House	Title 3	No	Yes.
Official Residence of the Vice President	Title 3/Title 10	No	No.
Council of Economic Advisers	Title 5	Yes	Yes.
Council on Environmental Quality	Title 5	Yes	No.

TABLE. 1–1—Continued

Office [section 401(a)(4)]	Type of employee	Previously covered by chapter 71	FLRA must review COI & constitutional responsibilities [section 431(d)]
National Security Council	Title 5	Yes	Yes.
Office of Administration	Title 3/Title 5	Yes (Title 5 employees)	No.
Office of Management and Budget	Title 5	Yes	Yes.
Office of National Drug Control Policy	Title 5	Yes	Yes.
Office of Science and Technology Policy	Title 5	Yes	No.
Office of the US Trade Representative	Title 5	Yes	No.

3. Issues on Which Comments Are Requested

The FLRA is reviewing its current regulations to determine whether any modifications are necessary. As the review process continues, the FLRA is requesting comment on the following issues:

1. Appropriateness of Bargaining Units and Eligibility

Section 7112 of the Statute gives the FLRA the authority to determine the appropriateness of any unit. Section 7112(b) discusses the types of employees who shall not be included in an appropriate unit. Section 431(d)(1)(B) of the Act states that the Authority ''shall exclude [employees] from coverage'' if there are any conflict of interest or constitutional issues. Given the provision of section 7112, the implementing regulations found at 5 CFR 2421.14, as well as the requirements of section 431(d)(1)(B), are there factors that should be included in the FLRA's regulations to address the appropriateness of units in the EOP?

2. Remedies

Section 431(a) of the Act prohibits the FLRA from ordering reinstatement as a remedy. Sections 7118(a)(7) and 7105(a)(2)(I) of the Statute describe the remedial powers of the FLRA. Are there remedial powers of the FLRA, in addition to reinstatement, that should be examined in light of the Act's requirements?

3. Security Issues

The FLRA currently has the ability to investigate, prosecute, and adjudicate cases in which non-public information could be at issue or discussed. In addition to the precautions already taken in those cases, are there additional security concerns that the FLRA should consider in the drafting of its regulations?

4. Conflict of interest/Appearance of Conflict of Interest

Section 431(d)(1)(B)(i) of the Act requires the FLRA to exclude certain covered employees if the FLRA determines such an exclusion is required due to a conflict of interest or an appearance of a conflict of interest. Do the following examples create a conflict or an appearance of a conflict: (1) the FLRA Chair, General Counsel, and the members of the Federal Service Impasses Panel serve at the pleasure of the President, and therefore, are removable at will; or (2) that the Office of Management and Budget controls the FLRA's budget and the FLRA does not have so-called ''by-pass'' authority to allow it to request additional funds from the Congress? Are there other issues that the FLRA should consider in drafting its regulations?

5. Constitutional Issues

Section 431(d)(1)(B)(ii) of the Act requires the FLRA to exclude certain covered employees if the FLRA determines such an exclusion is required due to the President's or Vice President's constitutional responsibilities. An initial review by the FLRA of the Constitution and case law outlining the President and Vice President's constitutional responsibilities did not yield any constitutional issues that would require modification of current FLRA regulations. Are there any constitutional issues that should be considered by the FLRA in drafting the regulations?

6. Political Affiliation

Section 435(g) of the Act states that it:

> shall not be a violation of any provision of this chapter to consider, or make any employment decision based on, the party affiliation, or political compatibility with the employing office * * *.

Is there anything in the Statute or FLRA's current regulations that will conflict with section 435(g)?

7. Head of an Agency

Sections 7102(1), 7114(c)(1)—(3), and 7117(c)(3) of the Statute reference actions by the ''head of an agency.'' For the purposes of the EOP operations, who should be considered the ''head of an agency'' for each EOP office?

Solly Thomas,

Executive Director.

[FR Doc. 98–8649 Filed 4–1–98; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1468

RIN 0578–AA20

Conservation Farm Option

AGENCY: Commodity Credit Corporation, Department of Agriculture.

ACTION: Proposed Rule.

SUMMARY: Section 335 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) amended the Food Security Act of 1985 (the 1985 Act) to establish the Conservation Farm Option (CFO) Program. The Commodity Credit Corporation (CCC) administers the CFO under the supervision of the Vice President of the CCC who is the Chief of the Natural Resources Conservation Service (NRCS), with concurrence throughout the process by a Executive Vice President of the CCC who is the Administrator of the Farm Service Agency (FSA). The CCC is issuing a proposed rule for the CFO. This proposed rule describes how CCC will implement CFO as authorized by the 1985 Act. The CCC seeks comments from the public which will be used to make revisions, if necessary, that will be issued in a final rule.

DATES: Comments must be received by June 1, 1998.

ADDRESSES: All comments concerning this proposed rule should be addressed to Gary R. Nordstrom, Director, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890. Attention: CFO. FAX: 202–720–1838. This rule may also be accessed,

and comments submitted, via Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at http://www.ftw.nrcs.usda.gov; select the 1996 Farm Bill Conservation Programs from the menu.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Water Issues Team Leader, Conservation Operations Division, Natural Resources Conservation Service; phone: 202–720–3524; fax: 202–720–4265; e-mail: dan.smith@usda.gov, Attention: CFO; or Edward Rall, Economic and Policy Analysis Staff, Farm Service Agency; phone: 202–720–7795; fax: 202–720–8261; e-mail: erall@wdc.fsa.usda.gov, Attention: CFO.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

Pursuant to Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action. It will not result in an annual effect on the economy of $100 million or more, and therefore is not an economically significant regulatory action. The administrative record is available for public inspection in Room 6037, South Building, USDA, 14th and Independence Ave, SW, Washington, D.C.

Pursuant to Executive Order 12866, CCC conducted an economic analysis of the potential impacts associated with this program, and included the analysis as part of a Cost Benefit Analysis document prepared for this rule. The analysis estimates CFO will have a beneficial impact on the adoption of conservation practices and, when installed or applied to technical standards, will increase net farm income. In addition, benefits would accrue to society through maintenance of long-term productivity, enhancement of the resource base, non-point source pollution damage reductions, and wildlife enhancements. As a voluntary program, CFO will not impose any obligation or burden upon agricultural producers that choose not to participate.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

CCC has determined through an Environmental Assessment for the Conservation Farm Option Program, dated August 1, 1996, that the issuance of this proposed rule will not have a significant effect on the human environment. Copies of the Environmental Assessment and the Finding of No Significant Impact may be obtained from Daniel Smith, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890.

Paperwork Reduction Act

This proposed rule sets forth procedures for implementing CFO. CCC needs certain information from potential applicants in order to carry out the requirements of the program. CCC submitted information collection requirements to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* FSA has requested reinstatement of OMB 0560–0174 which covers both CFO and EQIP. This package contains the forms necessary for program implementation and include Forms CCC–1200, CCC 1210, and CCC–1245.

Form CCC–1200 is the Conservation Program Contract used in both the CFO and Environmental Quality Incentive Program (EQIP) and allows a farmer, rancher, or landowner to apply for conservation benefits under the terms and conditions of the contract.

Form CCC–1210 is the Conservation Farm Option Pilot Proposal form used only in the CFO program and allows farmers, groups and other entities to propose geographic areas for inclusion as pilot areas in the CFO.

Form CCC–1245 is the Practice Approval and Payment Application used in both the CFO and EQIP and allows the participant to submit performance data in order to be paid for the practices installed by the participant under the program.

A regular information collection submission for CFO and EQIP is in clearance and a notice will be published in the **Federal Register** shortly.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule are not retroactive. Furthermore, the provisions of this proposed rule preempt State and local laws to the extent such laws are inconsistent with this proposed rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 11 and 614 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

USDA classified this proposed rule as not major, therefore, pursuant to Section 304 of the Department of Agriculture Reorganization Act of 1994, a risk assessment is not required.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, CCC assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of Program

Background

Traditional agricultural conservation programs provide farmers and ranchers with cost share and land retirement payments as incentives to protect and conserve soil, water, and other natural resources, and provide technical assistance to implement conservation practices. In certain cases, however, these traditional programs lack sufficient flexibility to allow farmers and ranchers to operate in a manner they consider optimal or to address natural resource concerns which warrant innovative solutions. The CFO is intended to promote innovative and environmentally-sound methods for addressing these concerns.

Overview of the Conservation Farm Option Pilot Program

In accordance with the 1985 Act, CCC will establish CFO pilot programs for producers of wheat, feed grains, upland cotton, and rice. Only those owners and producers that have a farm with contract acres enrolled in production flexibility contracts established under the 1996 Act are eligible to participate in the CFO. Producers accepted into the CFO must enter into 10-year contracts which may be extended an additional 5 years. The purposes of CFO pilot programs include: (1) Conservation of soil, water, and related resources; (2) water quality protection or improvement; (3) wetland restoration, protection, and creation; (4) wildlife habitat development and protection; and (5) other similar conservation purposes. To enroll in the program, the 1985 Act requires producers to prepare a conservation farm plan which becomes part of the

CFO contract. The plan describes all conservation practices to be implemented and maintained on acreage subject to contract. An important goal is to promote the adoption of resource conserving crop rotations while maintaining agricultural production and maximizing environmental benefits. The 1985 Act also requires the plan to contain a schedule for the implementation and maintenance of the practices, comply with highly erodible land and wetland conservation requirements of Title XII of the 1985 Act, and contain such other terms as the Secretary may require. Producers must also agree to forgo payments under the Conservation Reserve Program (CRP), the Wetlands Reserve Program (WRP), and the Environmental Quality Incentives Program (EQIP). In lieu of these payments, the 1985 Act requires the Secretary to offer annual payments under the contract that are equivalent to the payments the owner or producer would have received had the owner or producer participated in the CRP, the WRP and the EQIP. CCC will determine the CFO payment rates taking into consideration the payments that would have been received under the CRP, WRP, and EQIP, as applicable. CRP payments will not exceed the maximum bid price accepted for similar land in the vicinity.

The CFO pilot program will substitute a single annual payment for the different types of payments available under the CRP, the WRP, and EQIP, provide an incentive for coordinated, long-term natural resource planning, and be flexible enough to allow farmers and ranchers to operate in economically efficient, but innovative ways. The CFO provides for a locally-led approach by allowing individual farmers and ranchers, or groups of farmers and ranchers to implement innovative solutions to natural resource problems and encourages implementation of sustainable agricultural production practices. The CFO is a program that permits farmers and ranchers to maximize environmental benefits with minimal land retirement, while maintaining agricultural production.

CCC will determine CFO participation in a two step process: First, CCC will select CFO pilot project areas based on proposals submitted by the public; then, CCC will accept applications from eligible producers within the selected pilot project area.

CFO Pilot Projects

CFO pilot projects will address resource problems and needs that are well documented and on a scale that will facilitate the evaluation of the effectiveness of the systems and practices installed, as well as that of the entire program. CFO pilot projects are intended to be simple, flexible, and should encourage sustainable agricultural production practices and support locally led conservation goals.

CCC will select CFO pilot project areas based on the extent of the proposal:

1. Demonstrates innovative approaches to conservation program delivery and administration;
2. Demonstrates innovative conservation technologies and systems;
3. Creates environmental benefits in a cost effective manner;
4. Addresses conservation of soil, water, and related resources, water quality protection or improvement; wetland restoration, protection, and creation; and wildlife habitat development and protection;
5. Ensures effective monitoring and evaluation of the pilot effort;
6. Considers multiple stakeholder participation (partnerships) within the pilot area; and
7. Provides additional non-Federal funding.

An interdepartmental committee made up of representatives of several Federal agencies will review the proposals and make recommendations to the Chief, NRCS, who is a Vice President of the CCC, based on criteria available to the public in the CFO proposal package. The CFO proposal package includes the CFO Pilot Proposal Form CCC–1210, instructions for completion of the CCC–1210, and the criteria for evaluating proposals. The CFO proposal package is available from any FSA or NRCS office. CCC will give preference to proposals that have high ratings based on the criteria upon which proposals will be evaluated.

Pilot projects can involve either an individual or a group. In either case, to be considered for enrollment in CFO, each individual or entity within an approved pilot project area must submit an application which is the basis for the contract between the participant and CCC.

Pilot Project Area Proposal Submission

CCC requests recommendations from the public regarding establishment of pilot project areas for fiscal year (FY) 1998. In FY 1999 through FY 2002, the CCC may establish additional pilot projects, as funding allows. Pilot projects will be fully funded upon selection.

CFO proposals may be developed for a group of eligible producers by organizations or entities that desire to coordinate individual producer plan development and implementation activities. These group proposals may promote the adoption of sustainable farming or other conservation practices on several farms, thus, expanding the opportunity for greater acceptance of innovative and environmentally sound farming practices. Achievements from these efforts may serve as on-farm models to encourage others to accept new measures without government assistance. Moreover, groups participating will promote program success stories to enhance the CFO based on proven results.

The proposals for pilot project areas must be for the purpose(s) of conserving soil, water, and related resources; protecting or improving water quality; restoring, protecting and creating wetlands; developing and protecting wildlife habitat; or other similar conservation purposes.

An individual, organization, or entity submitting the proposal will be responsible for providing leadership in the overall local planning effort, including activities such as education, information delivery, monitoring and coordination with local agencies, States or subdivisions thereof, tribal, and Federal agencies.

Selection Of Participants Within Pilot Project Areas

Upon selection of pilot project areas, all producers with production flexibility contracts within the project area will be eligible to participate in the CFO. NRCS will approve CFO conservation farm plans and the local FSA office will approve the CFO contracts and make payments on behalf of CCC.

Participation in CFO projects is open to all production flexibility contract holders without regard to race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status.

List of Subjects in 7 CFR Part 1468

Administrative practices and procedures, Conservation plan, Contracts, Natural resources, Payment rates, Soil conservation, Technical assistance, Water resources, and Wetlands.

Accordingly, Title 7 of the Code of Federal Regulations is amended by adding a new part 1468 to read as follows:

PART 1468—CONSERVATION FARM OPTION

Subpart A—General Provisions

Sec.

Authority: 16 U.S.C. 3839bb.

Subpart A—General Provisions

§ 1468.1 Applicability.

Through the Conservation Farm Option, the Commodity Credit Corporation (CCC) provides financial assistance to eligible farmers and ranchers to address soil, water, and related natural resources concerns, water quality protection or improvement; wetland restoration, protection, and creation; wildlife habitat development and protection and other similar conservation purposes on their lands in an environmentally beneficial and cost-effective manner. An important purpose is to promote the adoption of resource-conserving crop rotations while maintaining agricultural production and maximizing environmental benefits through the implementation of structural, vegetative, and land management practices on eligible land.

§ 1468.2 Administration.

(a) Administration of CFO is shared by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth below.

(b) NRCS shall:

(1) Provide overall program management and implementation of the CFO;

(2) Establish policies, procedures, priorities, and guidance for program implementation, including determination of pilot project areas;

(3) Establish annual payment rates;

(4) Make funding decisions and determine allocations of program funds;

(c) FSA shall be responsible for the administrative processes and procedures for applications, contracting, financial matters, program accounting and distribution of allocations;

(d) NRCS and FSA shall cooperate in establishing program policies, priorities, and guidelines related to the implementation of this part.

(e) No delegation herein to lower organizational levels shall preclude the Chief of NRCS, or the Administrator of FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part that is the responsibility of their respective agencies.

§ 1468.3 Definitions.

The following definitions shall apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Applicant means a producer who has requested in writing to participate in CFO.

Chief means the Chief of NRCS, or designee.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of a participant's decisions, and supporting information for treatment of a unit of land or water, including the schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems.

Conservation practice means a specified treatment, such as a structural or vegetative practice or a land management practice, which is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the program.

County executive director means the FSA employee responsible for directing and managing program and administrative operations in one or more FSA county offices.

County Farm Service Agency Committee means a committee elected by the agricultural producers in the county or area, in accordance with § 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, or designee.

Field office technical guide means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Land management practice means conservation practices that primarily require site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Liquidated damages means a sum of money stipulated in the contract which the participant agrees to pay, in addition to refunds and other charges, if the participant breaches the contract, and represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means an applicant who is a party to a CFO contract.

Secretary means the Secretary of the United States Department of Agriculture.

State conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State technical committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Technical assistance means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and quality assurance for professional conservationists; and evaluation and assessment of the program.

Unit of concern means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

§ 1468.4 Program requirements

(a) Program participation is voluntary. The participant is responsible for the development of a conservation plan for the farm or ranching unit of concern. The participant's conservation plan is a part of the CFO contract. CCC will provide annual payments to a participant to apply needed conservation practices and land use adjustments as specified in a time schedule set forth in the conservation plan.

(b) To be eligible to participate in CFO, an applicant must have a production flexibility contract in accordance with part 1412 of this chapter.

(c) Participants in the CFO must:

(1) Agree to forgo payments under the Conservation Reserve Program authorized by part 1410 of this chapter, the Wetlands Reserve Program authorized by part 1467 of chapter, and Environmental Quality Incentives Program authorized by part 1466 of this chapter, on the farm enrolled in the CFO.

(2) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(3) Have control of the land for the term of the proposed contract period.

(i) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control;

(ii) and if the applicant is a tenant of the land involved in agricultural production the applicant shall provide CCC with the written authorization by the landowner to apply the structural or vegetative practice.

(4) Submit a proposed conservation plan to CCC. When considering the acceptability of the plan, CCC will consider whether the participant will use the most cost-effective conservation practices to solve the natural resource concerns and maximize environmental benefits per dollar expended. The conservation practices must be eligible practices under CRP, WRP, or EQIP, or some other innovative conservation measure approved by the State Conservationist.

(5) Comply with the provisions at § 1412.304 of this chapter for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable;

(6) Supply information as required by CCC to determine eligibility for the program.

(7) Comply with all the provisions of the CFO contract which includes the conservation plan approved by CCC.

(d) States, political subdivisions, and agencies thereof are not eligible to participate in CFO.

(e) Land may be eligible for enrollment in CFO if such land is otherwise eligible for the program and used as:

(1) Cropland;

(2) Rangeland;

(3) Pasture;

(4) Forest land;

(5) Other land on which crops or livestock are produced; and

(6) Other agricultural land that NRCS determines poses a serious threat to soil, water, or related natural resources by reason of the soil types, terrain, climate, soil, saline characteristics, or other factors or natural hazards, such as the existing agricultural management practices of the applicant.

(f) In addition to meeting the land eligibility requirements in paragraph(e) of this section, land may be only considered for enrollment in CFO if CCC determines that the land is:

(1) Privately-owned land;

(2) Publicly-owned land where—

(i) The land is under private control for the contract period and is included in the participant's operating unit;

(ii) Installation of conservation practices will not primarily benefit the government landowner;

(iii) Conservation practices will contribute to an improvement in the identified natural resource concern; and

(iv) The participant has provided CCC with written authorization from the government landowner to apply the conservation practices; or

(3) Tribal, allotted, or Indian trust land.

§ 1468.5 CFO Pilot project areas

(a)(1) CCC may solicit proposals from the public to establish pilot project areas.

(2) CCC shall select pilot project areas based on the extent the individual proposal:

(i) Demonstrates innovative approaches to conservation program delivery and administration;

(ii) Proposes innovative conservation technologies and system;

(iii) Proposes cost effective solutions to environmental concerns;

(iv) Ensures effective evaluation of the pilot effort; and

(v) Addresses the following:

(A) Conservation of soil, water, and related resources,

(B) Water quality protection or improvement,

(C) Wetland restoration, protection, and creation, and

(D) Wildlife habitat development and protection.

(b) Pilot projects may involve one or more participants. Each individual or entity within an approved pilot project area must submit an application in order to be considered for enrollment in the CFO.

§ 1468.6 Conservation plan

(a) The conservation plan for the farm or ranch unit of concern shall:

(1) Describe any resource conserving crop rotation, and all other conservation practices, to be implemented and maintained on the acreage that is subject to contract during the contact period; and

(2) Address the resource concerns identified in the CFO Pilot Proposal through the methods, systems or practices specified in the CFO Pilot Proposal.

(3) Contain a schedule for the implementation and maintenance of the practices described in the conservation farm plan; and

(b) The conservation plan is part of the CFO contract.

(c) The conservation plan must allow the participant to achieve a cost-effective resource management system, or some appropriate portion of that system, identified in the applicable NRCS field office technical guide or as approved by the State Conservationist.

(d) Upon a participant's request, the NRCS may provide technical assistance to a participant.

(1) NRCS may utilize the services of qualified personnel of cooperating Federal, State, or local agencies, Indian tribes, or private agribusiness sector or organizations, in performing its responsibilities for technical assistance.

(2) Participants may, at their own cost, use qualified professionals to provide technical assistance. NRCS retains approval authority over the technical adequacy of work done by non-NRCS personnel for the purpose of determining CFO contract compliance.

(3) Technical and other assistance provided by qualified personnel not

affiliated with NRCS may include, but not limited to: conservation planning; conservation practice survey, layout, design, and installation; information, education, and training for producers; and training, and quality assurance for professional conservationists.

(e) Participants are responsible for implementing the conservation plan. A participant may seek additional assistance from other public or private organizations or private agribusiness sector as long as the activities funded are in compliance with this part.

(f) All conservation practices scheduled in the conservation plan are to be carried out in accordance with the applicable NRCS field office technical guide. The State Conservationist may approve use of innovative conservation measures that are not contained in the NRCS field office technical guide.

(g)(1) To simplify the conservation planning process for the participant, the conservation plan may be developed, at the request of the participant, as a single plan that incorporates, other Federal, State, tribal, or local government program or regulatory requirements; and the CCC development or approval of a conservation plan shall not constitute compliance with program, statutory and regulatory requirements administered or enforced by another agency, except as agreed to by the participant and the relevant Federal, State, local or tribal entities.

(2) CCC may accept an existing conservation plan developed and required for participation in any other CCC or USDA program if the conservation plan otherwise meets the requirements of this part. When a participant develops a single conservation plan for more than one program, the participant shall clearly identify the portions of the plan that are applicable to the CFO contract. It is the responsibility of the participant to ascertain and comply with all applicable statutory and regulatory requirements.

Subpart B—Contracts

§ 1468.20 Application for CFO Program Participation

(a) Any eligible farmer or rancher within an approved pilot project area, may submit an application for participation in the CFO to a service center or other USDA county or field office of FSA or NRCS.

(b) CCC will accept applications throughout the year. CCC will rank and select the offers of applicants periodically, as determined appropriate by CCC.

(c) CCC will develop ranking criteria to prioritize applications within a pilot project area; and will accept applications in a pilot project area based on eligibility factors of the applicant and this ranking.

(d) An applicant has the option of offering and accepting less than the maximum program payments allowed.

(e) CCC will rank all applications using criteria that will consider

(1) The degree to which the application is consistent with the pilot project proposal;

(2) The environmental benefits that will be derived by applying the conservation practices in the conservation plan which will meet the purposes of the program;

(3) An estimate of the cost of annual payments; and

(4) The environmental benefits per dollar expend;

(f) If two or more applications have an equal rank, the application that will result in the least cost to the program will be given greater consideration.

§ 1468.21 Contract requirements

(a) In order for an applicant to receive annual payments, the applicant shall enter into a contract agreeing to implement a conservation plan.

(b) A CFO contract shall:

(1) Incorporate by reference all portions of a conservation plan applicable to CFO;

(2) Be for a duration of 10 years, and may be renewed, subject to the availability of funds, for a period not to exceed 5 years upon mutual agreement of CCC and the participant;

(3) Provide that the participant will:

(i) Not conduct any practices on the farm or ranch unit of concern consistent with the goals of the contract that would attend to defeat the purposes of the contract, and reduce net environmental and societal benefits,

(ii) In accordance with the provisions of § 1468.25 of this part, refund with interest any program payments received and forfeit any future payments under the program, on the violation of a term or condition of the contract.

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, in accordance with the provisions of § 1468.24 of this part, and

(iv) Supply information as required by CCC to determine compliance with the contract and requirements of the program;

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices in accordance with the provisions of § 1468.22 of this part, and

(5) Include any other provision determined necessary or appropriate by CCC.

(c) There is a limit of one CFO contract at any one time for each farm, as identified with FSA number, determined at the time of the application for CFO assistance.

§ 1468.23 Annual payments.

(a) Annual payments, subject to the availability of funds, will be based on the value of the expected payments that would have been paid to the participant under CRP, WRP, or EQIP, as applicable.

(b) The participant must certify that a conservation practice is completed in accordance with the conservation plan to establish compliance with the contract.

§ 1468.24 Contract modifications and transfers of land.

(a) The participant and CCC may modify a contract if the participant and CCC agree to the contract modification and the conservation plan is revised in accordance with CCC requirements.

(b) The parties may agree to transfer a contract with the agreement of all parties to the contract. The transferee must be determined by CCC to be eligible and shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

§ 1468.25 Contract violations and termination.

(a)(1) If CCC determines that a participant is in violation of the terms of a contract or the provisions of this part, CCC may give the participant a reasonable time to correct the violation. If a participant continues in violation, CCC will terminate the CFO contract.

(2) Notwithstanding the provisions of (a)(1), a contract termination shall be effective immediately upon a determination by CCC, that the participant has submitted false information, filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of § 1468.35 of this part, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If CCC terminates a contract, the participant shall forfeit all rights for future payments under the contract and

shall refund all or part of the payments received, plus interest, determined in accordance with part 1403 of this chapter. The county FSA committee, in consultation with NRCS, has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If CCC terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract.

(3) When making all contract termination decisions, CCC may reduce the amount of money owed by the participant by a proportion which reflects the good-faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract if, based on CCC's determination that such termination would be in the public interest, CCC approves the termination.

Subpart C—General Administration

§ 1468.30 Appeals.

(a) An applicant or participant may obtain administrative review of an adverse decision made with respect to this part and the CFO contract in accordance with parts 2 and 614 of this title, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

(1) CCC funding allocations;

(2) Eligible conservation practices; and

(3) Other matters of general applicability.

§ 1468.31 Access to operating unit.

Any authorized CCC representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, or as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The CCC representative shall make a reasonable effort to contact the participant prior to the exercise of this right to access.

§ 1468.32 Performance based upon advice or action of representatives of CCC.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the county FSA committee, in consultation with NRCS, may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1468.33 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any participant shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States. The regulations governing offsets and withholdings found at part 1403 of this chapter shall apply to contract payments.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1468.34 Misrepresentation and scheme or device.

(a) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) An applicant or participant who is determined to have knowingly adopted any scheme or device that tends to defeat the purpose of the program, made any fraudulent representation, or misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter, received by such applicant or participant with respect to CFO contracts.

Signed in Washington, D.C. on March 26, 1998.

Pearlie S. Reed,

Vice President, Commodity Credit Corporation.

[FR Doc. 98–8505 Filed 4–1–98; 8:45 am]

BILLING CODE 3410–16–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, and 126

HUBZone Empowerment Contracting Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) is proposing to add to its regulations a new Part 126 to implement a new program entitled the ''HUBZone Empowerment Contracting Program'' (''hereinafter the HUBZone Program''). This program was created by the HUBZone Act of 1997, which is contained in Title VI of Public Law 105–135, enacted on December 2, 1997 (111 Stat. 2592). The proposed rule would set forth the program requirements for qualification as a HUBZone small business concern (HUBZone SBC), the federal contracting assistance available to qualified HUBZone SBCs, and other aspects of this program.

DATES: SBA must receive comments by no later than May 4, 1998.

ADDRESSES: You may submit your comments by first class mail to Michael McHale, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael McHale, Assistant Administrator, Office of Procurement Policy and Liaison, (202) 205–6731.

SUPPLEMENTARY INFORMATION: Title VI of the Small Business Reauthorization Act of 1997, Public Law 105–135, December 2, 1997, creates a new program called the ''HUBZone Program''. The purpose of the HUBZone program is to provide federal contracting opportunities for certain qualified small business concerns (SBCs) located in distressed communities in an effort to promote private-sector investment and employment opportunities in these communities. Fostering the growth of federal contractors in these areas and ensuring that these contractors remain viable businesses for the long-term will help to empower these areas while not adversely affecting recent efforts to streamline and improve the federal procurement process.

The legislative history contains many strong indications that Congress wanted the SBA to implement the program in a manner that builds on the President's proposed Empowerment Contracting program (launched by Executive Order, May 21, 1996) and is consistent with the Federal government's other existing community empowerment programs-most notably the Empowerment Zone program. The legislative history also

contains many indications that Congress wanted SBA to implement the HUBZone program without harming SBA's existing 8(a) program. Furthermore, by increasing the small business contracting goal in this title, Congress sent a strong signal to SBA that it also should avoid harm to other Congressionally recognized programs which benefit small business. SBA is sensitive to these indications of Congressional intent and believes that this proposal reflects a balanced approach to HUBZone implementation.

The HUBZone Act directs the Administrator of SBA to promulgate regulations to ''carry out this title and the amendments made by this title.'' (Pub.L. 105–135, Sec. 605(a)). This proposed rule would add a new part to Title 13 of the Code of Federal Regulations to include the regulations for the HUBZone program. The regulations set out the general principles and definitions applicable to the program; the departments and agencies affected by the program; the qualification requirements for HUBZone concerns; the certification procedures of the program; the verification processes which SBA will use for this program; the contractual assistance provided by the program; the applicable subcontracting percentage requirements; the protest and appeal procedures; and various applicable penalties.

The proposed rule would also provide conforming amendments necessary to integrate the HUBZone program into the SBA size regulations and regulations related to government procurement.

The HUBZone Act requires the Administrator of SBA to establish and maintain a database of qualified HUBZone SBCs. The proposed rule refers to this database as the List of those concerns that have been certified by SBA as qualified HUBZone SBCs (the List). The List will include, to the extent practicable, the name, address, and type of business of each concern; must be updated at least annually; and must be provided upon request to any Federal agency or other entity.

SBA has attempted to write the proposed regulations in plain English. To this end, SBA has written proposed section headings in question and answer format for ease of use and has tried to avoid unnecessary verbiage.

SBA encourages comments on all aspects of this proposed rule. This is a new government program with the potential to achieve significant public policy objectives. Like many new programs, it also carries the potential for abuse. SBA has developed these proposed regulations in an effort to achieve an appropriate balance; broad public comment will assist it in developing a final rule.

Section by Section Analysis

The following is a section by section analysis of each provision of SBA's regulations that would be affected by this proposed rule:

The authority citation for 13 CFR Part 121 would be revised to include Title VI of Public Law 105–135, as Part 121 would be amended to include references to the HUBZone program.

Section 121.401 would be amended to add the HUBZone program to the list of government procurement programs subject to size determinations.

Section 121.1001 would be amended by redesignating paragraph (a)(6) as (a)(7) and adding a new paragraph (a)(6) to describe who may initiate a size protest or request for formal size determination in the HUBZone program.

Section 121.1008 would be amended by adding a sentence which requires the SBA Government Contracting Area Director, or designee, to notify the AA/HUB of receipt of a size protest concerning a qualified HUBZone SBC.

The authority citation for Part 125 of this title would be revised to include Title VI of Public Law 105–135, as § 125.3 would be amended to include HUBZone SBCs in the subcontracting assistance provisions of this section.

A new part 126 would be added to Title 13 of the Code of Federal Regulations to implement the HUBZone program.

Section 126.100 would explain that the purpose of the HUBZone program is to provide federal contracting assistance for qualified SBCs located in historically underutilized business zones in an effort to increase employment opportunities and investment in those areas.

Proposed § 126.101 lists the departments and agencies affected directly by the HUBZone program.

Section 126.102 would describe the effect the HUBZone program would have on the section 8(d) subcontracting program. The HUBZone Act of 1997 amended section 8(d) of the Small Business Act, 15 USC 637(d), to include qualified HUBZone SBCs in the formal subcontracting plans required by section 8(d) of the Small Business Act and described in § 125.3 of this title.

Section 126.103 would define terms that are important to the HUBZone program. In defining some terms essential to the HUBZone program, the HUBZone Act of 1997 relied upon definitions provided by other federal agencies. This proposed rule would cross reference those definitions for use in connection with the HUBZone program.

For example, the HUBZone Act defines a ''HUBZone'' as an ''historically underutilized business zone which is in an area located within one or more qualified census tracts, qualified non-metropolitan counties, or lands within the external boundaries of an Indian reservation.'' Further, the HUBZone Act states that the term ''qualified census tracts'' has the meaning given that term in section 42(d)(5)(C)(ii)(I) of the Internal Revenue Code. This section of the Internal Revenue Code refers to the low-income housing credit program maintained by the Department of Housing and Urban Development (HUD). The Secretary of HUD designates the qualified census tracts by Notice published periodically in the **Federal Register**. These notices are titled ''Statutorily Mandated Designation of Qualified Census Tracts and Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986.'' The most recent Notice may be found at 59 FR 53518 (1994). The proposed rule includes a cross reference to section 42(d)(5)(C)(ii)(I) of the Internal Revenue Code.

The term ''qualified non-metropolitan counties'' is based on the most recent data available concerning median household income and unemployment rates. The Bureau of Census of the Department of Commerce gathers the data regarding median household income and the Bureau of Labor Statistics of the Department of Labor gathers the data regarding unemployment rates. One may find the information from the Bureau of Census at any local Federal Depository Library. To find the nearest Federal Depository Library, one may call toll-free (888) 293–6498. The information from the Bureau of Labor Statistics is available for public inspection at the US Department of Labor, Bureau of Labor Statistics, Division of Local Area Unemployment Statistics office in Washington DC (the text of the proposed rule lists the complete address). Again, the proposed rule would cross reference this information to provide guidance in determining whether or not a small business concern is located in a HUBZone.

The terms ''qualified census tract'' and ''qualified non-metropolitan counties'' are based on statistics gathered periodically by various federal agencies. The census reflects changes every 10 years, while unemployment statistics are calculated annually. Changes in either can generate changes in the areas that qualify as HUBZones—even as often as annually.

The HUBZone Act of 1997 does not define ''lands within the external boundaries of an Indian reservation.'' For purposes of the HUBZone program, SBA has adopted the definition of ''Indian reservation'' used in the Bureau of Indian Affairs' (BIA) regulations and the proposed rule includes a cross-reference to 25 CFR 151.2(f). The BIA definition of ''Indian reservation'' includes ''that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, Indian reservation means that area of land constituting the former reservation of the tribe as defined by the Secretary [of the Interior or authorized representative].'' 25 CFR 151.2(f). BIA's definition of ''tribe'' includes Alaska Native entities. See 25 CFR 81.1(w).

SBA created a website that enables individuals to input the address of their business to determine if it is located in a HUBZone. Additionally, through the SBA website, individuals may obtain lists of the qualified census tracts and qualified non-metropolitan counties on a state-by-state basis. The website also contains a ''hot link'' to a directory of BIA's Land Titles and Records Offices and their respective jurisdictions.

Proposed § 126.200 contains the HUBZone eligibility requirements. In general, as described in the regulations, the company must be a small business concern; the company must be owned and controlled by one or more persons each of whom is a citizen of the United States; the principal office of the concern must be located in a HUBZone; and at least thirty-five percent (35%) of the concern's employees must reside in a HUBZone. To be counted as residing in the HUBZone, an employee must either be registered to vote in the HUBZone or have resided in the HUBZone for a period of not less than 180 days.

Proposed § 126.201 describes who is considered to own a HUBZone SBC.

Proposed § 126.202 explains who is considered to control a HUBZone SBC.

Section 126.203 would state that a HUBZone SBC must meet SBA's size standards for its primary industry classification as defined in Part 121.

SBA believes that current size standards for the procurement assistance program is an effective size standard for HUBZone purposes. However, because the focus of the HUBZone program is creating jobs in HUBZone communities rather than development of individual businesses, SBA is considering whether a different approach for HUBZones may be more appropriate. SBA is specifically seeking comments on policies that may help to create HUBZone areas. One way SBA is considering is a minimum alternative size standard for non-8(a) HUBZone SBCs of at least 16 employees. SBCs in the 8(a) program could have fewer than 16 employees. SBA is also considering a maximum size standard for most SBCs of one-half the procurement assistance size standard for purposes of initial qualification only. (The full procurement assistance size standard would apply to HUBZone contracting opportunities.) SBA is specifically seeking comments on the potential impact of a minimum size standard of 16 employees, except for 8(a) SBCs and a maximum size standard of one-half of the SBA size standard for initial qualification purposes, except for 8(a) firms and women-owned firms. Comments should address the potential impact of such size standards on types of businesses and specific industries, particularly those with large numbers of firms with very few employees, such as business consulting, health care, and construction.

SBA believes a minimum size standard might better ensure that the HUBZone program concentrates its benefits on concerns with at least a minimum base of employees residing in HUBZones. Such a minimum base could enhance the impact that a HUBZone contract would have, both in terms of number of required resident employees and in terms of number of new employees to perform contracts. Directing HUBZone contracts to somewhat large firms may also ease the task of contract administration for contracting officers who will be dealing with HUBZone SBCs for the first time, and increase the likelihood that they will view favorably the prospect of working with such concerns.

It should also be noted that, unlike the 8(a) program, the HUBZone program is not primarily aimed at encouraging the development of individual concerns. The HUBZone program focuses on job creation and investment in HUBZone communities, and uses Federal procurement contract awards to qualified HUBZone SBCs to achieve that purpose. The exception for 8(a) firms also ties in with the fact that smaller 8(a) participants have a mechanism in place to assist them with performing contracts—the Mentor-Protégé program.

The minimum size standard of 16 employees also would help distinguish the HUBZone program from the Very Small Business (VSB) program. The VSB program sets a maximum size standard of 15 employees. Like the 8(a) program, the VSB program is primarily designed as a developmental program and uses Federal contracting opportunities to assist in the development of individual firms. Setting a minimum size standard of 16 employees for the HUBZone program could help balance the objectives of the HUBZone program, the 8(a) program, and the VSB program.

In addition to the minimum size standard under discussion, SBA also is reviewing a maximum size standard for qualified HUBZone SBCs. Under this alternative approach, at the time of application for certification, a concern could not exceed one-half the size standard corresponding to the SIC code of the concern's primary industry, unless the concern is an 8(a) participant or a small business concern owned and controlled by women.

SBA is inviting public comment on whether this reduced size standard would best fulfill the purposes of the HUBZone program. SBA wants to avoid the situation where the award of a single HUBZone contract likely would result in a qualified HUBZone SBC exceeding the size standard for its primary industry classification. (Example: Assume that a qualified HUBZone SBC has 499 employees and its primary industry has a size standard of 500 employees. Should the concern receive a HUBZone contract and add 10 new employees to perform the contract, it would no longer meet the employee size standard.) The program may better achieve its intended purposes by providing incentives for existing qualified HUBZone SBCs to remain and expand in HUBZones without losing their eligibility, and by attracting non-HUBZone SBCs into HUBZones where they will provide new employment opportunities and spur community economic development. With a maximum size standard for qualified HUBZone SBCs, they will have room to grow in HUBZone communities before they are no longer small for purposes of obtaining contract awards under the program. SBA specifically invites comments on the question of whether there should be a maximum size standard for the HUBZone program that is different from other procurement programs, and what the impact of such a size standard would be on different types of business and specific industries.

Additionally, if the commenter believes a lower initial maximum size standard for the HUBZone program is appropriate, SBA asks that the commenter address the issue of whether there should be an exception to that size standard for 8(a) participants or SBCs owned and controlled by women. SBA

is discussing exceptions for such firms. The 8(a) program is clearly a developmental program with its purpose to develop concerns owned and controlled by socially and economically disadvantaged individuals into competitively viable businesses that can survive upon graduation from the 8(a) program. SBA believes the HUBZone program could provide an additional source of government contract support while the 8(a) participant remains in the program. It is reluctant to impose any restrictions on such concerns that would conflict with other regulations governing the 8(a) program directly.

In addition, the Small Business Act contains a congressional finding that assistance to women-owned businesses (WOBs) is needed to remove discriminatory barriers to their development. Similar to the developmental objectives of the 8(a) program, SBA is seeking comment on whether allowing WOBs a maximum opportunity to qualify as HUBZone SBCs would assist in overcoming such barriers and aid in their development.

Under proposed § 126.203, if SBA cannot verify that a concern is small, SBA may deny the concern status as a qualified HUBZone SBC, or SBA may request a formal size determination from the responsible Government Contracting Area Director or designee.

Section 126.204 would provide that qualified HUBZone SBCs may have affiliates so long as the affiliates are also qualified HUBZone SBCs.

Proposed § 126.205 explains that WOBs, 8(a) participants, and small disadvantaged business concerns (SDBs) also can qualify as HUBZone SBCs if they meet the requirements set forth in this part.

Section 126.206 would state the conditions under which regular dealers can qualify as HUBZone SBCs.

Proposed § 126.207 explains that a qualified HUBZone SBC may have offices or facilities located in another HUBZone or even outside a HUBZone. However, in order to qualify as a HUBZone SBC, the concern's principal office must be located in a HUBZone.

Sections 126.300 through 126.306 would describe how a concern is certified as a qualified HUBZone SBC. This section would explain how SBA certifies a concern for the program, when the certification takes place, and whether a concern can certify itself.

Proposed § 126.304 sets forth what a concern must submit to be certified by SBA as a qualified HUBZone SBC. Proposed § 126.304(f) explains that if a concern is applying for certification based on a location ''within the external boundaries of an Indian reservation'', it must submit official documentation from the Bureau of Indian Affairs Land Titles and Records Office governing their area that confirms that the concern is located within the external boundaries of an Indian reservation. This additional requirement is necessary because, while the qualified census tracts and qualified non-metropolitan counties are contained in databases available in an electronic format, the data concerning Indian reservations is available only through the BIA Land Titles and Records Offices and is not available in an electronic format. Consequently, concerns applying for HUBZone status based on location within the external boundaries of an Indian reservation must submit the additional documentation.

Proposed § 126.307 states where SBA will maintain the List and proposed § 126.308 explains what a concern can do in the event SBA inadvertently omits it from the List.

Section 126.309 would state that if SBA declines or de-certifies a concern, it may seek certification or re-certification no sooner than one year from the date of decline or de-certification, if it believes that it has overcome all of the reasons for decline or de-certification. SBA requests comments addressing the prohibition on seeking certification sooner than one year from the date of decline or de-certification and, in particular, whether the time period is appropriate. SBA asks commenters to propose alternatives if they believe the time period is inappropriate.

Proposed §§ 126.400 through 126.405 discuss program examinations, including who will conduct program exams, what the examiners will review, and when examinations will be conducted. In addition, this section would set out the action SBA may take when it cannot verify a concern's eligibility and what action SBA will take once it has verified a concern's eligibility. Concerns would have an obligation to maintain relevant documentation for 6 years.

Sections 126.500 through 126.503 would set forth how a concern maintains its HUBZone status; a qualified HUBZone SBC's ongoing obligation to SBA and the consequences for failure to uphold that obligation; the length of time a concern may qualify as a HUBZone SBC; and when SBA may remove a concern from the List. Specifically, a concern wishing to remain on the List must self-certify annually to SBA that it remains a qualified HUBZone SBC. This self-certification must take place within 30 days after the one-year anniversary of their date of certification. SBA is particularly interested in comments specifically addressing the requirement of annual self-certification to SBA. SBA asks commenters to propose alternatives if they believe the time period is inappropriate.

This section would also explain the qualified HUBZone SBC's ongoing obligation to immediately notify SBA of any material change which could affect its eligibility. The consequences for failure to do so will be immediate de-certification, removal from the List, and possibly the imposition of penalties under § 126.900 of this part. In order to be placed upon the List again, the concern must re-apply for certification pursuant to §§ 126.300 through 126.309 of this part. Additionally, the application for certification must include a full explanation of why the concern failed to notify SBA of the material change. If SBA is not satisfied with the explanation, SBA may decline to certify the concern pursuant to § 126.306 of this part.

SBA proposes that qualified HUBZone SBCs remain eligible for HUBZone status for a period of 3 years beyond the date that the HUBZone in which the concern is located ceases to meet the definition of a HUBZone, if the concern continues to meet all other eligibility requirements. SBA specifically invites public comment on this particular issue. SBA desires to balance the need to de-certify concerns that are no longer located in a HUBZone against the need to not discourage concerns from investing in HUBZone communities and creating jobs and expanded business operations in those communities in reliance on HUBZone program benefits.

Proposed §§ 126.600 through 126.616 explain the general conditions applicable to HUBZone contracts. These sections include provisions regarding sole source contract awards; competitive contract awards; price evaluation preferences and their effect on qualified HUBZone SBCs; when SBA may appeal a non-award to a qualified HUBZone SBC; and when a HUBZone contract may be prohibited by other SBA programs or other Government programs.

Proposed § 126.609 discusses what a contracting officer may do if a contract opportunity does not exist for competition among qualified HUBZone SBCs. This section explains that, in this situation, the contracting officer may make an award under the 8(a) program on either a sole source or competitive basis, make award to a HUBZone SBC on a sole source award basis, or utilize a small business set-aside, in that order

of precedence. If the criteria are not met for any of these special contracting authorities, then the contracting officer may solicit the procurement through full and open competition. SBA believes this order of precedence will aid in providing the maximum practicable opportunity for the development of SBCs owned by members of socially and economically disadvantaged groups, as Congress intended in the Small Business Act (15 U.S.C. 632(f)(1)(e)), and yet is consistent with the new HUBZone legislation.

Proposed § 126.613 explains how a price evaluation preference affects the bid of a qualified HUBZone SBC in full and open competition. In a full and open competition, a contracting officer must deem the price offered by a qualified HUBZone SBC to be lower than the price offered by another offeror (other than another small business concern) if the price offered by the qualified HUBZone SBC is not more than 10% higher than the price offered by the otherwise lowest, responsive, and responsible offeror. An example of the application of the HUBZone price evaluation preference is included in this section of the proposed rule.

Proposed § 126.614 describes how a contracting officer must apply both HUBZone and SDB price evaluation preferences in a full and open competition. The HUBZone price evaluation preference is described in proposed § 126.613 of this part. The SDB price evaluation preference currently applies to the Department of Defense only, and is set forth in 10 U.S.C. 2323. The Department of Defense regulations implementing this preference are set out in § 252.219–7006 of the Defense Federal Acquisition Regulation Supplement.

This proposed rule requires that the contracting officer first apply the SDB price evaluation preference, then apply the HUBZone price evaluation preference. The SDB price evaluation preference should be applied first in order to establish the lowest, responsive, and responsible offeror. Once the contracting officer establishes the lowest, responsive, and responsible offeror, if the qualified HUBZone SBC's offer is not more than 10 percent higher than that offer (unless the lowest, responsive, responsible offeror is another small business concern) the contracting officer must deem the price offered by the qualified HUBZone SBC to be lower than the price offered by the otherwise lowest, responsive, and responsible offeror. The SDB price evaluation must be applied first because if the contracting officer applies the HUBZone price evaluation preference first, the SDB price evaluation preference would effectively negate the HUBZone price evaluation preference. An example of the application of both HUBZone and SDB price evaluation preferences is included in proposed § 126.614 of the regulations.

It is possible that the qualified HUBZone SBC that submits an offer on a contract will be both a qualified HUBZone SBC and an SDB. For example, a qualified HUBZone SBC (but not an SDB) submits an offer of $102; a qualified HUBZone SBC that is also an SDB submits an offer of $105; an SDB (but not a qualified HUBZone SBC) submits an offer of $107; a small business concern (but not a qualified HUBZone SBC or an SDB) submits an offer of $100; and a large business submits an offer of $93. Under this proposal, the contracting officer must go through the following steps:

1. Apply the SDB price evaluation preference to establish the lowest, responsive, and responsible offeror. Thus, the qualified HUBZone SBC's offer becomes $112.2; the qualified HUBZone SBC/SDB's offer remains $105; the SDB's offer remains $107; the small business concern's offer becomes $110; and the large business's offer becomes $102.3. As a result of the SDB price evaluation preference, the large business is the lowest, responsive, and responsible offeror.

2. Apply the HUBZone price evaluation preference and if a qualified HUBZone SBC's price is not more than 10 percent higher than the large business's price, the contracting officer must deem its price to be lower than the large business's price. In this example, the qualified HUBZone price of $112.2 is not more than 10 percent higher than the large business's price, however, the qualified HUBZone/SDB's price of $105 is also not more than 10 percent higher than the large business's price and is lower than the qualified HUBZone SBC's price.

Consequently, as specified by this proposed rule, the contracting officer must deem the price of the qualified HUBZone/SDB as the lowest, responsive, and responsible offeror.

This example illustrates the potential effect of according a small business concern a ''dual status'' as both a qualified HUBZone SBC and an SDB. SBA invites comments specifically addressing whether such an application of ''dual status'' is appropriate. Should concerns be able to benefit from both their qualified HUBZone status and their small disadvantaged status? Or, should they be required to choose one or the other when submitting an offer on a contract in full and open competition?

Proposed § 126.616 specifically discusses the circumstances in which a contracting officer may award a HUBZone contract to a joint venture. This section explains that a qualified HUBZone SBC may enter into a joint venture with one or more other qualified HUBZone SBCs for the purpose of performing a specific HUBZone contract. By allowing joint ventures between qualified HUBZone SBCs, 8(a) participants and WOBs, SBA would make it more possible for such concerns to bid on larger contracts.

Proposed § 126.616(b) explains the size standards applicable to such joint ventures. A joint venture of qualified HUBZone SBCs could submit an offer for a HUBZone procurement so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided that, for a procurement having an employee-based size standard, the procurement exceeds $10 million. On August 14, 1997, SBA proposed a similar rule for the 8(a) program. Although the final rule for the 8(a) program has yet to be published, SBA anticipates that the final rule will be the same on this issue. To achieve consistency within its programs, SBA modeled this section of the proposed rule after § 124.512 of the 8(a) program proposed rule.

Since a principal purpose of the HUBZone program is job creation and job growth, SBA would like commenters to address specifically whether HUBZone contract opportunities should be limited to certain types of contracts only. For example, should HUBZone contracts only be available for industries that are considered ''labor-intensive''? The proposed rule does not now contain such a restriction.

Additionally, SBA requests that commenters discuss whether HUBZone contract opportunities should be limited to those not now awarded to SBCs. It also invites suggestions for ways in which HUBZone implementation can better help government contracting activities meet their SDB and WOB goals.

Proposed § 126.700 discusses the subcontracting percentage requirements applicable to the HUBZone program; the limited circumstances under which the subcontracting percentage requirements may be changed; and the procedures for changing those requirements. For purposes of definitions applicable to § 126.700, as well as §§ 126.304(a)(5) and 126.602(b), SBA specifically solicits comment and, in particular, with regard to an appropriate definition for ''materials''. SBA asks commenters to discuss whether substantially completed products with only minor

modifications should be considered materials, and whether and how labor costs involved in producing such products should be considered.

Proposed § 126.800 addresses protests relating to a small business concern's HUBZone status. This section would explain who may file a protest, what the protest must contain, how and where a protest must be filed, who decides the protest, and what appeal rights are available.

Proposed § 126.900 prescribes the penalties applicable under the HUBZone program including procurement and non-procurement suspension or debarment, as well as applicable civil and criminal penalties.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule may constitute a major rule within the meaning of Executive Order 12866, and may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* SBA submits the following economic analysis prepared pursuant to Executive Order 12866 and Initial Regulatory Flexibility Analysis (IRFA) prepared pursuant to the Regulatory Flexibility Act.

In making its determination that this proposed rule may constitute a major rule and may have a significant economic impact on a substantial number of small entities, SBA used the definition of small business set forth in 13 CFR Part 121.

The HUBZone Act of 1997, Title VI of Public Law 105–135, 111 Stat. 2592 (December 2, 1997), creates the HUBZone program and directs the Administrator of SBA to promulgate regulations to implement it. The proposed rule sets forth the program requirements for qualification as a HUBZone SBC, the federal contracting assistance available to qualified HUBZone SBCs, and other aspects of this program.

The HUBZone program will benefit SBCs by increasing the number of federal government contracts awarded to them. SBA cannot predict with any accuracy the number or dollar amount of contracts that will be awarded to qualified HUBZone SBCs or determine the magnitude of the shift, if any, among small and large businesses. SBA is seeking data or comments from the public on the impact of the proposed rule on all small businesses. The program also will benefit HUBZone communities by providing much needed jobs and investment in those communities.

Prior to submitting an offer on a HUBZone contract, an interested small business must apply to SBA for certification as a qualified HUBZone SBC. The concern must submit information relating to its eligibility for the program, including supporting documentation. Once a concern is certified as a qualified HUBZone SBC, it must self-certify annually to SBA that there has been no material change in its circumstances that would affect eligibility. The information required for certification consists of general information about the business. SBA estimates that each concern will be able to complete the certification application in one hour or less.

As the HUBZone program is new and this proposed rule is designed to implement the program, there are no relevant federal rules that may duplicate, overlap or conflict with the proposed rule. Additionally, since the HUBZone Act of 1997 directs the Administrator to promulgate regulations to implement this program, without new legislation there are no alternatives to implementing this proposed rule.

The small entities who this proposed rule may affect are those who fit within the definition of a small business concern as defined by SBA in 13 CFR Part 121 and new Part 126 and who participate in government contracting. Because the program is new, SBA cannot estimate precisely the number or classes of small entities that this proposed rule will affect. However, as explained below, SBA estimates that more than 30,000 SBCs will apply for certification as qualified HUBZone SBCs.

Based on 1992 census data and making reasonable extrapolations to account for growth in recent years, SBA estimates that there are approximately 5 million businesses with employees in the United States; of this number, approximately 4.9 million—or 98 percent—are considered small. Clearly, not all of the businesses who are considered small seek to participate in federal government contracting or will seek to participate in the HUBZone program. Currently, there are approximately 170,000 SBCs registered on PRO-Net, SBA's database of SBCs actively seeking federal government contracts.

The number of entities that seek certification as qualified HUBZone SBCs will depend, first, on the number of businesses located in HUBZones. The potential number of HUBZones is significant. Based on the data available, there are approximately 61,000 census tracts in the United States; of those tracts, about 7,000—or 11 percent—are qualified census tracts for purposes of the HUBZone program. In addition, there are approximately 3,000 non-metropolitan counties in the United States; of those counties, about 900 -or 30 percent—are qualified non-metropolitan counties for purposes of the HUBZone program. (At the time of publishing this proposed rule, there was no data available on the number of Indian reservations in the United States.) Based on combining the qualified census tract and qualified non-metropolitan county data, SBA estimates that approximately 12 percent of the census tracts and non-metropolitan counties in the United States will qualify as HUBZones. For purposes of these estimates, the number of Indian reservations is not significant.

If all small businesses interested in Federal procurement were evenly distributed geographically, then approximately 12 percent of the 170,000 SBCs registered on PRO-Net—or 20,000—would be located in HUBZones. However, SBA believes that a much higher number of small business are located in qualified census tracts than in qualified non-metropolitan counties; therefore, SBA adjusts this number upward and estimates that 25,000 SBCs—or 15 percent—interested in Federal procurement will be located in HUBZones.

The incentives available through participation in the program should result in additional relocating to HUBZone areas. SBA is unable to predict the impact of this factor on the total number of qualified HUBZone SBCs, but estimates that roughly 30,000 concerns are either now HUBZone SBCs or will become HUBZone SBCs and will apply for certification.

Because the HUBZone program is new, SBA also cannot estimate precisely the economic impact the proposed rule may have on the economy. According to the Congressional Budget Office (CBO), in 1996 the federal agencies specified in the HUBZone Act contracted for more than 90 percent of all federal procurement obligations. *(143 Cong. Rec. S8976 (daily ed. September 9, 1997)).* In FY 1996, the federal government spent $197.6 billion on the procurement of goods and services. The government awarded small businesses $41.1 billion in direct contract actions—21 percent of the total $197.6 billion in contract actions.

The HUBZone Act of 1997 amends the Small Business Act to increase the Government-wide federal contracting goal for SBCs from 20 percent to 23

percent of all federal prime contracts. In addition, the HUBZone Act sets the government contracting goal for HUBZone SBCs initially at 1 percent of all federal prime contracts with a gradual increase to 3 percent by the year 2003. Thus, by 2003, assuming the participating agencies reach the 3 percent contracting goal, HUBZone SBCs may be awarded approximately $6 billion in federal contract actions (3 percent of $197.6 billion).

In addition to the procurement contract awards available to qualified HUBZone concerns, the HUBZone program will have other effects on the economy including the possibility of increased costs to the government. CBO anticipates that implementation of the HUBZone program will increase the incidence of sole source contracting. According to CBO, about 19 percent of federal procurement is awarded through sole source contracts. It is not possible to project any increase in sole source awards at this time, however, there might not be any increase in sole source awards at all. Instead, qualified HUBZone SBCs might receive sole source awards that would otherwise go to large businesses or other small businesses.

CBO also estimates that implementing the HUBZone program would significantly increase discretionary spending for the federal agencies affected by the program. According to CBO, ''[s]uch costs could total tens of millions of dollars each year, but CBO cannot estimate such costs precisely.'' *(143 Cong. Rec. S8976 (daily ed. September 9, 1997)).* CBO anticipated that these additional costs would stem from both additional administrative responsibilities for SBA and other federal agencies, as well as the likely increased use of sole source contracting. SBA is not in a position to shed much additional light on this subject. It has received an appropriation of $2 million in FY 1998 to begin implementing the program and has requested $4 million for FY 1999. No other cost information is available at the present time. Assessing whether the government will have a net cost from this program is very subjective. It is at least possible that increased competition from HUBZone SBCs will cause competing concerns to lower prices thereby reducing government procurement costs (perhaps substantially).

Under all of these circumstances, SBA has determined that this proposed rule may constitute a major rule within the meaning of E.O. 12866, and may have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule imposes new reporting or recordkeeping requirements on concerns applying to be certified as qualified HUBZone SBCs. The proposed rule requires such concerns to submit evidence that they meet the eligibility requirements set forth in the rule; once certified, in order to remain on the List a concern must self-certify annually to SBA that it remains qualified; and qualified HUBZone SBCs must notify SBA immediately of any material change in circumstances which could affect their eligibility.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that it has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalog of Federal Domestic Assistance Programs, No. 59.009)

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs-business, Individuals with disabilities, Loan programs-business, Small businesses.

13 CFR Part 125

Government contracts; Government procurement; Reporting and recordkeeping requirements; Research; Small businesses; Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small business.

Accordingly, for the reasons set forth above, SBA proposes to amend Title 13, Code of Federal Regulations (CFR), as follows:

PART 121—[AMENDED]

1. The authority citation for 13 CFR Part 121 is revised to read as follows:

Authority: Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Section 121.401 is amended by deleting the word ''and'' before ''Federal Small Disadvantaged Business Programs,'' adding a comma after ''Federal Small Disadvantaged Business Programs,'' and adding the following language at the end of the sentence ''and SBA's HUBZone program''.

3. Section 121.1001 is amended by redesignating paragraph (a)(5) as (a)(6) and by adding the following new paragraph (a)(5) to read as follows:

§ 121.1001 Who may initiate a size protest or a request for formal size determination?

(c) Size Status Protests. * * *

(5) For SBA's HUBZone program, the following entities may protest in connection with a particular HUBZone procurement:

(i) Any concern that submits an offer for a specific HUBZone set-aside contract;

(ii) Any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC;

(iii) The contracting officer; and

(iv) The Associate Administrator for Government Contracting, or designee.

* * * * *

4. Section 121.1008 is amended by revising paragraph (a) to read as follows:

§ 121.1008 What happens after SBA receives a size protest or a request for a formal size determination?

(a) When a size protest is received, the SBA Government Contracting Area Director, or designee, will promptly notify the contracting officer, the protested concern, and the protestor that a protest has been received. In the event the size protest pertains to a requirement involving SBA's HUBZone Program, the Government Contracting Area Director will advise the AA/HUB of receipt of the protest. In the event the size protest pertains to a requirement involving SBA's SBIR Program, the Government Contracting Area Director will advise the Assistant Administrator for Technology of the receipt of the protest. SBA will provide a copy of the protest to the protested concern along with a blank SBA Application for Small Business Size Determination (SBA Form 355) by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to respond to the allegations of the protestor.

* * * * *

PART 125—[AMENDED]

5. The authority section for 13 CFR Part 125 is revised to read as follows:

Authority: Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 634(b)(6), 637, and 644; 31 U.S.C. 9701, 9792.

6. Section 125.3 is amended by revising paragraphs (b) and (c) and by revising the last sentence of paragraph (d) to read as follows:

§ 125.3 Subcontracting assistance.

(a) * * *

(b) Upon determination of the successful subcontract offeror on a subcontract for which a small business, small disadvantaged business, and/or a HUBZone small business received a preference, but prior to award, the prime contractor must inform each unsuccessful offeror in writing of the name and location of the apparent successful offeror and if the successful offeror was a small business, small disadvantaged business, or HUBZone business. This applies to all subcontracts over $10,000.

(c) SBA Commercial Market Representatives (CMRs) facilitate the process of matching large prime contractors with small, small disadvantaged, and HUBZone subcontractors. CMRs identify, develop, and market small businesses to the prime contractors and assist the small firms in obtaining subcontracts.

(d) * * * Source identification means identifying those small, small disadvantaged, and HUBZone firms which can fulfill the needs assessed from the opportunity development process.

7. Add a new part 126 to read as follows:

PART 126—HUBZONE PROGRAM

Subpart A—Provisions of General Applicability

Sec.

Subpart B—Requirements to be a Qualified Hubzone SBC

Subpart C—Certification

Subpart D—Program Examinations

Subpart E—Maintaining HUBZone Status

Subpart F—Contractual Assistance

Subpart G—Subcontracting Percentage Requirements

Subpart H—Protests

Subpart I—Penalties

Authority: Pub.L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a).

Subpart A—Provisions of General Applicability

§ 126.100 What is the purpose of the HUBZone program?

The purpose of the HUBZone program is to provide federal contracting assistance for qualified SBCs located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in such areas.

§ 126.101 Which government departments or agencies are affected directly by the HUBZone program?

(a) Until September 30, 2000, the HUBZone program applies only to procurements by the following departments and agencies:

(1) Department of Agriculture;

(2) Department of Defense;

(3) Department of Energy;

(4) Department of Health and Human Services;

(5) Department of Housing and Urban Development;

(6) Department of Transportation;

(7) Department of Veterans Affairs;

(8) Environmental Protection Agency;

(9) General Services Administration; and

(10) National Aeronautics and Space Administration.

(b) After September 30, 2000, the HUBZone program will apply to all federal departments and agencies which employ one or more contracting officers as defined by 41 U.S.C. 423(f)(5).

§ 126.102 What is the effect of the HUBZone program on the section 8(d) subcontracting program?

The HUBZone Act of 1997 amended the section 8(d) subcontracting program to include qualified HUBZone SBCs in the formal subcontracting plans described in § 125.3 of this title.

§ 126.103 What definitions are important in the HUBZone program?

Administrator means the Administrator of the United States Small Business Administration (SBA).

AA/8(a)BD means SBA's Associate Administrator for 8(a) Business Development.

AA/HUB means SBA's Associate Administrator for the HUBZone Program.

ADA/GC&8(a)BD means SBA's Associate Deputy Administrator for Government Contracting and 8(a) Business Development.

Certify means the process by which SBA determines that a HUBZone SBC is qualified for the HUBZone program and entitled to be included in SBA's ''List of Qualified HUBZone SBCs.''

Citizen means a person born or naturalized in the United States. SBA does not consider holders of permanent visas and resident aliens to be citizens.

Concern means a firm which satisfies the requirements in §§ 121.105(a) and (b) of this title.

Contract opportunity means a situation in which a requirement for a procurement exists, and either:

(1) HUBZone contracts (including options) awarded by the contracting activity to HUBZone SBCs do not aggregate more than 3 percent of all contract awards by that activity that fiscal year; or

(2) The contracting activity has reached a HUBZone contracting level of 3 percent but the contracting activity also has met all other contracting goals applicable to SDBs and WOBs. See other definitions in this section for further details.

County unemployment rate is the rate of unemployment for a county based on the most recent data available from the United States Department of Labor, Bureau of Labor Statistics. The appropriate data may be found in the DOL/BLS publication titled ''Supplement 2, Unemployment in States and Local Areas.'' This publication is available for public inspection at the Department of Labor, Bureau of Labor Statistics, Division of Local Area Unemployment Statistics located at 2 Massachusetts Ave., NE, Room 4675, Washington DC 20212. A copy is also available at SBA, Office of AA/HUB, 409 3rd Street, SW, Washington DC 20416.

De-certify means the process by which SBA determines that a concern is no longer a qualified HUBZone SBC and removes that concern from its List.

Employee means a person (or persons) employed by a HUBZone SBC on a full-time (or full-time equivalent), permanent basis. Full-time equivalent includes employees who work 30 hours per week or more. Full-time equivalent also includes the aggregate of employees who work less than 30 hours a week, where the work hours of such employees add up to at least a 40 hour work week. The totality of the circumstances, including factors relevant for tax purposes, will determine whether persons are employees of a concern. Temporary employees, independent contractors or leased employees are not employees for these purposes.

Example 1: 4 employees each work 20 hours per week; SBA will regard that circumstance as 2 full-time equivalent employees.

Example 2: 1 employee works 20 hours per week and 1 employee works 15 hours per week; SBA will regard that circumstance as not a full-time equivalent.

Example 3: 1 employee works 15 hours per week, 1 employee works 10 hours per week, and 1 employee works 20 hours per week; SBA will regard that circumstance as 1 full-time equivalent employee.

Example 4: 1 employee works 30 hours per week and 2 employees each work 15 hours per week; SBA will regard that circumstance as 1 full-time equivalent employee.

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified non-metropolitan counties, or lands within the external boundaries of an Indian reservation. See other definitions in this section for further details.

HUBZone small business concern (HUBZone SBC) means a concern that is small as defined by § 126.203, is exclusively owned and controlled by persons who are United States citizens, and has its principal office located in a HUBZone.

Indian reservation has the meaning used by the Bureau of Indian Affairs in 25 CFR 151.2(f). This definition refers generally to land over which a ''tribe'' has jurisdiction, and ''tribe'' includes Alaska Native entities under 25 CFR 81.1(w).

Interested party means any concern that submits an offer for a specific HUBZone sole source or set-aside contract, any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC, the contracting activity's contracting officer, or SBA.

List refers to the database of qualified HUBZone SBCs that SBA has certified.

Median household income has the meaning used by the Bureau of the Census, United States Department of Commerce, in its publication titled, ''1990 Census of Population, Social and Economic Characteristics,'' Report Number CP–2, pages B–14 and B–17. This publication is available for inspection at any local Federal Depository Library. For the location of a Federal Depository library, call toll-free (888) 293–6498 or contact the Bureau of the Census, Income Statistics Branch, Housing and Economic Statistics Division, Washington DC 20233–8500.

Metropolitan statistical area means an area as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986. (title 26, United States Code).

Non-metropolitan has the meaning used by the Bureau of the Census, United States Department of Commerce, in its publication titled, ''1990 Census of Population, Social and Economic Characteristics,'' Report Number CP–2, page A–9. This publication is available for inspection at any local Federal Depository Library. For the location of a Federal Depository Library, call toll-free (888) 293–6498 or contact the Bureau of the Census, Population Distribution Branch, Population Division, Washington DC 20233–8800.

Person means a natural person. Pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1626(e), Alaska Native Corporations and any

direct or indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation are deemed to be owned and controlled by Natives, and are thus persons.

Principal office means the location where the greatest number of the concern's employees at any one location perform their work.

Qualified census tract has the meaning given that term in section 42(d)(5)(C)(ii)(I) of the Internal Revenue Code (title 26, United States Code).

Qualified HUBZone SBC means a HUBZone SBC that SBA certifies as qualified for federal contracting assistance under the HUBZone program.

Qualified non-metropolitan county means any county that:

(1) Based on the most recent data available from the Bureau of the Census of the Department of Commerce—

(i) Is not located in a metropolitan statistical area; and

(ii) In which the median household income is less than 80 percent of the non-metropolitan State median household income; or

(2) Based on the most recent data available from the Secretary of Labor, has an unemployment rate that is not less than 140 percent of the statewide average unemployment rate for the State in which the county is located.

Reside means to live in a primary residence at a place for at least 180 days, or as a currently registered voter, and with intent to live there indefinitely.

Small disadvantaged business (SDB) means a concern that is small pursuant to part 121 of this title, and is owned and controlled by socially and economically disadvantaged individuals, tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations.

Statewide average unemployment rate is the rate based on the most recent data available from the Bureau of Labor Statistics, United States Department of Labor, Division of Local Area Unemployment Statistics, 2 Massachusetts Ave., NE, Room 4675, Washington, DC 20212. A copy is also available at SBA, Office of AA/HUB, 409 3rd Street, SW, Washington DC 20416.

Women-owned business (WOB) means a concern that is small pursuant to part 121 of this title, and is at least 51 percent owned and controlled by women.

Subpart B—Requirements to be a Qualified HUBZone SBC

§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

(a) The concern must be a HUBZone SBC as defined in § 126.103; and

(b) At least 35 percent of the concern's employees must reside in a HUBZone. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction round up to the nearest whole number.

Example 1: A concern has 25 employees, 35 percent or 8.75 employees must reside in a HUBZone. Thus, 9 employees must reside in a HUBZone.

Example 2: A concern has 95 employees, 35 percent or 33.25 employees must reside in a HUBZone. Thus, 34 employees must reside in a HUBZone.

§ 126.201 For this purpose, who does SBA consider to own a HUBZone SBC?

An owner of a HUBZone SBC is a person who owns any legal or equitable interest in such HUBZone SBC. More specifically:

(a) *Corporations.* SBA will consider any person who owns stock, whether voting or non-voting, to be an owner. SBA will consider options to purchase stock to have been exercised. SBA will consider the right to convert debentures into voting stock to have been exercised.

(b) *Partnerships.* SBA will consider a partner, whether general or limited, to be an owner if that partner owns an equitable interest in the partnership.

(c) *Sole proprietorships.* The proprietor is the owner.

(d) *Limited liability companies.* SBA will consider each member to be an owner of a limited liability company.

Example 1: All stock of a corporation is owned by U.S. citizens. The president of the corporation, a non-U.S. citizen, owns no stock in the corporation, but owns options to purchase stock in the corporation. SBA will consider the option exercised, and the corporation is not eligible to be a qualified HUBZone SBC.

Example 2: A partnership is owned 99.9 percent by persons who are U.S. citizens, and 0.1 percent by someone who is not. The partnership is not eligible because it is not 100 percent owned by U.S. citizens.

§ 126.202 Who does SBA consider to control a HUBZone SBC?

Control means both the day-to-day management and long-term decisionmaking authority for the HUBZone SBC. Many persons share control of a concern, including each of those occupying the following positions: officer, director, general partner, managing partner, and manager. In addition, key employees who possess critical licenses, expertise or responsibilities related to the concern's primary economic activity may share significant control of the concern. SBA will consider the control potential of such key employees on a case by case basis.

§ 126.203 What size standards apply to HUBZone SBCs?

(a) *At time of application for certification.* A HUBZone SBC must meet SBA's size standards for its primary industry classification as defined in § 121.201 of this title. If SBA is unable to verify that a concern is small, SBA may deny the concern status as a qualified HUBZone SBC, or SBA may request a formal size determination from the responsible Government Contracting Area Director or designee.

(b) *At time of contract offer.* A HUBZone SBC must be small within the size standard corresponding to the SIC code assigned to the contract.

§ 126.204 May a qualified HUBZone SBC have affiliates?

Yes. A qualified HUBZone SBC may have affiliates so long as the affiliates also are qualified HUBZone SBCs, 8(a) participants, or WOBs.

§ 126.205 May WOBs, 8(a) participants or SDBs be qualified HUBZone SBCs?

Yes. WOBs, 8(a) participants, and SDBs can qualify as HUBZone SBCs if they meet the additional requirements in this part.

§ 126.206 May regular dealers be qualified HUBZone SBCs?

Yes. Regular dealers (also known as non-manufacturers) may certified as qualified HUBZone SBCs if they meet all the requirements set forth in § 126.200 and they can demonstrate that there are manufacturers located in a HUBZone who can provide the product required in the contract. The manufacturer must be located in a HUBZone and must meet the employee residence requirement set forth in § 126.200(b). Additional requirements that regular dealers must meet to bid on a contract are set out in § 126.601(d).

§ 126.207 May a qualified HUBZone SBC have offices or facilities in another HUBZone or outside a HUBZone?

Yes. A qualified HUBZone SBC may have offices or facilities in another HUBZone or even outside a HUBZone and still be a qualified HUBZone SBC. However, in order to qualify, the concern's principal office must be located in a HUBZone.

Subpart C—Certification

§ 126.300 How may a concern be certified as a qualified HUBZone SBC?

A concern must apply to SBA for certification. The application must include a representation that it meets the eligibility requirements described in § 126.200 and must submit relevant supporting information. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its sole discretion, may rely solely upon the information submitted to establish eligibility, or may request additional information, or may verify the information before making a determination. If SBA determines that the concern is a qualified HUBZone SBC, it will issue a certification to that effect and add the concern to the List.

§ 126.301 Is there any other way for a concern to obtain certification?

No. SBA certification is the only way to qualify for HUBZone program status.

§ 126.302 When may a concern apply for certification?

A concern may apply to SBA and submit the required information whenever it can represent that it meets the eligibility requirements, subject to § 126.309. All representations and supporting information contained in the application must be complete and accurate as of the date of submission. The application must be signed by an officer of the concern who is authorized to represent the concern.

§ 126.303 Where must a concern file its certification?

The concern must file its certification with the AA/HUB, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

§ 126.304 What must a concern submit to SBA?

(a) To be certified by SBA as a qualified HUBZone SBC, a concern must represent to SBA that under the definitions set forth in § 126.103:

(1) It is a small business concern that is both owned only by United States citizens and controlled only by United States citizens;

(2) Its principal office is located in a HUBZone;

(3) Not less than 35 percent of its employees reside in a HUBZone;

(4) It will use good faith efforts to ensure that a minimum percentage of 35 percent of its employees continue to reside in a HUBZone so long as SBA certifies it as qualified and during the performance of any contract awarded to it on the basis of its status as a qualified HUBZone SBC; and

(5) It will ensure that, where it enters into subcontracts to aid in performance of any prime contracts awarded to it because of its status as a qualified HUBZone SBC, it will incur not less than a certain minimum percentage of certain contract costs for itself or subcontractor qualified HUBZone SBCs, as follows:

(i) If a service contract, 50 percent of the cost of the contract performance incurred for personnel on the concern's employees or on the employees of other qualified HUBZone SBCs;

(ii) If a contract for supplies not from a regular dealer in such supplies, 50 percent of the manufacturing cost (excluding the cost of materials) on performing the contract in a HUBZone;

(iii) If a contract for general construction, 15 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs; and

(iv) If a contract for special trade construction, 25 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs.

(b) If the concern is applying for HUBZone status based on a location within the external boundaries of an Indian reservation, the concern must submit with its application for certification official documentation from the appropriate Bureau of Indian Affairs (BIA) Land Titles and Records Office with jurisdiction over the concern's area, confirming that it is located within the external boundaries of an Indian reservation. BIA lists the Land Titles and Records Offices and their jurisdiction in 25 CFR 150.4 and 150.5.

(c) In addition to these representations, the concern must submit the forms, attachments, and any additional information required by SBA.

§ 126.305 What format must the certification to SBA take?

A concern must submit the required information in either a written or electronic application form provided by SBA. An electronic application must be sufficiently authenticated for enforcement purposes.

§ 126.306 How will SBA process the certification?

(a) The AA/HUB is authorized to approve or decline certifications. SBA will receive and review all certifications, but SBA will not process incomplete packages. SBA will make its determination within 30 calendar days after receipt of a complete package whenever practicable. The decision of the AA/HUB is the final agency decision.

(b) SBA will base its certification on facts existing on the date of submission. SBA, in its sole discretion, may request additional information or clarification of information contained in the submission at any time.

(c) If SBA approves the application, SBA will send a written notice to the concern and automatically enter it on the List described in § 126.307.

(d) A decision to deny eligibility must be in writing and state the specific reasons for denial.

§ 126.307 Where will SBA maintain the List of qualified HUBZone SBCs?

SBA maintains the List at its Internet website at http://www.sba.gov/HUB. Requesters also may obtain a copy of the List by writing to the AA/HUB at U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416 or via e-mail at aahub@sba.gov.

§ 126.308 What happens if SBA inadvertently omits a qualified HUBZone SBC from the List?

A HUBZone SBC that has received SBA's notice of certification, but is not on the List within 10 business days thereafter should immediately notify the AA/HUB in writing at U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416 or via e-mail at aahub@sba.gov. The concern must appear on the List to be eligible for HUBZone contracts.

§ 126.309 How may a declined or de-certified concern seek certification at a later date?

A concern that SBA has declined or de-certified may seek certification no sooner than one year from the date of decline or de-certification if it believes that it has overcome all reasons for decline through changed circumstances, and is otherwise eligible.

Subpart D—Program Examinations

§ 126.400 Who will conduct program examinations?

SBA field staff or others designated by the AA/HUB will conduct program examinations.

§ 126.401 What will SBA examine?

(a) *Eligibility*. Examiners will verify that the qualified HUBZone SBC met the requirements set forth in § 126.200 at the time of its application for certification and at the time of examination.

(b) *Scope of review*. Examiners may review any information related to the

HUBZone SBC qualifying requirements, including documentation related to the location and ownership of the concern and the employee percentage requirements. The qualified HUBZone SBC must document each employee's residence address through employment records. The examiner also may review property tax, public utility or postal records, and other relevant documents. The concern must retain documentation demonstrating satisfaction of the employee residence and other qualifying requirements for 6 years from date of submission to SBA.

§ 126.402 When may SBA conduct program examinations?

SBA may conduct a program examination at the time the concern certifies to SBA that it meets the requirements of the program or at any other time while the concern is on the List or subsequent to receipt of HUBZone contract benefits. For example, SBA may conduct a program examination to verify eligibility upon notification of a material change under § 126.501. Additionally, SBA, in its sole discretion, may perform random program examinations to determine continuing compliance with program requirements, or it may conduct a program examination in response to credible information calling into question the HUBZone status of a small business concern. For protests to the HUBZone status of a small business concern in regard to a particular procurement, see § 126.800.

§ 126.403 May SBA require additional information from a HUBZone SBC?

Yes. At the discretion of the AA/HUB, SBA has the right to require that a HUBZone SBC submit additional information as part of the certification process, or at any time thereafter. If SBA finds a HUBZone SBC is not qualified, SBA will de-certify the concern and delete its name from the List. SBA may choose to pursue penalties against any concern that has made material misrepresentations in its submissions to SBA in accordance with § 126.900.

§ 126.404 What happens if SBA is unable to verify a qualified HUBZone SBC's eligibility?

(a) Authorized SBA headquarters personnel will first notify the concern in writing of the reasons why it is no longer eligible.

(b) The concern will have 10 business days to respond to the notification.

(c) The AA/HUB will consider the reasons for proposed de-certification and the concern's response before making a decision whether to de-certify.

§ 126.405 What happens if SBA verifies eligibility?

If SBA verifies that the concern is eligible, it will amend the date of certification on the List to reflect the date of verification.

Subpart E—Maintaining HUBZone Status

§ 126.500 How does a qualified HUBZone SBC maintain HUBZone status?

(a) Any qualified HUBZone SBC wishing to remain on the List must self-certify annually to SBA that it remains a qualified HUBZone SBC. There is no limit to the length of time a concern may remain on the List so long as it continues to satisfy SBA that it meets all eligibility requirements set forth in § 126.200.

(b) Concerns wishing to remain in the program without any interruption must self-certify their continued eligibility to SBA within 30 calendar days after the one-year anniversary of their date of certification. Failure to do so will result in SBA de-certifying the concern. The concern then would have to submit a new application for certification under §§ 126.300 through 126.306.

(c) The self-certification to SBA must be in writing and must represent that the circumstances relative to eligibility which existed on the date of certification showing on the List have not materially changed.

§ 126.501 What are a qualified HUBZone SBC's ongoing obligations to SBA?

The concern must immediately notify SBA of any material change which could affect its eligibility. The notification must be in writing, and must be sent or delivered to the AA/HUB to comply with this requirement. Failure of a qualified HUBZone SBC to notify SBA of such a material change will result in immediate de-certification and removal from the List, and SBA may seek the imposition of penalties under § 126.900. If the concern later becomes eligible for the program, the concern must apply for certification pursuant to §§ 126.300 through 126.309 and must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern pursuant to § 126.306.

§ 126.502 Is there a limit to the length of time a qualified HUBZone SBC may be on the List?

(a)There is no limit to the length of time a qualified HUBZone SBC may remain on the List so long as it continues to follow the provisions of §§ 126.500, 126.501, and 126.503, and so long as the HUBZone in which it is located remains a HUBZone.

(b) In the event a HUBZone ceases to meet the definition of a HUBZone, qualified HUBZone SBCs may remain on the List for a period of 3 years from the date of the change in the status of the HUBZone, if they continue to meet all the eligibility requirements set forth in this part.

§ 126.503 When is a concern removed from the List?

If SBA determines at any time that a HUBZone SBC is not qualified, SBA may de-certify the HUBZone SBC, remove the concern from the List, and seek imposition of penalties pursuant to § 126.900. An adverse finding in the resolution of a protest also may result in de-certification and removal from the List, and the imposition of penalties pursuant to § 126.900. Failure to notify SBA of a material change which could affect a concern's eligibility will result in immediate de-certification, removal from the List, and SBA may seek the imposition of penalties under § 126.900.

Subpart F—Contractual Assistance

§ 126.600 What are HUBZone contracts?

HUBZone contracts are contracts awarded to a qualified HUBZone SBC through any of the following procurement methods:

(a) Sole source awards to qualified HUBZone SBCs;

(b) Set-aside awards based on competition restricted to qualified HUBZone SBCs; or

(c) Awards to qualified HUBZone SBCs through full and open competition after a price evaluation preference in favor of qualified HUBZone SBCs.

§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?

(a) In order to submit an offer on a specific HUBZone contract, a concern must be small under the size standard corresponding to the SIC code assigned to the contract.

(b) At the time a qualified HUBZone SBC submits its offer on a specific contract, it must certify to the contracting officer that:

(1) It is a qualified HUBZone SBC which appears on SBA's List;

(2) there has been no material change in its circumstances since the date of certification shown on the List which could affect its HUBZone eligibility; and

(3) It is small under the SIC code assigned to the procurement.

(c) If bidding as a joint venture, each qualified HUBZone SBC must make the

certifications in paragraphs (b)(1), (2), and (3) separately under its own name.

(d) A qualified HUBZone SBC which is a regular dealer may submit an offer on a contract for supplies if it meets the requirements under the non-manufacturer rule as defined in § 121.406(b) of this title and if the small manufacturer is located in a HUBZone and meets the employee residence requirement of § 126.200(b). The Administrator or designee may waive the requirement set forth in § 121.406(b)(1)(iii) of this title, but the manufacturer must be located in a HUBZone and must meet the employee residence requirement of § 126.200(b). The procedures for waivers of the non-manufacturer rule are set out in §§ 121.1201 through 121.1205 of this title.

§ 126.602 What additional requirements apply during contract performance?

(a) The qualified HUBZone SBC must attempt to maintain the required percentage of employees who reside in a HUBZone during the performance of any contract awarded to the concern on the basis of HUBZone status. ''Attempt to maintain'' means making substantive and documented efforts to maintain that percentage such as written offers of employment, published advertisements seeking employees, and attendance at job fairs. HUBZone contracts are described more fully in § 126.600.

(b) During the performance of a contract for procurement of supplies (other than a procurement from a regular dealer in such supplies), the qualified HUBZone SBC must spend at least 50 percent of the manufacturing cost (excluding the cost of materials) on performing the contract in a HUBZone. See § 126.700(a)(4).

(c) Enforcement of paragraphs (a) and (b) of this section will be the responsibility of the contracting officer and violation of either requirement may be grounds for termination of the contract at the election of the contracting officer.

§ 126.603 Does HUBZone certification guarantee receipt of HUBZone contracts?

No. Qualified HUBZone SBCs should market their capabilities to appropriate procuring agencies in order to increase their prospects of having a requirement set aside for HUBZone contract award.

§ 126.604 Who decides if a HUBZone contract opportunity exists?

The contracting officer for the contracting activity makes this decision.

§ 126.605 What requirements are not available for HUBZone contracts?

A contracting activity may not make a requirement available for a HUBZone contract if:

(a) The contracting activity otherwise would fulfill that requirement through award to Federal Prison Industries, Inc. under 18 U.S.C. 4124 or 4125, or to Javits-Wagner-O'Day Act participating non-profit agencies for the blind and severely disabled, under 41 U.S.C. 46 *et seq.*, as amended; or

(b) An 8(a) participant currently is performing that requirement or SBA has accepted that requirement for performance under the authority of the section 8(a) program, unless SBA has consented to release of the requirement from the 8(a) program; or

(c) That requirement has an estimated value of between $2,500 and $100,000 and otherwise would be procured under simplified acquisition procedures; or

(d) The requirement does not meet the definition of contract opportunity in § 126.103. This provision does not apply to awards made to a qualified HUBZone SBC as a result of a price evaluation preference in a full and open competition.

§ 126.606 May a contracting officer request that SBA release an 8(a) requirement for award as a HUBZone contract?

Yes. However, SBA will grant its consent only where neither the incumbent nor any other 8(a) participant(s) can perform the requirement, and where the 8(a) program will not be adversely affected. The SBA official authorized to grant such consent is the AA/8(a)BD.

§ 126.607 When must a contracting officer set aside a requirement for competition among qualified HUBZone SBCs?

(a) The contracting officer first must review a requirement to determine whether it is excluded from HUBZone contracting or is not a ''contract opportunity,'' pursuant to § 126.605. If the requirement is not excluded and is not a contract opportunity, then the contracting officer must set aside the requirement for competition restricted to qualified HUBZone SBCs if the contracting officer:

(1) Has a reasonable expectation that at least 2 qualified HUBZone SBCs will submit offers; and

(2) Determines that award can be made at a fair market price.

(b) The contracting officer must review SBA's List of qualified HUBZone SBCs to determine whether there are 2 or more qualified HUBZone SBCs available to perform the requirement.

§ 126.608 What may the contracting officer do if an award cannot be made based on a set-aside for competition among qualified HUBZone SBCs?

If the contracting officer sets the requirement aside for competition restricted to qualified HUBZone SBCs, and

(a) If the contracting officer only receives one acceptable offer from a responsible qualified HUBZone SBC, the contracting officer may make an award to that concern on a sole source basis; or

(b) If the contracting officer receives no acceptable offers from responsible qualified HUBZone SBCs, the contracting officer may withdraw the set-aside and re-solicit the requirement, if still valid, as an 8(a) contract or a small business set-aside. If procurement through the 8(a) program or through a small business set-aside is not possible, the contracting officer may re-solicit the procurement through full and open competition.

§ 126.609 What may the contracting officer do if a contracting opportunity does not exist for competition among qualified HUBZone SBCs?

The contracting officer may make an award under the 8(a) program on either a sole source or competitive basis, make award to a qualified HUBZone SBC on a sole source award basis, or utilize a small business set-aside, in that order of precedence. If the criteria are not met for any of these special contracting authorities, then the contracting officer may solicit the procurement through full and open competition.

§ 126.610 May SBA appeal a contracting officer's decision not to reserve a procurement for award as a HUBZone contract?

The Administrator may appeal a contracting officer's decision not to make a particular requirement available for award as a HUBZone sole source or a HUBZone set-aside contract.

§ 126.611 What is the process for such an appeal?

(a) *Notice of appeal.* SBA must notify the contracting officer within 5 business days of SBA's receipt of the contracting officer's decision if the Administrator intends to appeal the decision. The contracting officer must notify SBA's procurement center representative or the AA/HUB as soon as practicable after a decision to not make an award to a qualified HUBZone SBC on either a HUBZone sole source or set-aside basis provided the decision was for reasons other than the applicability of § 126.605.

(b) *Suspension of action.* Upon receipt of notice of SBA's intent to appeal, the

contracting officer must suspend further action regarding the procurement until the head of the contracting activity issues a written decision on the appeal, unless the head of the contracting activity makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract.

(c) *Deadline for appeal.* Within 15 business days of SBA's notification to the contracting officer, SBA must file its formal appeal with the head of the contracting activity or that agency may consider the appeal withdrawn.

(d) *Decision.* The contracting activity must specify in writing the reasons for a denial of an appeal brought under this section.

§ 126.612 When may a contracting officer award sole source contracts to a qualified HUBZone SBC?

A contracting officer may award a sole source contract to a qualified HUBZone SBC only if the contracting officer determines that

(a) None of the provisions of § 126.605 apply;

(b) The anticipated award price of the contract, including options, will not exceed:

(1) $5,000,000 for a requirement within the SIC codes for manufacturing; or

(2) $3,000,000 for a requirement within all other SIC codes;

(c) Two or more qualified HUBZone SBCs are not likely to submit offers;

(d) A qualified HUBZone SBC is a responsible contractor able to perform the contract; and

(e) Contract award can be made at a fair and reasonable price.

§ 126.613 How does a price evaluation preference affect the bid of a qualified HUBZone SBC in full and open competition?

Where a contracting officer will award a contract on the basis of full and open competition, the contracting officer must deem the price offered by a qualified HUBZone SBC to be lower than the price offered by another offeror (other than another small business concern) if the price offered by the qualified HUBZone SBC is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

Example: In a full and open competition, a qualified HUBZone SBC submits an offer of $102; another small business concern submits an offer of $100; and a large business submits an offer of $93. The lowest, responsive, responsible offeror would be the large business. However, the contracting officer must consider whether to apply the HUBZone price evaluation preference. If the qualified HUBZone SBC's offer is not more than 10 percent higher than the large business's offer, the contracting officer must deem the qualified HUBZone SBC's price as lower than the price of the large business. In this example, the qualified HUBZone SBC's price is not more than 10 percent higher than the large business's price and, consequently, the qualified HUBZone SBC displaces the large business as the lowest, responsive, and responsible offeror.

§ 126.614 How must a contracting officer apply HUBZone and SDB price evaluation preferences in a full and open competition?

A contracting officer may receive offers from both qualified HUBZone SBCs and SDB concerns, or from concerns that qualify as both, during a full and open competition. First, the contracting officer must apply the SDB price evaluation preference described in 10 U.S.C. 2323 to all appropriate offerors. Second, the contracting officer must apply the HUBZone price evaluation preference as described in § 126.613 to all appropriate offerors. A contracting officer must apply both price preferences to concerns that qualify as both qualified HUBZone SBCs and SDB concerns.

Example: In a full and open competition, a qualified HUBZone SBC (but not an SDB) submits an offer of $102; an SDB (but not a qualified HUBZone SBC) submits an offer of $107; and a large business submits an offer of $93. The contracting officer first applies the SDB price evaluation preference and adds 10 percent to the qualified HUBZone SBC's offer thereby making that offer $112.2, and to the large business's offer thereby making that offer $102.3. As a result, the large business is the lowest, responsive, and responsible offeror. Now the contracting officer applies the HUBZone preference and, since the qualified HUBZone SBC's offer is not more than 10 percent higher than the large business's offer, the contracting officer must deem the price offered by the qualified HUBZone SBC to be lower than the price offered by the large business.

§ 126.615 May a large business participate on a HUBZone contract?

A large business may not participate as a prime contractor on a HUBZone award but may participate as a subcontractor to an otherwise qualified HUBZone SBC, subject to the subcontracting limitations set forth in § 126.700.

§ 126.616 What requirements must a joint venture satisfy to bid on a HUBZone contract?

A joint venture may bid on a HUBZone contract if the joint venture meets all of the following requirements:

(a) *HUBZone joint venture.* A qualified HUBZone SBC may enter into a joint venture with one or more other qualified HUBZone SBCs, 8(a) participants, or WOBs for the purpose of performing a specific HUBZone contract.

(b) For a procurement having an employee-based size standard, the procurement exceeds $10 million.

(c) *Performance of work.* The aggregate of the qualified HUBZone SBCs to the joint venture, not each concern separately, must perform the applicable percentage of work required by § 126.700.

Subpart G—Subcontracting Percentage Requirements

§ 126.700 What are the subcontracting percentage requirements under this program?

(a) *Subcontracting percentage requirements.* A qualified HUBZone SBC can subcontract part of a HUBZone contract, provided:

(1) In the case of a contract for services (except construction), the qualified HUBZone SBC spends at least 50 percent of the cost of the contract performance incurred for personnel on the concern's employees or on the employees of other qualified HUBZone SBCs;

(2) In the case of a contract for general construction, the qualified HUBZone SBC spends at least 15 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs;

(3) In the case of a contract for construction by special trade contractors, the qualified HUBZone SBC spends at least 25 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs; or

(4) In the case of a contract for procurement of supplies (other than a procurement from a regular dealer in such supplies), the qualified HUBZone SBC spends at least 50 percent of the manufacturing cost (excluding the cost of materials) on performing the contract in a HUBZone. One or more qualified HUBZone SBCs may combine to meet this subcontracting percentage requirement.

(b) *Definitions.* Many definitions applicable to this section can be found in § 125.6 of this title.

§ 126.701 Can these subcontracting percentage requirements change?

Yes. The Administrator may change the subcontracting percentage requirements if the Administrator determines that such action is necessary to reflect conventional industry practices.

§ 126.702 How can the subcontracting percentage requirements be changed?

Representatives of a national trade or industry group (as defined by two-digit Major Group industry codes) may request a change in subcontracting percentage requirements for that industry. Changes in subcontracting percentage requirements may be requested only for categories defined by two-digit Major Group industry codes in the Standard Industry Classification (SIC) Code system. SBA will not consider requests from anyone other than a representative of a national trade or industry group or requests for changes for four-digit SIC Code categories.

§ 126.703 What are the procedures for requesting changes in subcontracting percentages?

(a) *Format of request.* There is no prescribed format, but the requester should try to demonstrate to the Administrator that a change in percentage is necessary to reflect conventional industry practices, and should support its request with information including, but not limited to:

(1) Information relative to the economic conditions and structure of the entire national industry;

(2) Market data, technical changes in the industry and industry trends;

(3) Specific reasons and justifications for the change in the subcontracting percentage;

(4) The effect such a change would have on the Federal procurement process; and

(5) Information demonstrating how the proposed change would promote the purposes of the HUBZone Program.

(b) *Notice to public.* Upon an adequate preliminary showing to SBA, SBA will publish in the **Federal Register** a notice of its receipt of a request that it consider a change in the subcontracting percentage requirements for a particular industry for HUBZone contracts. The notice will identify the group making the request, and give the public an opportunity to submit to the Administrator information and arguments in both support and opposition.

(c) *Comments.* Once SBA has published a notice in the **Federal Register**, it will afford a period of not less than 60 days for public comment.

(d) *Decision.* SBA will render its decision after the close of the comment period. If it decides against a change, it will publish notice of its decision in the **Federal Register**. Concurrent with the notice, SBA will advise the requester of its decision in writing. If it decides in favor of a change, SBA will propose an appropriate change to this part in accordance with proper rulemaking procedures.

Subpart H—Protests

§ 126.800 Who may protest the status of a qualified HUBZone SBC?

(a) *For sole source procurements.* SBA or the contracting officer may protest the apparent successful offeror's qualified HUBZone SBC status.

(b) *For all other procurements.* Any interested party may protest the apparent successful offeror's qualified HUBZone SBC status.

§ 126.801 How does one submit a HUBZone status protest?

(a) *General.* The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a qualified HUBZone SBC is a ''small'' business for purposes of any Federal program are subject to part 121 of this title. If a protest includes both the size of the HUBZone SBC and whether the concern meets the HUBZone qualifying requirements set forth in § 126.200, SBA will process each protest concurrently, under the procedures set forth in part 121 of this title and this part.

(b) *Format.* Protests must be in writing and state all specific grounds for the protest. A protest merely asserting that the protested concern is not a qualified HUBZone SBC, without setting forth specific facts or allegations, is insufficient.

(c) *Filing.* (1) An unsuccessful offeror must submit its written protest to the contracting officer.

(2) A contracting officer and SBA must submit their protest to the AA/HUB.

(3) Protestors may deliver their protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period).

(d) *Timeliness.* (1) An interested party must submit its protest by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror (in negotiated acquisitions).

(2) Any protest received after the time limits is untimely.

(3) Any protest received prior to bid opening or notification of intended award, whichever applies, is premature.

(e) *Referral to SBA.* The contracting officer must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The contracting officer must send protests to AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

§ 126.802 Who decides a HUBZone status protest?

The AA/HUB or designee will determine whether the concern has qualified HUBZone status.

§ 126.803 How will SBA process a HUBZone status protest?

(a) *Notice of receipt of protest.* (1) SBA immediately will notify the contracting officer and the protestor of the date SBA receives a protest and whether SBA will process the protest or dismiss it in accordance with § 126.804.

(2) If SBA determines the protest is timely and sufficiently specific, SBA will notify the protested HUBZone SBC of the protest and the identity of the protestor. The protested HUBZone SBC may submit information responsive to the protest within 5 business days.

(b) *Time period for determination.* (1) SBA will determine the HUBZone status of the protested HUBZone SBC within 15 business days after receipt of a protest.

(2) If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract, unless the contracting officer has granted SBA an extension.

(3) The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(c) *Notice of determination.* SBA will notify the contracting officer, the protestor, and the protested concern of its determination.

(d) *Effect of determination.* The determination is effective immediately and is final unless overturned on appeal by the ADA/GC&8(a)BD, pursuant to § 126.805. If SBA upholds the protest, SBA will de-certify the concern as a qualified HUBZone SBC. If SBA denies the protest, after considering the merits of the protest, SBA will amend the date of certification on the List to reflect the date of protest decision.

§ 126.804 Will SBA decide all HUBZone status protests?

SBA will decide all protests not dismissed as premature, untimely or non-specific.

§ 126.805 What are the procedures for appeals of HUBZone status determinations?

(a) *Who may appeal.* The protested HUBZone SBC, the protestor, or the

contracting officer may file appeals of protest determinations with SBA's ADA/GC&8(a)BD.

(b) *Timeliness of appeal.* SBA's ADA/GC&8(a)BD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the 5-day period.

(c) *Method of submission.* The party appealing the decision may deliver its appeal in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period).

(d) *Notice of appeal.* The party bringing an appeal must provide notice of the appeal to the contracting activity contracting officer and either the protested HUBZone SBC or original protestor, as appropriate.

(e) *Grounds for appeal.* (1) SBA will re-examine a protest determination only if there was a clear and significant error in the processing of the protest or if the AA/HUB failed completely to consider a significant fact contained within the information supplied by the protestor or the protested HUBZone SBC.

(2) SBA will not consider additional information or changed circumstances that were not disclosed at the time of the AA/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

(f) *Contents of appeal.* The appeal must be in writing. The appeal must identify the protest determination being appealed and set forth a full and specific statement as to why the decision is erroneous or what significant fact the AA/HUB failed to consider.

(g) *Completion of appeal after award.* An appeal may proceed to completion even after award of the contract that prompted the protest, if so desired by the protested HUBZone SBC, or where SBA determines that a decision on appeal is meaningful.

(h) *Decision.* The ADA/GC&8(a)BD will make its decision within 5 business days of its receipt, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protestor, and the protested HUBZone SBC, consistent with law. The ADA/GC&8(a)BD's decision is the final agency decision.

Subpart I—Penalties

§ 126.900 What penalties may be imposed under this part?

(a) *Suspension or debarment.* The Agency Debarring Official may suspend or debar a person or concern pursuant to the procedures set forth in part 145 of this title. The contracting agency debarring official may debar or suspend a person or concern under the Federal Acquisition Regulation, 8 CFR part 9, subpart 9.4.

(b) *Civil penalties.* Persons or concerns are subject to civil remedies under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws.

(c) *Criminal penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the HUBZone status of a small business concern in connection with procurement programs pursuant to sec. 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concerns also are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to sec. 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct ''continuing representations'' that are no longer true.

Dated: March 26, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–8585 Filed 4–1–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model AS–K13 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model AS–K13 sailplanes. The proposed AD would require inspecting the main spar fitting for excessive tolerance, traces, movement, etc., and repairing the main spar fitting if any of the above conditions exist. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent failure of the main spar caused by excessive movement of the main spar fitting, which could result in loss of control of the sailplane.

DATES: Comments must be received on or before May 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–04–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: ''Comments to Docket No. 98–CE–04–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–04–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Alexander Schleicher Model AS–K13 sailplanes. The LBA reports three incidents of excessive play between the main fitting and spar. Investigation of these sailplanes reveal traces in the main spar fitting, which reveal that the excessive movement has occurred in the fitting and end spar. These traces look like cracks in the varnish between the metal and wood.

These conditions, if not corrected in a timely manner, could result in possible failure of the main spar with consequent loss of control of the sailplane.

Relevant Service Information

Sportflugzeugbau JUBI GmbH has issued AS–K13 Service Bulletin No. 13, dated December 19, 1990, which specifies procedures for inspecting the main spar fitting for excessive tolerance, traces, movement, etc. This service bulletin also specifies repairing the main spar fitting if any of the above conditions exist in accordance with an approved repair scheme.

The LBA classified this service bulletin as mandatory and issued German AD 91–144, dated July 31, 1991, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model AS–K13 sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the main spar fitting for excessive tolerance, traces, movement, etc., and repairing the main fitting if any of the above conditions exist. Accomplishment of the proposed inspection would be required in accordance with Sportflugzeugbau JUBI GmbH AS–K13 Service Bulletin No. 13, dated December 19, 1990. Accomplishment of the repair, if necessary, would be required in accordance with a repair scheme approved by the FAA.

Compliance Time of the Proposed AD

Although the problems identified with the main spar fitting would only be unsafe during flight, this condition is not a result of the number of times the sailplane is operated. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it is for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 2 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per sailplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $600, or $300 per sailplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher Segelflugzeugbau: Docket No. 98–CE–04–AD.

Applicability: Model AS–K13 sailplanes, serial numbers 13618 through 13689 (with or without an A.B. suffix), certificated in any category.

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

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

To prevent failure of the main spar caused by excessive movement of the main spar fitting, which could result in loss of control of the sailplane, accomplish the following:

(a) Within the next 6 calendar months after the effective date of this AD, inspect the main spar fitting for excessive tolerance, traces, movement, etc., in accordance with Sportflugzeugbau JUBI GmbH AS–K13 Service Bulletin No. 13, dated December 19, 1990.

(b) If any excessive tolerance, traces, movement, etc., is found in the area of the main spar fitting during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish the following:

(1) Obtain a repair scheme from the manufacturer through the FAA, Small Airplane Directorate, at the address specified in paragraph (d) of this AD; and

(2) Incorporate this scheme in accordance with the instructions to the repair scheme.

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

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to Sportflugzeugbau JUBI GmbH AS–K13 Service Bulletin No. 13, dated December 19, 1990, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 91–144, dated July 31, 1991.

Issued in Kansas City, Missouri, on March 25, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8581 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–329–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require interim inspections to detect discrepancies of the main fitting subassembly of the main landing gear, and follow-on corrective actions, if necessary. This proposal would also require inspection to detect discrepancies of the fitting, repair of the fitting, if necessary, and application of new surface protection on the fitting. Accomplishment of these actions would terminate the interim inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent cracking of the main fitting subassembly of the main landing gear, which could result in collapse of the main landing gear.

DATES: Comments must be received by May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–329–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–329–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, *Attention*: Rules Docket No. 97–NM–329-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that an operator has reported in-service cracking in the main fitting subassembly of the main landing gear. This cracking resulted from corrosion at the side stay attachment fitting. Investigation revealed that the corrosion initiated after the surface protection was damaged during honing of the bushes. Such cracking, if not corrected, could result in collapse of the main landing gear.

Explanation of Relevant Service Information

Messier-Dowty, the landing gear manufacturer, has issued Service Bulletin F100–32–86, Revision 2, dated July 3, 1997, which describes procedures for interim repetitive visual and eddy current inspections to detect paint damage, corrosion, or cracking of the main fitting subassembly of the main landing gear.

The service bulletin also describes procedures for a one-time detailed visual and a one-time eddy current inspection to detect discrepancies (paint damage, corrosion, or cracking) of the fitting; repair of the fitting, if necessary; and application of new surface protection on the fitting. Accomplishment of these actions would eliminate the need for the interim repetitive inspections.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 1996–133/2(A), dated January 31, 1997, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain discrepancies where the repair cannot be accomplished within the limits specified in the service bulletin, this proposal would require such repairs to be accomplished in accordance with a method approved by the FAA.

Differences Between Proposed Rule and Foreign AD

Operators should note that this AD proposes to mandate the repetitive inspections described in Appendix B of Messier-Dowty Service Bulletin F100–32–86 as interim action, prior to the accomplishment of the terminating actions (detailed inspections, repair, and application of surface protection) described in the Accomplishment Instructions of the service bulletin. [Accomplishment of the interim inspections specified in this service bulletin is optional in Dutch airworthiness directive 1996–133/2(A).] The FAA has determined that mandating the interim inspections will maintain continued operational safety while allowing U.S. operators an opportunity to schedule the terminating action.

Cost Impact

The FAA estimates that 127 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed interim inspections. Based on an average labor rate of $60 per work hour, the cost impact of the proposed interim inspections on U.S. operators is estimated to be $15,240, or $120 per airplane, per inspection cycle.

It would take approximately 14 work hours per airplane to accomplish the proposed terminating actions. Based on an average labor rate of $60 per work hour, the cost impact of the proposed terminating actions on U.S. operators is estimated to be $106,680, or $840 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 97–NM–329–AD.

Applicability: Model F28 Mark 0100 series airplanes, equipped with Messier-Dowty main landing gear units having the part numbers and serial numbers specified in Messier-Dowty Service Bulletin F100–32–86, Revision 2, dated July 3, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the main fitting subassembly of the main landing gear, which could result in collapse of the main landing gear, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a visual and an eddy current inspection to detect discrepancies (paint damage, corrosion or cracking) of the main fitting subassembly of the main landing gear, in accordance with Appendix B of Messier-Dowty Service Bulletin F100–32–86, Revision 2, dated July 3, 1997.

(1) If no discrepancy is detected, or if any discrepancy is detected that is within the limits specified in Appendix B of the service bulletin: Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 60 days.

(2) If any discrepancy is detected that is outside the limits specified in Appendix B of the service bulletin: Prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(b) Within 6 months after the effective date of this AD, perform a one-time eddy current inspection and a one-time visual inspection to detect discrepancies (paint damage, corrosion, or cracking) of the main fitting subassembly of the main landing gear, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin F100–32–86, Revision 2, dated July 3, 1997. Accomplishment of the actions required by this paragraph constitute terminating action for the requirements of this AD.

(1) If no discrepancy is detected, prior to further flight, apply a protective treatment to the main fittings in accordance with the service bulletin.

(2) If any discrepancy is detected that can be repaired within the limits specified in the service bulletin, prior to further flight, repair the discrepancy, and apply a protective treatment to the main fittings, in accordance with the service bulletin.

(3) If any discrepancy is detected that cannot be repaired within the limits specified in the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1996–133/2(A), dated January 31, 1997.

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8578 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–46–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require replacement of the existing pressure dump and relief valves in the main and auxiliary hydraulic systems with new valves. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the pressure dump and relief valves in the main and auxiliary hydraulic systems, which could cause a loss in hydraulic pressure for roll control spoilers and brakes, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–46–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–46–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–46–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received reports of defective pressure dump and relief valves in the main and auxiliary hydraulic systems. These valves may have a thin section in the housing caused by excessive tolerance accumulation during the manufacturing process. In addition, the housing of the pressure dump and relief valves may have been over-torqued during manufacture. This condition, if not

corrected, could result in failure of the pressure dump and relief valves in the main and auxiliary hydraulic systems, which could cause a loss in hydraulic pressure for roll control spoilers and brakes, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–29–205, dated February 12, 1997, which describes procedures for replacement of certain valves in the main and auxiliary hydraulic systems. Specifically, the service bulletin calls for replacement of pressure dump and relief valves having part number (P/N) ZHV29–1 with new valves having P/N ZHV29–2. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 97–072, dated March 27, 1997, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $18,000, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier: Docket 98–NM–46–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3095 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pressure dump and relief valves in the main and auxiliary hydraulic systems, which could cause a loss in hydraulic pressure for roll control spoilers and brakes, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 8 months after the effective date of this AD, replace the existing pressure dump and relief valves having part number (P/N) ZHV29–1 with new valves having P/N ZHV29–2, in the main and auxiliary hydraulic systems, in accordance with Dornier Service Bulletin SB–328–29–205, dated February 12, 1997.

(b) As of the effective date of this AD, no person shall install on any airplane any pressure dump and relief valve having P/N ZHV29–1.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in German airworthiness directive 97–072, dated March 27, 1997.

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8577 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–60–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–311 and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–311 and –315 series airplanes. This proposal would require replacement of the nitrogen cylinder assemblies that inflate the airplane's ditching dams with improved nitrogen cylinder assemblies. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the ditching dams to inflate fully during an emergency water landing, which could result in water entering the airplane.

DATES: Comments must be received by May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7520; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–60–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–311 and –315 series airplanes on which the medium and high gross weight configuration is incorporated. This airplane model is equipped with ditching dams to prevent water from entering the airplane in the event of an emergency water landing. A nitrogen cylinder assembly is intended to inflate the ditching dams in fewer than six seconds. TCA advises that, during functional testing of ditching dams on Model DHC–8–300 series airplanes, some of the dams failed to inflate fully. The manufacturer also reported several incidents in which the nitrogen cylinder assembly failed to inflate the ditching dam. Such failures have been attributed to a problem with the design of the nitrogen cylinder assembly, in which excessive back pressure in the inflation valve assembly allows some of the gas to escape during inflation of the ditching dam. This condition, if not corrected, could lead to failure of the ditching dams to inflate fully during an emergency water landing, which could result in water entering the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Service Bulletin S.B. 8–25–122, dated October 10, 1997, which describes procedures for replacing the existing nitrogen cylinder assemblies on ditching dams with new nitrogen cylinder assemblies that incorporate an improved valve assembly. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–97–21, dated November 13, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per

airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer of the nitrogen cylinder assembly at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $480, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland Inc.: Docket 98–NM–60–AD.

Applicability: Model DHC–8–311 and –315 series airplanes in the medium and high gross weight configuration, on which Bombardier Change Request CR803SO00001, CR803SO00002, CR803CH00046, CR803CH00079, CR803CH00105, CR825CH00847, or CR803CH00051 has been incorporated; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the ditching dams to inflate fully during an emergency water landing, which could result in water entering the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the existing nitrogen cylinder assembly on the ditching dams with a new nitrogen cylinder assembly that incorporates an improved valve assembly (reference de Havilland Modification 8/3154), in accordance with Bombardier Service Bulletin S.B. 8–25–122, dated October 10, 1997.

(b) As of the effective date of this AD, no person shall install on any airplane any nitrogen cylinder assembly having part number 410870(BSC) or 410870–1.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–21, dated November 13, 1997.

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8576 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–279–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes. This proposal would require inspection of the main landing gear (MLG) bushing seats to detect cracks, and repair of the bushing hole or replacement of strut bushings with new bushings, if necessary. This proposal also would require replacement of the plain bearings of the MLG shock absorber with new bearings. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent structural failure of the MLG due to fatigue cracking of the strut bushing seat.

DATES: Comments must be received by May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–279–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Curtis A. Jackson, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6083; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–279–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–279–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC advises that, during fatigue testing of the main landing gear (MLG) strut, jamming of the plain bearing of the upper hinge point of the shock absorber occurred. This caused the bushings to turn and scratch the surface of the bushing seat of the MLG struts, and the initiation of a fatigue crack. Such fatigue cracking, if not detected and corrected in a timely manner, could result in structural failure of the MLG.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–32–0012, dated September 1, 1997, which describes procedures for a one-time liquid penetrant inspection to detect cracking of the flanged bushing seats of the main landing gear (MLG); a one-time inspection of the bushing holes using a bore micrometer to determine the dimension of the holes; and replacement of the strut bushings with new bushings, if necessary.

In addition, EMBRAER has issued Service Bulletin 145–32–0009, dated September 1, 1997, which describes procedures for replacement of the plain bearings of the MLG shock absorber with new bearings. Accomplishment of the action specified in this service bulletin is intended to adequately address the identified unsafe condition.

The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 97–10–02, dated October 13, 1997, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletins

Operators should note that, although EMBRAER Service Bulletin 145–32–0012, dated September 1, 1997, specifies that the manufacturer may be contacted for disposition of an oversized flanged bushing seat, this proposal would require repair of this condition to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $540, or $60 per airplane.

The FAA estimates that it would take approximately 6 work hours per airplane to accomplish the proposed replacement of the plain bearings, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $3,240, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 97–NM–279–AD.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145018 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main landing gear (MLG) due to fatigue cracking of the strut bushing seat, accomplish the following:

(a) Prior to the accumulation of 2,000 total flight cycles, or within 100 flight cycles after the effective date of this AD, whichever occurs later, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Perform a one-time liquid penetrant inspection to detect cracking of the flanged bushing seats of the MLG, in accordance with EMBRAER Service Bulletin 145–32–0012, dated September 1, 1997. If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(2) Perform a one-time inspection of the bushing holes using a bore micrometer to determine the dimension of the holes, in accordance with EMBRAER Service Bulletin 145–32–0012, dated September 1, 1997. Prior to further flight, accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If the dimension of the bushing hole is less than 49.2 mm, perform the applicable corrective actions specified in the service bulletin.

(ii) If the dimension of the bushing hole is greater than or equal to 49.2 mm, repair in accordance with a method approved by the Manager, Atlanta ACO.

(3) Replace the plain bearing of the MLG shock absorber with a new bearing in accordance with EMBRAER Service Bulletin 145–32–0009, dated September 1, 1997.

(b) As of the effective date of this AD, no person shall install a plain bearing having part number ABC24VG (NMB) on the shock absorber of the MLG of any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

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

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 97–10–02, dated October 13, 1997.

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8575 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–244–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes, and Model MD–88 and MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, and Model MD–88 and MD–90–30 airplanes. This proposal would require replacement of the lanyard assembly pins of the evacuation slides with solid stainless steel pins. This proposal is prompted by a report that, due to stress corrosion on the lanyard pins, the arms of the lanyard assembly of the evacuation slide were found to be frozen. The actions specified by the proposed AD are intended to prevent the improper deployment of the evacuation slide due to such stress corrosion, which could delay or impede evacuation of passengers during an emergency.

DATES: Comments must be received by May 18, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–244–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be

considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–244–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–244–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during a routine maintenance inspection, the arms of the lanyard assembly of the evacuation slide were found to be frozen on a McDonnell Douglas Model DC–9–82 series airplane. Investigation revealed that stress corrosion caused the pivot pin to swell and freeze the arms of the lanyard assembly. This condition, if not detected and corrected in a timely manner, could prevent the proper deployment of the evacuation slide, which could delay or impede evacuation of passengers during an emergency.

The subject area on certain McDonnell Douglas Model MD–88 and MD–90–30 airplanes is identical to that on the affected DC–9–80 series airplane. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–25A357, dated February 11, 1997 (for Model DC–9–80 series airplanes and Model MD–88 airplanes), and McDonnell Douglas Alert Service Bulletin MD90–25A019, dated February 11, 1997 (for Model MD–90 airplanes). These alert service bulletins describe procedures for replacement of the lanyard assembly pins with solid stainless steel pins. Accomplishment of the replacement specified in the alert service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of the lanyard assembly pins with solid stainless steel pins. The actions would be required to be accomplished in accordance with the alert service bulletins described previously.

Cost Impact

There are approximately 680 McDonnell Douglas Model DC–9–80 series airplanes, and Model MD–88 and MD–90–30 airplanes of the affected design in the worldwide fleet. The FAA estimates that 339 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $102,378, or $302 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 97–NM–244–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) series airplanes and Model MD–88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD80–25A357, dated February 11, 1997; and Model MD–90–30 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–25A019, dated February 11, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the improper deployment of the evacuation slide, which could delay or impede evacuation of passengers during an emergency, accomplish the following:

(a) Within 180 days after the effective date of this AD, replace the lanyard assembly pins of the evacuation slides with solid stainless steel pins, in accordance with McDonnell

Douglas Alert Service Bulletin MD80–25A357, dated February 11, 1997 (for Model DC–9–80 series airplanes and Model MD–88 airplanes), or McDonnell Douglas Alert Service Bulletin MD90–25A–19, dated February 11, 1997 (for Model MD–90 airplanes); as applicable.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8574 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–14–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes. This proposal would require a one-time inspection to detect discrepancies in electrical wiring and wiring harness behind the lavatory, and corrective actions. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent chafing of electrical wiring, which could result in severe overheating of the wiring, consequent smoke in the flight deck and cabin, and possible injury to flightcrew or passengers.

DATES: Comments must be received by May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7511; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–14–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–100, –200, and –300 series airplanes. TCA advises that it has received reports of smoke in the flight deck and cabin, caused by severe overheating of chafed electrical wiring located at the top edge of the lavatory forward panel. Further investigation revealed that the chafing was caused by inadequate clearance between a wiring harness and the lavatory forward panel. Such chafing, if not corrected, could result in severe overheating of electrical wiring, consequent smoke in the flight deck and cabin, and possible injury to flightcrew or passengers.

Explanation of Relevant Service Information

Bombardier has issued de Havilland Service Bulletin S.B. 8–24–50, dated April 25, 1997, which describes procedures for a one-time inspection to detect chafing of the electrical wiring or wiring harness, and to measure clearance between the wiring harness and the lavatory forward panel; repair of damaged wiring; and modification of the wiring harness and lavatory forward panel. The modification involves installing protective wrap on the wiring harness, and trimming the top outboard edge of the lavatory forward panel. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–97–14, dated July 22, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 163 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $9,780, or $60 per airplane.

It would take approximately 20 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $195,600 or $1,200 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Haviland Inc.: Docket 98–NM–14–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes, serial numbers 003 through 433 inclusive, except 031, 408, and 413; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of electrical wiring, which could result in severe overheating of the wiring, consequent smoke in the flight deck and cabin, and possible injury to flightcrew or passengers, accomplish the following:

(a) Within 9 months after the effective date of this AD, perform a one-time inspection to detect discrepancies in the electrical wiring or wiring harness located behind the lavatory, in accordance with Bombardier Service Bulletin S.B. 8–24–50, dated April 25, 1997.

(1) If no discrepancy is found, prior to further flight, modify the wiring harness and the lavatory forward panel, in accordance with the service bulletin.

(2) If any discrepancy is found, prior to further flight, repair it and modify the wiring harness and the lavatory forward panel, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–14, dated July 22, 1997.

Issued in Renton, Washington, on March 27, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8709 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–43–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe Avro 146-RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe Avro 146-RJ series airplanes. This

proposal would require a one-time inspection of certain electrical wires in the electrical equipment bay to determine if ERMA terminal lugs are installed; and replacement with new parts, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the electrical circuit terminal lugs, which could result in electrical system failure, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98-NM–43-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98-NM–43-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98-NM–43-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe Avro 146–RJ series airplanes. The CAA advises that a batch of ERMA terminal lugs has been found to contain a defect that may result in the lug breaking away from the barrel and may cause a short circuit of certain electrical systems of electrical and hydraulic equipment bays. Because this problem was detected during manufacturing, the remainder of this batch of lugs has been withdrawn from production; however, some of the lugs were fitted onto certain airplanes. This condition, if not corrected, could result in electrical system failure, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin SB.24–120, dated September 18, 1997, which describes procedures for performing a one-time inspection of electrical wires, part numbers (P/N) MD0011N and MD0012N, to determine if ERMA terminal lugs are installed; and replacement with a new type of plug, P/N AMP323064, if any ERMA terminal tug is found. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 007–09–97 (undated), in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on the single U.S. operator is estimated to be $240.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft

(Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 98–NM–43–AD.

Applicability: Model BAe Avro 146–RJ85A series airplanes, serial numbers E2296, E2297, E2299, E2300, E2302, E2303, E2304, E2305, E2306, and E2307; and Model Avro 146–RJ100A series airplanes, serial numbers E3298, E3301, and E3308; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously. To prevent failure of the electrical circuit terminal lugs, which could result in electrical system failure, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time visual inspection of the electrical wires, having part numbers (P/N) MD0011N and MD0012N, in the electrical equipment bay and hydraulic equipment bay, to determine if any ERMA terminal lug having P/N ERMA 12115/2 is installed, in accordance with British Aerospace Service Bulletin SB.24–120, dated September 18, 1997. If any ERMA terminal lug is found, prior to further flight, remove the lug and replace with an AMP terminal lug having P/N AMP 323064, in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install an ERMA terminal lug, P/N ERMA 12115/2, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in British airworthiness directive 007–09–97 (undated).

Issued in Renton, Washington, on March 27, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8708 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–28–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require repetitive inspections of the center joint of the main landing gear (MLG) torque link and the MLG assembly for excessive free-play; and correction, if necessary. This proposal would also require installation of new MLG torque link dampers, which would constitute terminating action for the repetitive inspections; and revision of the FAA-approved maintenance program to incorporate inspections and overhaul of the new torque link dampers. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the failure of MLG torque links, which could result in reduced controllability of the airplane on the ground during takeoff or landing.

DATES: Comments must be received by May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–28–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–28–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–28–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 series airplanes. The RLD advises that it has received numerous reports of main landing gear (MLG) torque link failures on in-service airplanes. The cause of these failures has been attributed to one or more deficiencies, such as excessive play in hinges and bearings, worn or non-approved tires, and nitrogen pressure or tire pressure that is too high. These deficiencies caused reduced natural stability of the MLG in a lateral and torsional mode during landing, vibration, and consequent failure of the MLG torque links. These conditions, if not corrected, could result in reduced controllability of the airplane on the ground during takeoff or landing.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin F28/32–151, Revision 1, dated March 12, 1997, which describes procedures for repetitive visual inspections of the center joint of the MLG torque link and of the MLG assembly for excessive free-play; and correction, if necessary. The service bulletin also describes procedures for installation of new MLG torque link dampers, which would eliminate the need for the repetitive inspections; and revision of the FAA-approved maintenance program to incorporate visual inspections and overhaul of the new torque link dampers. Accomplishment of the actions specified in Part 2 of the Accomplishment Instructions of the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 1996–103(A), dated August 30, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

Parts 1.A., 1.B., 1.C., and 1.D. of the Accomplishment Instructions of Fokker Service Bulletin F28/32–151, Revision 1, dated March 12, 1997, reference Fokker F.28 Airplane Maintenance Manual (AMM), Chapters 32–10–01, 32–10–00, and 32–10–04, as additional sources of service information to accomplish the actions required by this proposal.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 3 work hours per airplane to accomplish the proposed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $4,860, or $180 per airplane, per inspection cycle.

It would take approximately 18 work hours per airplane to accomplish the proposed installation/modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $90,000 per airplane. Based on these figures, the cost impact of the installation/modification proposed by this AD on U.S. operators is estimated to be $2,459,160, or $91,080 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket 98–NM–28–AD.

Applicability: All Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of main landing gear (MLG) torque links, which could result in reduced controllability of the airplane on the ground during takeoff or landing, accomplish the following:

(a) Within 1,000 flight cycles after the effective date of this AD, perform a visual inspection of the center joint of the MLG torque link for excessive free play, in accordance with Part 1.D. of the Accomplishment Instructions of Fokker Service Bulletin F28/32–151, Revision 1, dated March 12, 1997.

(1) If no discrepancy is detected, repeat the visual inspection thereafter at intervals not to exceed 1,000 flight cycles.

(2) If any discrepancy is detected, prior to further flight, correct the discrepant condition in accordance with Part 1.D. of the Accomplishment Instructions of the service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 1,000 flight cycles.

Note 2: Part 1.D. of the Accomplishment Instructions of Fokker Service Bulletin F28/32–151, Revision 1, dated March 12, 1997, references Fokker F.28 Airplane Maintenance Manual (AMM), Chapter 32–10–04, as an additional source of service information to accomplish the actions required by this proposal.

(b) Within 3,000 flight cycles after the effective date of this AD, perform a visual inspection of the MLG assembly for excessive free play, in accordance with Parts 1.A., 1.B., and 1.C. of the Accomplishment Instructions of Fokker Service Bulletin F28/32–151, Revision 1, dated March 12, 1997.

(1) If no discrepancy is detected, repeat the visual inspection thereafter at intervals not to exceed 3,000 flight cycles.

(2) If any discrepancy is detected, prior to further flight, correct the discrepant condition in accordance with Parts 1.A., 1.B., and/or 1.C. of the Accomplishment Instructions of the service bulletin, as applicable. Repeat the visual inspection thereafter at intervals not to exceed 3,000 flight cycles.

Note 3: Parts 1.A., 1.B., and 1.C. of the Accomplishment Instructions of Fokker Service Bulletin F28/32–151, Revision 1, dated March 12, 1997, reference Fokker F.28 AMM, Chapters 32–10–01, 32–10–00, and 32–10–04, as additional sources of service information to accomplish the actions required by this proposal.

(c) Within 30 months after the effective date of this AD, accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Install torque link dampers and associated sub-assemblies in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F28/32–151, Revision 1, dated March 12, 1997. Accomplishment of the installation constitutes terminating action for the repetitive inspection requirements of this AD.

(2) Revise the FAA-approved maintenance program to incorporate a visual inspection of the oil level of the torque-link dampers thereafter at intervals not to exceed 250 flight hours, and incorporate a scheduled overhaul of each damper concurrent with the overhaul of the MLG on which it is installed, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F28/32–151, Revision 1, dated March 12, 1997.

Note 4: After the maintenance program is revised to include the required inspection and overhaul actions in accordance with paragraph (c)(2) of this AD, operators do not need to make a maintenance log entry to show compliance with this AD each time those actions are accomplished thereafter.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 6: The subject of this AD is addressed in Dutch airworthiness directive BLA 1996–103(A), dated August 30, 1996.

Issued in Renton, Washington, on March 27, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8707 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–98–001]

RIN 2115–AE46

Special Local Regulations; Parker International Waterski Marathon

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the table of events by adding the Parker International Waterski Marathon conducted on the navigable waters of the Colorado River beginning at Bluewater Marina in Parker, AZ, and extending approximately 10 miles south to La Paz County Park, on the following dates: annually, commencing on the second full weekend of March every year, and lasting a total of 2 days. The Special Local Regulations applicable to this event are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during scheduled events.

DATES: Comments should be received on or before May 18, 1998.

ADDRESSES: You may mail comments to Lieutenant Mike A. Arguelles, U.S. Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, California 92101, or deliver them to the same address between 8 a.m. and 3 p.m. Monday through Friday, except holidays. The telephone number is (619) 683–6484.

The Marine Safety Office maintains the public docket for this rulemaking. Comments, and any documents referenced in this preamble, will become part of this docket and will be available for inspection and copying at the Marine Safety Office between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike A. Arguelles, U.S. Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, California 92101. The telephone number is (619) 683–6484.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD11–98–001) and the specific section of this document to which each

comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comment should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The Parker International Waterski Marathon will consist of various waterski activities. The event will take place, annually, over a two day period commencing on the second full weekend of March. The special local regulations applicable to this event are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during scheduled events.

Discussion of Proposed Rule

The course of the event is approximately 10 miles long and encompasses the entire water area of the Colorado River from Bluewater Marina in Parker, AZ, south to La Paz County Park. The course will be marked by buoys and sponsor vessels to alert non-participants. On the following days and times, the race zone will be in use by vessels competing in the event: annually, commencing on the second full weekend of March every year, and lasting a total of 2 days, from 8 AM until 5 PM (PST) each day. During these times the Colorado River from Bluewater Marina in Parker, AZ, south to La Paz County Park will be closed to all traffic with the exception of emergency vessels. No vessels other than participants, official patrol vessels, or emergency vessels will be allowed to enter into, transit through, or anchor within this zone unless specifically cleared by or through an official patrol vessel.

Pursuant to 33 CFR § 100.1101(b)(3), Commander, Coast Guard Activities San Diego, is designated Patrol Commander for this event; he has the authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard. Once the zone is established, authorization to remain within the zone is subject to termination by the Patrol Commander at any time. The Patrol Commander may impose other restrictions within the zone if the circumstances dictate. Restrictions will be tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary to safely conduct the event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

Because it expects the impact of this proposal to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) that this proposal, if adopted, will not have a substantial impact on a significant number of small entities. If, however, you think that your business or organization qualifies as a small entity and this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. § 3501 *et. seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket.

List of Subjects in 33 CFR Part 100

Regattas, Marine Parades.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 100, section 100.1102, as follows:

PART 100—MARINE EVENTS

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

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. In § 100.1102, Table 1 is amended by adding an entry for the Parker International Waterski Marathon immediately following the last entry to read as follows:

§ 100.1102 Marine Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona).

* * * * *

Parker International Waterski Marathon

Sponsor: Parker International Waterski Association

Dates: Annually, commencing on the second full weekend of March every year, and lasting a total of 2 days, from 8 AM (PST) until 5 PM (PST) each day.

Location: The entire water area of the Colorado River beginning at Bluewater Marina in Parker, AZ, and extending approximately 10 miles south to La Paz County Park.

Dated: March 11, 1998.

J. C. Card,

Vice Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 98–8260 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11–97–010]

RIN 2115–AE84

Regulated Navigation Area: Copper Canyon, Lake Havasu, Colorado River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a Regulated Navigation Area (RNA) within the Copper Canyon, Lake Havasu region on the waters of the Colorado River. This action is necessary because the Coast Guard has determined that the extremely heavy traffic of recreational vessels in this area, particularly during peak holiday periods, creates conditions hazardous to navigation and causes vessels carrying law enforcement and emergency medical personnel to be unable to access the area. This RNA will establish an access lane to enhance navigation safety and to permit law enforcement and emergency response officials to reach all areas of Copper Canyon and provide services.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Comments may be mailed to Lieutenant Michael A. Arguelles, Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA 92101–1064. The Captain of the Port maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection at the Marine Safety Office at the address listed above.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael A. Arguelles, Coast Guard Marine Safety Office San Diego; telephone number (619) 683–6484.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this proposed rulemaking by submitting written data, views, or any other materials. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD11–97–010) and the specific section of the proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address listed in **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal person involved in drafting this document are Lieutenant Michael A. Arguelles, Project Manager, Marine Safety Office San Diego and Lieutenant (junior grade) Derek A. D'Orazio, Project Attorney, Coast Guard Maintenance and Logistics Command Pacific.

Background and Purpose

In the past, emergency medical and law enforcement personnel have had difficulty getting through the severe congestion of recreational boats in Copper Canyon. This hazardous condition has become a major public safety concern, particularly during holidays and other times of heavy congestion. The RNA defined in this proposal will effectively provide an emergency access lane for law enforcement and other emergency services officials. This lane will significantly enhance public safety by allowing quicker emergency response time.

Vessels using Copper Canyon, other than designated patrol vessels, will be prohibited from anchoring, mooring, loitering in, or otherwise impeding the transit of any other vessel within the emergency access lane. These non-patrol vessels shall expeditiously and continuously transit the lane via the most direct route consistent with navigational safety. At times of heavy congestion, however, designated by periodic Coast Guard Notices to Mariners on VHF–FM Channel 16, the emergency access lane will be closed to all traffic other than designated patrol vessels, and no entry will be permitted by any recreational or commercial vessel except with the express permission of the Captain of the Port or his designated representative.

The geographic description of the emergency access lane constituting this RNA is as follows: beginning at the approximate center of the mouth of Copper Canyon and drawing a line down the approximate center of the canyon extending shoreward to the end of the navigable waters of the canyon, and comprising a semi-rectangular area extending 30 feet on each side of the line, for a total semi-rectangular width of 60 feet.

This line is more precisely described as: beginning at latitude 34°25′42″N, longitude 114°18′26″W, thence southwesterly to latitude 34°25′38″N, longitude 114°18′26″W, thence southwesterly to latitude 34°25′37″N, longitude 114°18′26″W, thence southwesterly to latitude 34°25′34″N, longitude 114°18′26″W, thence southwesterly to latitude 34°25′33″N, longitude 114°18′28″W, thence southwesterly to latitude 34°25′29″N, longitude 114°18′29″W, thence to the end of the navigable waters of the canyon.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the Department of Transportation regulatory policies and procedures unnecessary, because use of Copper Canyon by both recreational and commercial vessels will not be precluded by this regulation; nor will such use be more than nominally affected.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal would have significant impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard expects the economic impact of the proposal to be minimal on all entities since use of Copper Canyon will not be precluded and will only be

nominally affected. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist has been prepared and placed in the rulemaking docket, and will be available for inspection and copying at the address listed in **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend Title 33, Code of Federal Regulations Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new section 165.1115 is added to read as follows:

§ 165.1115 Copper Canyon, Lake Havasu, Colorado River—Regulated Navigation Area.

(a) *Location.* The following is a regulated navigation area: (1) In the water area of Copper Canyon, Lake Havasu, Colorado River, beginning at the approximate center of the mouth of Copper Canyon and drawing a line down the approximate center of the canyon extending shoreward to the end of the navigable waters of the canyon, and comprising a semi-rectangular area extending 30 feet on each side of the line, for a total semi-rectangular width of 60 feet. (2) This line is more precisely described as: beginning at latitude 34°25′42″N, longitude 114°18′26″W, thence southwesterly to latitude 34°25′38″N, longitude 114°18′26″W, thence southwesterly to latitude 34°25′37″N, longitude 114°18′26″W, thence southwesterly to latitude 34°25′34″N, longitude 114°18′26″W, thence southwesterly to latitude 34°25′33″N, longitude 114°18′28″W, thence southwesterly to latitude 34°25′29″N, longitude 114°18′29″W, thence to the end of the navigable waters of the canyon. All coordinates use Datum: NAD83.

(3) The semi-rectangular area shall extend 30 feet on each side of this line, for a total semi-rectangular width of 60 feet.

(b) *Definitions.* For the purpose of this section:

(1) *Vessel:* Every description of watercraft, used or capable of being used as a means of transportation on the water, regardless of mode of power.

(2) *Patrol Vessel:* Vessels designated by the Captain of the Port, San Diego, to enforce or assist in enforcing these regulations, including Coast Guard, Coast Guard Auxiliary, and San Bernardino County Sheriffs Department vessels.

(c) *Regulations.* (1) Vessels, with the exception of patrol vessels, shall not anchor, moor, loiter in, or otherwise impede the transit of any other vessel within the regulated navigation area. Furthermore, all vessels, with the exception of patrol vessels, shall expeditiously and continuously transit the regulated navigation area via the most direct route consistent with navigational safety.

(2) During periods of vessel congestion within the Copper Canyon area, as determined by the Captain of the Port or his designated on-scene representative, the regulated navigation area will be closed to all vessels, with the exception of patrol vessels. During designated closure periods, no vessel may enter, remain in, or transit through the regulated navigation area with the exception of patrol vessels. Designation of periods of vessel congestion and announcement of the closure of the regulated navigation area will be conducted by broadcast notices to mariners on VHF–FM Channel 16 no less frequently than every hour for the duration of the closure period.

(3) Each person in the regulated navigation area shall comply with the directions of the Captain of the Port or his designated on-scene representative regarding vessel operation.

Dated: March 11, 1998.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 98–8258 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–5989–8]

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Polychlorinated Biphenyls (PCBs) Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Water Act (CWA) requires states to adopt numeric criteria for those priority toxic pollutants for which EPA has published criteria guidance and whose discharge or presence could reasonably be expected to interfere with designated uses of states' waters. In 1992, EPA promulgated the National Toxics Rule (NTR) establishing numeric water quality criteria for toxic pollutants in fourteen states and jurisdictions to protect human health and aquatic life. These states and jurisdictions had not adopted sufficient chemical-specific, numeric criteria for toxic pollutants necessary to comply with the Clean Water Act.

Among the criteria promulgated in the NTR were human health and aquatic life water quality criteria for polychlorinated biphenyls (PCBs). Today, EPA is proposing revisions to the human health water quality criteria for PCBs in the NTR, based on the Agency's reassessment of the cancer potency of PCBs.

DATES: Written comments must be submitted by midnight June 1, 1998.

ADDRESSES: Send written comments to W–98–06, WQS–PCBs Comment Clerk, Water Docket, MC 4101, US EPA, 401 M Street, S.W., Washington, D.C. 20460. Comments may also be submitted electronically to OW-Docket@epamail.epa.gov. The record is available for inspection from 9:00 to 4:00 p.m., Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, USEPA, 401 M St., S.W., Washington, D.C. For

access to docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Cindy Roberts, Health and Ecological Criteria Division (4304), Office of Science and Technology, Office of Water, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–2787.

SUPPLEMENTARY INFORMATION:

A. Potentially Affected Entities

States authorized to implement the National Pollutant Discharge Elimination System (NPDES) Permit Program will need to ensure that permits they issue include any limitations on discharges necessary to comply with the standards established by the final rule. In doing so, the States will have a number of discretionary choices associated with permit writing. Entities discharging pollutants to waters of the United States in NTR states could be affected by this rulemaking. These entities may be affected since water quality criteria are part of water quality standards that in turn are used in developing NPDES permit limits. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
State and Jurisdictional Governments.	NPDES Authorized states and jurisdictions.
Industry	Industries discharging to waters in NTR states and jurisdictions.
Municipalities	Publicly-owned treatment works discharging to waters of NTR states and jurisdictions.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your organization or facility may be affected by this action, you should carefully examine the applicability criteria in § 131.36 (d) of title 40 of the Code of Federal Regulations as amended by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Water Docket Information

The record for this rulemaking has been established under docket number W–98–06 and includes supporting documentation. When submitting written comments to the Water Docket, (see **ADDRESSES** section above) please reference docket number W–98–06 and submit an original and three copies of your comments and enclosures (including references). Comments must be received or postmarked by midnight June 1, 1998. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Electronic comments may also be submitted to the Water Docket (see **ADDRESSES** section above). Electronic comments must be submitted as an ASCII file or a WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number, W–98–06, and be received by midnight of June 1, 1998. Comments and data will also be accepted on disks in WP5.1 format or ASCII file format. No confidential business information (CBI) should be sent via e-mail.

C. Background

In 1992, EPA promulgated numeric water quality criteria for priority toxic pollutants in twelve states (Rhode Island, Vermont, New Jersey, Florida, Michigan, Arkansas, Kansas, California, Nevada, Alaska, Idaho, Washington), Puerto Rico, and the District of Columbia (National Toxics Rule or NTR, 57 FR 60848, December 22, 1992, codified in the Code of Federal Regulations at 40 CFR 131.36). These states and jurisdictions had not adopted sufficient chemical-specific, numeric criteria for toxic pollutants necessary to comply with section 303(c)(2)(B) of the Clean Water Act. Among the criteria promulgated in the NTR were human health criteria for PCBs. The human health criteria were based on methodology issued in 1980 (''Guidelines and Methodology Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents,'' 45 FR 79347, November 28, 1980 or ''Human Health Guidelines'').

General Electric Company and the American Forest and Paper Association, Inc. challenged a number of aspects of the NTR, including the human health water quality criteria for PCBs. *See American Forest and Paper Ass'n. Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU) D.D.C.). In particular, the plaintiffs objected to EPA's application of its cancer risk assessment methodology to its evaluation of the carcinogenicity of PCBs and the Agency's evaluation of various scientific studies relevant to the cancer risk posed by PCBs. EPA had underway a number of activities related to these objections, including reassessment of the cancer potency of PCBs (the ''cancer reassessment''), revision of the methodology to derive human health water quality criteria, and revision of the cancer guidelines, that could lead the Agency to decide to amend the human health water quality criteria for PCBs in the NTR. EPA and the plaintiffs entered into a partial settlement agreement in which EPA, among other things, agreed to a schedule for completing the final cancer reassessment. See ''Partial Settlement Agreement,'' Consolidated Case No. 93–0694 RMU, D.D.C, signed November 7, 1995.

EPA also agreed that within l8 months of the issuance of the final cancer reassessment, the Agency would propose a revision to the NTR human health criteria for PCBs, or publish a **Federal Register** notice explaining why it was not revising the NTR criteria. EPA completed the reassessment in September 1996. See ''PCBs: Cancer Dose-Response Assessment and Applications to Environmental Mixtures'' (EPA/600/P–96/001F). In today's Notice, EPA is proposing an amendment to the PCBs human health criteria in the NTR that reflects the reassessment. In the settlement agreement, EPA also agreed to consider several issues identified by the Plaintiffs; those issues are discussed in section E of this document.

D. Proposed Revisions of Human Health Criteria for PCBs

1. Reassessment of Cancer Potency of PCBs

Background

Manufactured PCBs are mixtures of forms (congeners) of the PCB molecule that differ in their chlorine content. Different mixtures can take on forms ranging from oily liquids to waxy solids. Although their chemical properties vary widely, different mixtures have many common PCB congeners. Because of their flame retardant properties, chemical stability, and insulating properties, commercial PCB mixtures

were used in many industrial applications. These chemical properties, however, also contribute to the persistence of PCBs after they are released into the environment. Because of evidence of persistence and harmful effects, domestic manufacture of commercial mixtures was stopped in 1977; existing PCBs, however, continue in use, primarily in electrical capacitors and transformers.

In the environment, PCBs also occur as mixtures of congeners, but their composition differs from the commercial mixtures. This is because after release into the environment, the composition of PCB mixtures changes over time, through partitioning, chemical transformation and preferential bioaccumulation of certain congeners. Some PCB congeners can accumulate selectively in living organisms. PCBs are widespread in the environment because of past contaminations, and humans are exposed through multiple pathways: ambient air, drinking water, and diet.

For the purpose of issuing PCBs criteria in the NTR, EPA used a single dose-response slope (7.7 per mg/kg-d average lifetime exposure); this was the value included in EPA's Integrated Risk Information System (IRIS) at that time. This value was derived from a rat feeding study by Norback and Weltman (1985), one of several studies of Aroclor 1260. With no agreed upon basis for reflecting differences among environmental mixtures, EPA used this slope factor for all PCBs. Accordingly, the 7.7 per mg/kg-d slope factor was used for all PCBs and PCB mixtures. General Electric Company challenged EPA's use of this slope factor to calculate the NTR human health criteria for PCBs on several grounds, including that the Norback and Weltman study had been reevaluated. GE argued that if the reevaluated results had been used, the cancer potency factor would have been significantly lower. EPA and General Electric entered into a settlement agreement providing that EPA would complete a reassessment of the cancer potency factor for PCBs .

Reassessment

EPA considered a number of different approaches for its reassessment, and adopted an approach that distinguishes among PCB mixtures by using information on environmental processes. Environmental processes have effects that can decrease or increase toxicity, so potency of an environmental mixture may differ from the original commercial mixture. EPA's new assessment considered all cancer studies (which used commercial mixtures only) including a new study of four Aroclors that strengthens the case that all PCBs cause cancer. EPA used this information to develop a range of dose response slopes, changing the single-dose cancer potency factor of 7.7 per mg/kg-d to a slope which ranges from 0.07 per mg/kg-d (lowest risk and persistence) to 2.0 per mg/kg-d (high risk and persistence). It is noteworthy that bioaccumulated PCBs appear to be more toxic than commercial PCBs and appear to be more persistent in the body. The reassessment uses information on environmental processes to provide guidance on choosing an appropriate slope for representative classes of environmental mixtures and different exposure pathways.

The reassessment methodology determines cancer potency by using a tiered approach based on exposure pathways (such as food chain) to choose the appropriate slope values from the range. In this methodology, exposure through the food chain is associated with higher risks than other exposures. Specifically, preferential bioaccumulation through the food chain tends to concentrate certain highly chlorinated congeners which are often among the most toxic and persistent. Persistence in the body can enhance the opportunity for PCB congeners to express tumor promoting activity. Recent multimedia studies indicate that the major pathway of exposure to persistent toxic substances such as PCBs is through food (i.e., contaminated fish and shellfish consumption). Consumption of contaminated fish was considered to be the dominant source of PCB exposure. On this basis, EPA chose a cancer potency factor of 2 per mg/kg-d, the upper bound potency factor reflecting high risk and persistence, to calculate the revised human health criteria for PCBs. This upper bound slope factor of 2 per mg/kg-d is also used to assess increased risks associated with early life exposure to PCBs.

2. Calculation of Revised Human Health Criteria for PCBs

Using the cancer potency factor of 2 per mg/kg-d EPA calculated the revised human health criterion (HHC) for organism and water consumption as follows:

$$HHC = \frac{RF \times BW \times (1{,}000\ \mu g/mg)}{q1^* \times [WC + (FC \times BCF)]}$$

Where:

RF=Risk Factor=1×10 ($^{-6}$)
BW=Body Weight=70 kg
q1*=Cancer slope factor=2 per mg/kg-d
WC=Water Consumption=2 l/day
FC=Fish and Shellfish Consumption=0.0065 kg/day
BCF=Bioconcentration Factor=31,200
the HHC (µg/l)=0.00017 µg/l (rounded to two significant digits).

Following is the calculation of the human health criterion for organism only consumption:

$$HHC = \frac{RF \times BW \times (1{,}000\ \mu g/mg)}{q1^* \times FC \times BCF}$$

Where:
RF=Risk Factor=1×10 ($^{-6}$)
BW=Body Weight=70 kg q1
*=Cancer slope factor=2 per mg/kg-d
FC=Total Fish and Shellfish Consumption per Day=0.0065 kg/day
BCF=Bioconcentration Factor=31,200
the HHC (µg/l)=0.00017 µg/l (rounded to two significant digits).

The criteria are both equal to 0.00017 µg/l and apply to the total PCBs or congener or isomer analyses. See *PCBs: Cancer Dose Response Assessment and Application to Environmental Mixtures* (EPA/600/9–96–001F). For a discussion of the body weight and water consumption factors see the Human Health Guidelines (''Guidelines and Methodology Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents,'' 45 FR 79347, November 28, 1980). For a discussion of the BCF, see the 304(a) criteria guidance document for PCBs (''Ambient Water Quality Criteria for Polychlorinated Biphenyls'', EPA 440/5–80-068) (1980).

While EPA established ambient water quality criteria for PCBs based on bioaccumulation factors (BAFs) in the Great Lakes Water Quality Initiative, these BAFs were not used to derive national ambient water quality criteria because they did not address conditions outside the Great Lakes System (e.g., consumption weighted lipid content, freely dissolved fraction). The Great Lakes Water Quality Initiative also used a fish consumption value specific to the Great Lakes region; the 15 grams per day value represents the mean consumption rate of regional fish caught and consumed by the Great Lakes sport fishing population.

3. Criteria Expressed as Total of All Aroclors

In addition to the proposed revision of the numeric human health criteria for PCBs, EPA is proposing that the human health criterion be expressed as a total of all Aroclors. This proposal differs from the current NTR where criteria are expressed for each Arocolor. It is the Agency's view that expressing the criterion in terms of total rather than

single Aroclors better reflects current scientific thought (see also the proposed PCBs criteria in the California Toxics Rule, 62 FR 42160, August 5, 1997).

EPA's change of approach from one where each Aroclor has its own criterion to one where a single criterion applies to the sum of all Aroclors does not result in more stringent criteria. The proposed human health criterion specifies concentration limits of 0.00017 µg/L for total PCBs, in contrast to the old criteria of 0.000044 µg/L and 0.000045 µg/L for each of seven different Aroclors. Although the old criteria would, in theory, have allowed 0.000308 µg/L and 0.000315 µg/L total PCBs, respectively, if each of the seven Aroclors were at its limit, the new criterion is not more stringent than the old.

First, several of these Aroclors are not prevalent in commerce or in the environment. Aroclor 1242 alone accounted for 52 percent of U.S. PCB production, and Aroclors 1016, 1242, 1254, and 1260 together account for over 90 percent. It is, therefore, highly unlikely that the seven Aroclors would be present in similar concentrations. Second, from what we know about how PCBs degrade and partition into different environmental media and bioaccumulate in living organisms, it is unlikely that an environmental sample characterized in terms of Aroclors would resemble original Aroclor in any definable way. For example, PCBs in fish or sediment would likely contain PCB congeners of high chlorine content and, consequently, be characterized as ''like'' Aroclor 1254 or 1260, while PCBs present in water would likely contain PCB congeners of lower chlorine content and, thus, be characterized as ''like'' one or two Aroclors of lower chlorine content. Third, when environmental samples have been characterized in terms of Aroclor mixtures, experience shows that no more than two or three Aroclors are used. For these reasons, it is unlikely that an environmental sample could be characterized in terms of similar concentrations of the seven different Aroclors.

More importantly, it is not consistent with current scientific knowledge to characterize environmental PCBs as if they were Aroclors. Environmental processes can profoundly alter the composition of PCB mixtures through partitioning, chemical transformation, and preferential bioaccumulation.

E. Response to Issues Identified in Partial Settlement Agreement

As noted above, in the Partial Settlement Agreement EPA agreed to consider specific issues identified by the plaintiffs in developing the proposed rule.

1. The effect that the reduction in PCB concentrations in fish due to cooking and cleaning has on the human intake of PCBs through fish consumption.

In determining the PCB criteria proposed here, EPA used the 1980 methodology consumption rate of 6.5 grams/person/day representing the estimated mean per capita freshwater/estuarine finfish and shellfish consumption rate for the U.S. population.

In methodology to be proposed for public comment in 1998, EPA expects to recommend the use of ''as consumed'' intake rates, that should reflect the potential exposure from fish consumption better than using uncooked weights. States would have the flexibility to consider raw fish consumption if they believe that the population that they are targeting are consumers of raw fish if data are limited to uncooked weights (provided an adjustment for cooking loss is made). EPA is considering several issues regarding whether to use cooked or uncooked weights when estimating the fish consumption rates. One issue concerns the fact that weight loss in cooking is typically about 20 percent. If the mass of a toxicant in the fish tissue remains constant, then the concentration in the fish tissue will increase (the weight of the fish tissue decreased). However, if the mass of toxicant in the fish tissue decreases, the concentration in the fish tissue may decrease (Zabik, et al., 1993). This issue is complicated as different chemicals accumulate in different parts of the fish. Therefore, the method of preparation and cooking can greatly affect the potential intake of the contaminant. In addition, there is the relatively unexplored area of how the cooking process may change the ''parent'' compound to a by-product, or form a different compound altogether. EPA will solicit public comment on these issues when it solicits comment on the revised methodology. Until these issues relating to fish consumption are further considered, EPA does not believe it should change the current fish consumption value for this rule.

2. Statistical analysis, including Monte Carlo analysis, of studies to determine average daily human fish consumption.

In determining the PCB criteria proposed here, EPA used the 1980 methodology consumption rate of 6.5 grams/person/day representing the estimated mean per capita freshwater/estuarine finfish and shellfish consumption rate for the U.S. population. The source of the 6.5 grams/person/day was a fish consumption survey conducted in 1973 and 1974 by the National Purchase Diaries (NPD), a market research and consulting firm specializing in the analysis of consumer purchasing behavior.

Among the anticipated proposed changes to the 1980 methodology, default fish and shellfish consumption values will be presented for the general population, for sport fishers, and for subsistence fishers, replacing the single value of 6.5 grams/day used in the 1980 Human Health guidance. For contaminants that may cause effects resulting from acute exposures, default rates will be provided for children and for women of childbearing age. The proposed revision to the 1980 methodology is expected to encourage States to use fish and shellfish intake levels derived from local data on fish and shellfish consumption in place of the default values provided. However, EPA's proposal is expected to recommend that the fish and shellfish intake level chosen be protective of highly exposed populations. EPA will solicit public comment on the proposed change when it solicits comment on the revised methodology.

3. The impact of biodegradation of PCBs in the environment in determining an appropriate water quality criterion for PCBs.

As previously mentioned, EPA has completed its reassessment of the cancer potency of PCBs. The PCB criteria proposed today were developed after finalizing the cancer reassessment document.

After release into the environment, PCB mixtures change through partitioning, biodegradation, transformation, and bioaccumulation, differing considerably from commercial mixtures. USEPA has devoted an entire section in the PCBs' Reassessment (1996) (4.1. APPLICATION TO PCB MIXTURES IN THE ENVIRONMENT, pp. 39–43) to the question of how toxicity values for commercial mixtures can be applied to mixtures in the environment.

4. The scientific basis of proposed models for establishing bioaccumulation factors (BAFs), including: (a) the extent to which such models account for the sources of PCBs to fish tissue, including the water column and various strate of sediment, and dissolved, undissolved, and adsorbed PCBs; and (b) the variability of field-calculated BAFs for PCBs among various water bodies and the reasons for such variations.

In determining the PCB criteria proposed here, EPA used the same

bioconcentration factor, 31,200 L/kg, as used in the 1980 criteria guidance document.

In the revised human health methodology, EPA expects to recommend the use of bioaccumulation factors (BAF) in place of BCFs. The revised methodology would incorporate specific characteristics and behavior of bioaccumulative chemicals. For certain chemicals where uptake from exposure to multiple media is important, the revised methodology would emphasize the assessment of bioaccumulation (i.e., uptake from water, food, sediments) over bioconcentration (i.e., uptake from water).

As an alternative to expressing ambient water quality criteria as a water concentration, under the revised human health methodology, criteria may also be expressed in terms of fish tissue concentration. For some substances, particularly those that are expected to exhibit substantial bioaccumulation, the ambient water quality criteria derived may have extremely low values, possibly below the practical limits for detecting and quantifying the substance in the water column. It may be more practical and meaningful in these cases to focus on the concentration of those substances in fish tissue, since fish ingestion would be the predominant source of exposure for these substances that bioaccumulate.

It should be noted that the changes outlined above may result in significant numeric changes in the ambient water quality criteria. EPA will continue to rely on existing criteria as the basis for regulatory and non-regulatory decisions, until EPA revises and reissues those criteria using the revised final human health criteria methodology. The existing criteria are still viewed as scientifically acceptable by EPA. The intention of the methodology revisions is to present the latest scientific advancements in the areas of risk and exposure assessment in order to incrementally improve the already sound toxicological and exposure bases for these criteria. Revisiting all existing criteria would require considerable time and resources. Given these circumstances, EPA intends to propose a process for revising these criteria as part of the overall revisions to the methodology for deriving human health criteria that is expected to be published in the Federal Register in 1998.

F. Regulatory Assessment Requirements

1. Executive Order (E.O.) 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 and is therefore not subject to OMB review.

2. The Unfunded Mandates Reform Act of 1995

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

Today's Rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The proposed rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This rule proposes revised ambient water quality criteria which, when combined with State-adopted designated uses constitute water quality standards for those water bodies with adopted uses. Therefore, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated above, the rule imposes no enforceable requirements on any party, including small governments. Moreover, any water quality standards, including those proposed here apply broadly to waters in the States and may potentially affect any discharger to such waters and, therefore, will not uniquely affect small governments. Additionally, the proposed rule results in ambient water quality criteria for human health that are less stringent than those currently in the NTR and therefore any effects on small governments should be reduced by adoption, and future implementation by the States. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

3. Executive Order 12875, Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government unless the Federal Government provides the necessary funds to pay the direct costs incurred by the State, local or Tribal government or EPA provides the Office of Management and Budget a description of the extent of the Agency's's prior consultation and written communications with representatives of affected State, local and Tribal governments, the nature of

their concerns, and an Agency statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

For the same reasons as stated above in section E.2, EPA has determined this proposed rule does not impose federal mandates on State, local or Tribal governments. Thus, today's proposed rule is not subject to E.O. 12875.

4. The Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996

Under the RFA, (5 U.S.C. 601 *et seq.*), as amended by SBREFA, EPA generally is required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the regulatory action on small entities as part of proposed rulemaking. However, under section 605(b) of the RFA, if the Administrator for the Agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an IRFA. Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare an initial regulatory flexibility analysis.

The RFA requires analysis of the impacts of a rule on the small entities *subject to the rule's requirements. See United Dates Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA . (''[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule*, ''*United Distribution* at 1170, *quoting Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court)). The Agency is thus certifying that today's rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

EPA has authority to promulgate criteria or standards in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. EPA-promulgated standards are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES) program that limits discharges to navigable waters except in compliance with an EPA permit or permit issued under an approved state program. The CWA requires that all NPDES permits must include any limits on discharges that are necessary to meet state water quality standards. The States have discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While State implementation of federally-promulgated water quality criteria or standards may result in new or revised discharge limits being placed on small entities, the criteria or standards themselves do not apply to any discharger, including small entities.

Today's proposed rule as explained above, does not itself establish any requirements that are applicable to small entities. As a result of this action, the States will need to ensure that permits they issue include any limitations on dischargers necessary to comply with the water quality standards established by the criteria in today's proposed rule. In so doing, States will have a number of discretionary choices associated with permit writing. While implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

Furthermore, today's proposed rule results in ambient water quality criteria for human health that are less stringent than those currently in the NTR. Consequently, the economic effect of today's proposed rule should be positive in States subject to the NTR. Any adverse economic impact on small entities associated with measures taken to implement the current PCB criteria of the NTR should be reduced by adoption of the proposed revision.

5. The Paperwork Reduction Act

This proposed rule requires no new or additional information collection activities subject to the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*) Therefore, no Information Collection Request will be submitted to the Office of Management and Budget for review.

6. National Technology Transfer and Advancement Act (NTTAA)

Under Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

The Agency does not believe that this proposed rule addresses any technical standards subject to the NTTAA. A commenter who disagrees with this conclusion should indicate how today's notice is subject to the NTTAA and identify any potentially applicable voluntary consensus standards.

7. EO 13045—Protection of Children From Environmental Health Risks and Safety Risks

On April 21, 1997, the President issued Executive Order 13045 entitled Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19883). Under section 5 of the Order, a federal agency submitting a ''covered regulatory action'' to OMB for review under Executive Order 12866 must provide information regarding the environmental health or safety affects of the planned regulation on children. A ''covered regulatory action'' is defined in section 2–202 as a substantive action in a rulemaking, initiated after the date of this order or for which a Notice of Proposal rulemaking is published 1 year after the date of this order, that is likely to result in a rule that may: be ''economically significant'' under Executive Order 12866 and concern an environmental health risk or safety risk that any agency has reason to believe may disproportionally affect children. As discussed below, this final rule is not a ''covered regulatory action'' as defined in the Order and accordingly is not subject to section 5 of the Order.

This proposed rule does not meet the threshold requirement for a ''covered regulatory action.'' This Notice of Proposed Rulemaking will be published prior to April 21, 1998, and, as discussed in paragraph E.1 above, is not a significant rule under Executive Order

12866. While this proposal is not subject to E.O.13045, we note that this proposed water quality criteria is selected to be protective of sensitive subpopulations, including children.

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards, Toxic pollutants.

Dated: March 27, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I part 131 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 131.36 is amended:

a. The table in paragraph (b)(1) is amended by revising the entries for 119, 120, 121, 122, 123, 124, 125, by adding an entry and revising the total number of criteria at the end of the table, and adding footnote q. (Footnotes d, and g are republished for the convenience of the reader.)

b. Paragraph (d)(3)(ii) is amended by revising entries ''B2'' and ''C2'' under the heading ''Applicable Criteria''.

c. Paragraph (d)(9)(ii) is amended by revising entry ''B2'' under the heading ''Applicable Criteria'' to read as follows:

§ 131.36 Toxics criteria for those states not complying with Clean Water Act Section 303(c)(2)(B).

* * * * *

(b)(1) * *

A		B Freshwater		C Saltwater		D Human health (10^6 risk for carcinogens for consumption of:	
(No.) Compound	CAS No.	Criterion maximum conc. d (µg/L) B1	Criterion continuous conc. d (µg/L) B2	Criterion maximum conc. d (µg/L) C1	Criterion continuous conc. d (µzg/L) C2	Water & organism (µg/L) D1	Organisms only (µg/L) D2
*	*	*	*	*		*	*
119 PCB–1242	53469219		0.014 g		0.03 g		
120 PCB–1254	11097691		0.014 g		0.03 g		
121 PCB–1221	11104282		0.014 g		0.03 g		
122 PCB–1232	11141165		0.014 g		0.03 g		
123 PCB–1248	12672296		0.014 g		0.03 g		
124 PCB–1260	11096825		0.014 g		0.03 g		
125a PCB–1016	12674112		0.014 g		0.03 g		
125b Polychlorinated biphenyls (PCBs)			0.014 g		0.03 g	0.00017 q	0.00017 q
Total No. of Criteria (h)=		24	29	23	27	85	84

Footnotes:

* * * * * * *

d. Criteria Maximum Concentration (CMC) = the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time (1-hour average) without deleterious effects. Criteria Continuous Concentration (CCC) = the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects. µg/L = micrograms per liter.

* * * * * * *

g. Aquatic life criteria for these compounds were issued in 1980 utilizing the 1980 Guidelines for criteria development. The acute values shown are final acute values (FAV) which by the 1980 Guidelines are instantaneous values as contrasted with a CMC which is a one-hour average.

* * * * * * *

q. This criterion applies to total PCBs (i.e., the sum of all congener or all isomer analyses).

* * * * * * *

(d) * * *

(3) * * *

(ii) * * *

Use classification	Applicable criteria
* * *	* *
	Column B2—all except #105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125a.
* * *	* *
	Column C2—all except #105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125a.
* * *	* *

(9) * * *

(ii) * * *

Use classification	Applicable criteria
* * *	* *
	Column B2—all except #9, 13, 105, 107, 108, 111–113, 115, 117, 119–125a and 126; and
* * *	* *

[FR Doc. 98–8644 Filed 4–1–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98–36; FCC 98–40]

Assessment and Collection of Regulatory Fees For Fiscal Year 1998

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1998. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1998

sections 9(b)(2) and (3) provide for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Comments are due April 22, 1998 and Reply Comments are due May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:

Adopted: March 13, 1998
Released: March 25, 1998.

TABLE OF CONTENTS

I. Introduction

1. By this *Notice of Proposed Rulemaking,* the Commission commences a proceeding to revise its Schedule of Regulatory Fees in order to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1998. *See* 47 U.S.C. 159 (a).

2. Congress has required that we collect $162,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1998. *See* Public Law 105–119 and 47 U.S.C. 159(a)(2). This amount is $10,000,000 or nearly 7% more than the amount that Congress designated for recovery through regulatory fees for FY 1997. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997,* FCC 97–215, released June 26, 1997, 62 FR 37408 (July 11, 1997). Thus, we are proposing to revise our fees in order to collect the increased amount that Congress has required that we collect. Additionally, we propose to amend the Schedule in order to simplify and streamline the Fee Schedule. *See* 47 U.S.C. 159(b)(3).

3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with sections 159(b)(2) and (3). In addition, we are proposing changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules. *See* 47 CFR 1.1152 through 1.1156.

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities. *See* 47 U.S.C. 159(a). See Attachment I for a description of these activities. In our *FY 1994 Fee Report and Order,* 59 FR 30984 (June 16, 1994), we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress. *See* 47 U.S.C. 159(b), (f)(1). Subsequently, in

our *FY 1995, FY 1996,* and *FY 1997 Fee Reports and Orders,* 60 FR 34004 (June 29, 1995), 61 FR 36629 (July 12, 1996), and 62 FR 37408 (July 11, 1997), we modified the Schedule to increase by approximately 93 percent, 9 percent and 21 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect in FY 1995, FY 1996 and FY 1997. Also, in our *FY 1995, FY 1996,* and *FY 1997 Fee Reports and Orders,* we amended certain rules governing our regulatory fee program based upon our experience administering the program in prior years. *See* 47 CFR §§ 1.1151 *et seq.*

5. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (3), respectively, provide for ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees. *See* 47 U.S.C. 159(b)(2), (b)(3). Section 9(b)(2), entitled ''Mandatory Adjustments,'' requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees. *See* 47 U.S.C. 159(b)(2).

6. Section 9(b)(3), entitled ''Permitted Amendments,'' requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are to ''add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services.'' *See* 47 U.S.C. 159(b)(3).

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of the various services subject to a fee and for other purposes. *See* 47 U.S.C. 9(i). For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, for FY 1997, we limited the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the ''mandatory adjustments'' to the FY 1997 fees without incorporation of costs. This methodology enables us to develop regulatory fees which more closely reflect our costs of regulation and also allows us to make annual revisions to our fees based to the fullest extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee. Finally, section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect. *See* 47 U.S.C. 159(b)(4)(B).

III. Discussion

A. Summary of FY 1998 Fee Methodology

8. As noted above, Congress has required that the Commission recover $162,523,000 for FY 1998 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities. *See* 47 U.S.C. 159(a).

9. In developing our proposed FY 1998 fee schedule, we first determined that we would continue to use the same general methodology as we used in developing fees for FY 1997. We next estimated payment units [1] for FY 1998 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1997 fees. Next, we compared this revenue amount to the $162,523,000 that Congress has required us to collect in FY 1998 and pro-rated the overage among all the existing fee categories.

10. We then separately projected revenue requirements in each service category using data generated by our cost accounting system and established a revenue ceiling in each service no higher than 25 percent above the revenue that payers within a fee category would have paid if FY 1998 fees had remained at FY 1997 levels (adjusted only for changes in volume and the increase required by Congress). This methodology, described in our *FY 1997 Report and Order* at paragraph 35, reduces fees for services whose regulatory costs have declined and increases fees for services experiencing higher regulatory costs in order to continue to eliminate disparities disclosed by our cost accounting system between a service's current costs and fees ascribed to these services in prior fiscal years. The 25 percent limitation minimizes the impact of unexpected substantial increases to fees which could affect the well-being of licensees.

11. Once we established our tentative FY 1998 fees, we evaluated proposals made by Commission staff concerning other adjustments to the Fee Schedule and to our collection procedures. These proposals are discussed in paragraphs 20–30 and are factored into our proposed FY 1998 Schedule of Regulatory Fees, set forth in Attachment F.

12. Finally, we have incorporated, as Attachment H, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1998. [2] In the following paragraphs, we describe in greater detail our proposed methodology for establishing our FY 1998 regulatory fees.

B. Development of FY 1998 Fees

i. Adjustment of Payment Units

13. As the first step in calculating individual service regulatory fees for FY 1998, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1997 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.[3]

ii. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by our FY 1997 fee amounts in each fee category to determine how much revenue we would collect without any change to the FY 1997 Schedule of Regulatory Fees. The amount of revenue we would collect without changes in the fee schedule is approximately $171.5 million. This amount is approximately $9 million more than the amount the Commission is required to collect in FY 1998. We then adjusted these revenue requirements for each fee category on a

[1] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

[2] We also will incorporate a similar Attachment in the *Report and Order* concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees adopted by the *Report and Order.*

[3] It is important to also note that Congress' required revenue increase in regulatory fee payments of approximately seven percent in FY 1998 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

proportional basis, consistent with section 9(b)(2) of the Act, to obtain an estimate of revenue requirements for each fee category at the $162,523,000 level required by Congress for FY 1998. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

iii. Calculation of Regulatory Costs

15. In accordance with section 159(i) of the Act, the Commission utilizes a cost accounting system designed, in part, to provide data which helps to ensure that fees closely reflect our actual costs of regulation for each service category. The Commission's cost accounting system accumulates both personnel and non-personnel costs on a service-by-service basis and is described in detail in our *FY 1997 Report and Order* at paragraph 12.

16. In order to utilize actual costs for fee development purposes, we first add indirect support costs to direct costs [4] and then adjust the results to approximate the amount of revenue that Congress requires us to collect in FY 1998 ($162,523,000).[5] In effect, we proportionally adjusted the actual cost data pertaining to regulatory fee activities recorded for the period October 1, 1996 through September 30, 1997 (Fiscal Year 1997) among all the fee categories so that total costs approximated $162,523,000. For fee categories where fees are further differentiated by market (e.g., Markets 1–10 under the general VHF and UHF Commercial Television fee categories), we distributed the costs to each market group by maintaining the same ratios between the market groups as between the revenue requirements in the FY 1997 fee schedule. The results of these calculations are shown in detail in Attachment D and represent our best estimate of actual total attributable costs relative to each fee category for FY 1998.

iv. Establishment of 25% Revenue Ceilings

17. Our next step was to establish a ceiling of 25 percent on the increase in the revenue requirement of each fee category (over and above the Congressionally mandated increase in the overall revenue requirement and the difference in unit counts) using the same methodology we described in detail in our *FY 1997 Report and Order.* Capping each fee category's revenue requirement at no more than a 25 percent increase enables us to continue the process of reducing fees for services with lower costs and increasing fees for services with higher costs in order to close the gap between actual costs and fees designed to recover these costs.[6]

18. As noted in our *FY 1997 Report and Order,* an important consideration in utilizing a revenue ceiling is the impact on other fee payers. Because the Commission is required to collect a full $162,523,000 in FY 1998 regulatory fees, the additional revenue ($34,456,724) that would have been collected from licensees subject to a revenue ceiling had there been no ceiling, needs to be collected instead from licensees not subject to the ceiling. This results in a certain amount of subsidization between fee payer classes.[7] We believe, however, that the public interest is best served by this methodology. To do otherwise would subject payers in some fee categories to unexpected major fee increases which could severely impact the economic well being of certain licensees. Attachment E displays the step-by-step process we used to calculate adjusted revenue requirements for each fee category for FY 1998, including the reallocation of revenue requirements resulting from the application of our revenue ceilings.[8]

v. Recalculation of Fees

19. Once we determined the amount of fee revenue that it is necessary to collect from each class of licensee, we divided the revenue requirement by the number of payment units (and by the license term, if applicable, for ''small'' fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(3) of the Act. *See* Attachment E.

vi. Proposed Changes to Fee Schedule

20. We examined the results of our calculations made in paragraphs 15–19 to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). As a result of this review, we are proposing the following changes to our Fee Schedule:

a. Commercial AM & FM Radio. 21. For FY 1997 we established a revised methodology for determining AM & FM radio regulatory fees. This new methodology relies upon a radio station's calculated field strength signal contour overlaid upon U.S. Census data to obtain an estimate of population coverage for each station.[9] The calculated population coverages are then used along with a station's class to

[4] One feature of our cost accounting system is that it separately identifies direct and indirect costs. Direct costs include salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau. These costs include rent, utilities and contractual costs attributable to such personnel. Indirect costs include support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director. The combining of direct and indirect costs is accomplished on a proportional basis among all fee categories as shown on Attachment D.

[5] Congress' estimate of costs to be recovered through regulatory fees is generally determined ten to twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs for FY 1997 will not equal exactly the amount Congress has designated for collection for FY 1998.

[6] We are not suggesting that fee increases are limited to a 25 percent increase over the FY 1997 fees. The 25 percent increase is over and above the *revenue* which would be required after adjusting for projected FY 1998 payment units and the proportional share of the 6.56 percent increase in the amount that Congress is requiring us to collect. Thus, FY 1998 fees may increase more than 25 percent over FY 1997 fees depending upon the number of payment units. We are also not suggesting that this methodology will always result in a continuous closing of an existing gap between costs and fees designed to recover these costs. Since actual costs for a fee category may increase or decrease in consecutive years, the gap could either close or widen depending upon whether or not actual costs go down or up and by how much.

[7] Revenues from current fee payers already offset costs attributable to regulatees exempt from payment of a fee or otherwise not subject to a fee pursuant to section 9(h) of the Act or the Commission's rules. For example, CB and ship radio station users, amateur radio licensees, governmental entities, licensees in the public safety radio services, and all non-profit groups are not required to pay a fee. The costs of regulating these entities is borne by those regulatees subject to a fee requirement.

[8] Application of the 25% ceiling was accomplished by choosing a ''target'' fee revenue requirement for each individual fee category. This ''target'' was either the actual calculated (cost-based) revenue requirement (for those categories at or below the 25% ceiling) or, in the case where the calculated revenue exceeded the ceiling, an amount equal to the ceiling. The shortfall created by reducing the revenue requirement of those whose revenue requirement exceeded the revenue ceiling was proportionately spread among those fee categories whose revenue requirements were below the ceiling. This computation required more than one round of adjustment because the allocation of this revenue, in a few instances, caused the new revenue requirement amount to exceed the 25% ceiling. After three iterations (rounds), all the revenue requirements were at or below the revenue ceiling. See Attachment E.

[9] In FY 1997 we determined that the signal contour for AM radio stations would be based upon a calculated signal strength of 0.5 mV/m from the transmitter location. For Class B FM stations the contour was based upon a signal strength of 54 dBuV/m from the transmitter location and for Class B1 FM stations the contour was based upon a signal strength of 57 dBuV/m. For all other FM Classes, a 60 dBuV/m contour was used. Attachment J describes in detail the factors, measurements and calculations that go into determining station signal contours and associated population coverages.

develop a range of fees for both AM and FM radio stations.

22. Although the calculated contours used in FY 1997 are consistent with Commission radio station signal protection policies and rules, we received several complaints from licensees stating that the contours exaggerated actual market areas and populations served. In several instances licensees complained that small, rural stations whose contours, at the fringe, intersected major metropolitan areas, were attributed with populations far in excess of what they considered to be their primary or even secondary market areas. *See*, for example, letters from KTXC, dated September 10, 1997; Music Express Broadcasting Corporation of Northeast Ohio, dated August 28, 1997; and Martin Broadcasting Company, dated August 26, 1997. To alleviate this disparity and to ensure that radio stations are assigned population coverage figures more in line with their actual market areas, we are proposing for FY 1998 to utilize the same general methodology for determining regulatory fees as we introduced in FY 1997, but to change the applicable signal contours to 5 m/V/m for AM radio stations and 70 dBuV/m for FM radio stations. These reduced contours are generally consistent with the city grade contours of radio stations and should limit population coverage to only those populations actually within a station's primary local market area. We seek comment on this proposal. It should be noted that population coverage is only one factor used to determine radio station regulatory fees. For example, the number of stations claiming non-profit exemption from fees impacts the number of stations which may be assessed regulatory fees. Additionally, the overall amount that Congress requires the Commission to collect and the actual costs attributable to radio station regulation also influence the final determination of fee amounts. The following paragraphs explain in detail the development of our proposed fee schedule for AM and FM radio stations.

23. We calculated the revenue requirements for each category of station (e.g., AM, FM or construction permit) under our existing methodology for assessing radio station fees as shown in Attachment E. In order to consider both population and class of station, we then multiplied the population served by the same ratio between the individual classes as compared to the original FY 1994 Schedule to determine the weighted population. The weighted approach also streamlines the schedule by allowing us to combine AM and FM stations into a single ''radio'' category.

24. Our next step was to sort the data by compiling a list of every AM and FM station in descending order by class-weighted population. Next, we determined actual fees for each station. We designed a schedule which would place stations in wide bands based upon the classes of station and total populations served, with different fees for each band. We established the ranges for the schedule by first proposing a minimum and a maximum fee amount. In setting a minimum fee, we are proposing that it should be no less than the AM Construction Permit fee which we calculated in Attachment E to be $235. Therefore, we set the lowest radio fee at $250. In order to prevent the fee from becoming too great a burden for any licensee, we are proposing to limit the maximum fee to $2,500. At the same time, we are proposing to retain the number of actual fee classifications at ten as in our *FY 1997 Report and Order.* This allowed us to establish fee classifications in $250 increments, with each increment containing the same number of stations, resulting in a more equitable fee schedule while keeping the size of the schedule relatively manageable.[10] The resulting schedule of regulatory fees for radio stations (both AM and FM) would read:

Classification group	Number of stations	Fee
1	878	$2,500
2	878	2,250
3	878	2,000
4	878	1,750
5	878	1,500
6	878	1,250
7	878	1,000
8	878	750
9	878	500
10	873	250

25. This schedule, which we propose today, results in: (1) same class stations in different size cities generally having different fees, (2) different class stations in the same city generally having different fees, and (3) same class stations in the same city generally having the same fee. In addition, it is generally true that in using this methodology: (1) larger stations and those located in larger metropolitan areas tend to be assessed higher fees and (2) small stations and those located in rural areas tend to be assessed lower fees. This proposed fee schedule achieves the objectives of both assessing fees based on class of station and populations served, thereby providing a fair and equitable means of distinguishing between stations located in metropolitan areas and those located in rural areas. Moreover, if a licensee believes that it has been improperly placed in a particular fee classification group or that it will suffer undue financial hardship from the fee assessment, our rules provide for waiver, reduction or deferral of a fee as described in § 1.1166 of our rules. 47 U.S.C § 1.1166.

b. Alternative Proposed Schedule for AM and FM Radio Stations.—26. We also received a number of complaints that licensees could not easily see how their station class was used in determining their regulatory fee for FY 1997. Further, several licensees expressed the view that there was not enough difference between the fees imposed on stations in the largest population centers and those below. *See*, for example, letter from Heckler Broadcasting, Inc. received October 2, 1997; and Petition for Reduction of Regulatory Fee filed September 18, 1997, from Family Communications, Inc. The alternative schedule shown below addresses both of these concerns. However, it should be noted that although the ratios between the classes in the alternative schedule would no longer match the original schedule adopted by Congress, which was implemented in our *FY 1994 Report and Order*, it addresses licensee complaints that the differentiations between the size of service and fee assessed in our existing schedule are inequitable. We invite public comment on whether this alternative schedule for AM and FM Radio should be implemented instead of the one proposed in paragraph 24.

AM RADIO STATION REGULATORY FEES

Population served	Class A	Class B	Class C	Class D
<=20,000	$500	$400	$250	$300
20,001—50,000	1,000	750	400	500

[10] The number of stations is not exactly divisible by 10, leaving group 10 with five less stations than the other groups.

AM RADIO STATION REGULATORY FEES—Continued

Population served	Class A	Class B	Class C	Class D
50,001—125,000	1,500	1,000	500	750
125,001—400,000	2,000	1,500	750	1,000
400,001—1,000,000	3,000	2,500	1,250	1,750
>1,000,000	4,250	3,500	2,000	2,500

FM RADIO STATION REGULATORY FEES

Population served	Classes A, B1 & C3	Classes B, C, C1 & C2
<=20,000	$400	$500
20,001—50,000	750	1,000
50,001—125,000	1,000	1,500
125,001—400,000	1,500	2,000
400,001—1,000,000	2,500	3,000
>1,000,000	3,500	4,250

vii. Effect of Revenue Redistributions on Major Constituencies

27. The following chart illustrates the relative percentage of the overall revenue requirements borne by the major constituencies since inception of regulatory fees in FY 1994.

PERCENTAGE OF REVENUE COLLECTED BY CONSTITUENCY

	Fiscal years—				
	1994 (Actual)	1995 (Actual)	1996 (Actual)	1997 (Actual)	1998 (Proposed)
Cable TV Operators (Inc. CARS Licenses)	41.4	24.0	33.4	21.8	18.1
Broadcast Licensees	23.8	13.8	14.6	14.1	15.3
Satellite Operators (Inc. Earth Stations)	3.3	3.6	4.0	5.0	5.0
Common Carriers	25.0	44.5	40.9	49.8	47.8
Wireless Licensees	6.5	14.1	7.1	9.3	13.8
Total	100.0	100.0	100.0	100.0	100.0

C. Other Issues

i. Distinguishing between CMRS Fee Categories

28. We have received several comments from CMRS fee payers concerning the difficulty some of them have had in distinguishing between CMRS Mobile Services fees and CMRS Messaging Services fees. In our *FY 1997 Report and Order* (*see* paragraphs 58–62) we stated that Congress in its statutory fee schedule distinguished between licensees that we authorized to provide exclusive use services and those we authorized to provide only shared use services. Section (g) assesses a higher fee upon licensees of exclusive use spectrum than upon licensees of less valuable shared use spectrum. Similarly, the statutory fee schedule established fees for broadcast licensees that consider the type of service and class of service authorized. Moreover, since we established the fee program, our fee schedules have adhered to Congress' principle that our fee categories are to be based on the authorization provided to a licensee rather than the use a particular licensee makes of its authorized spectrum. Thus, we propose that our fee schedule for CMRS will not consider the particular use made of a licensee's spectrum and will consider the nature of services offered only to the extent that services offered on broadband spectrum and services offered on narrowband spectrum will be subject to different categories of fee payment. Thus, licenses authorizing operations on broadband spectrum would be subject to the CMRS Mobile Services fee, regardless of the services offered on that spectrum by the licensee. Further, licenses authorizing the provision of services on narrowband spectrum would be subject to the CMRS Messaging Services fee, regardless of the services offered on that spectrum. *See* also Attachment H, paragraphs 14 and 15. We also tentatively conclude that the Wireless Communications Service should be classified as CMRS Mobile Services. We request comments on these matters. We also believe a further clarification of which entities should be paying which CMRS fee would be beneficial to licensees and other fee payers. Separately, we propose to incorporate a clarification as to what is meant by CMRS ''units'' and who is responsible for paying regulatory fees for various kinds of CMRS units. *See* also Attachment H, paragraph 16.

29. The following categories of CMRS licensees would be covered by the CMRS Mobile Services regulatory fee:

Rural Radio Service
Air-ground Radiotelephone Service
Cellular Radiotelephone Service
Offshore Radiotelephone Service
Broadband Personal Communications Services
Wireless Communications Service
Specialized Mobile Radio Service
Public Coast Service

30. The following categories of CMRS licensees would be covered by the CMRS Messaging Services regulatory fee:

Paging and Radiotelephone Service
Narrowband Personal Communications Services
220–222 MHz Band
Interconnected Business Radio Services

31. Licensees in the Specialized Mobile Radio Service have requested reconsideration of our determination that FY 1997 CMRS regulatory fees should be based upon whether a licensee operates on broadband or

narrowband spectrum. *See FY 1997 Report and Order* at para. 60. We expect to address these concerns in our action on petitions for reconsideration of the *FY 1997 Report and Order.* Interested parties may comment in this proceeding on the appropriate fee structure for CMRS licensees and, in particular, may present alternatives to the methodology we established for FY 1997. Commenters should be aware that we do not believe that a case-by-case determination of the appropriate fee for a particular SMR licensee would serve the public interest due to the heavy resource burden it would require.

ii. Clarification of Operational LEO System

32. In our *FY 1997 Report and Order* at paragraph 75, we reiterated our requirement that licensees of low earth orbit satellite systems (LEOS) pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to § 25.120(d). We stated that we require payment of the LEO fee following commencement of operations of a system's first satellite in order to assure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that regulatees in other services are not burdened with these costs any longer than necessary. However, because § 25.120(d) applies to both geostationary and non-geostationary satellite systems, we believe that we need to clarify our existing definition of an operational LEO satellite. Non-geostationary satellite licensees, including licensees of LEO systems, are required to submit reports pursuant to §§ 25.142(c), 25.143(e), and 25.145(g) of the Commission's rules. These reports, annual and filed upon completion of milestones, report the status of a [the] system and indicate compliance under § 25.120(d). In our *FY 1997 Report and Order* at paragraph 75, we reiterated our requirement that licensees of low earth orbit satellite systems (LEOS) pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to § 25.120(d). We stated that we require payment of the LEO fee following commencement of operations of a system's first satellite in order to assure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that regulatees in other services are not burdened with these costs any longer than necessary. However, because § 25.120(d) applies to both geostationary and non-geostationary satellite systems, we believe that we need to clarify our existing definition of an operational LEO satellite to prevent misunderstanding of our intent as stated in paragraph 75 of our *FY 1997 Report and Order.* As such, we propose to add the following to our guidance (*see* Attachment H) relative to determining whether or not a LEO satellite is operational for fee assessment purposes:

Licensees of Non-Geostationary Satellite Systems will be assessed the LEO regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e), 25.145(g) or upon certification of operation of a single satellite pursuant to § 25.120(d).

iii. Renaming of LEO Fee Category

33. ''Non-Geostationary'' satellite orbits were first introduced in the early 90's with the filing of applications for non-voice, non-geostationary satellite service operating below 1 GHz. These satellites proposed to operate satellites in a ''low earth'' orbit, or a non-geostationary orbit The term, ''low earth orbit'' was then synonomous with ''non-geostationary''. As new technologies have evolved, we have received applications proposing to operate in ''medium'' and ''high'' earth orbit technologies, also non-geostationary orbits[, have been filed with the FCC]. Thus, we propose to change the name of the ''Low Earth Orbit Satellite Systems'' fee category to the ''Non-Geostationary Satellite Systems'' fee category in order to clarify that non-geostationary satellites, whether operating in low, medium or high orbits, are covered under this regulatory fee. This is consistent with current industry use, as well as with Commission rules, which refer to non-geostationary, not low earth, orbits and satellites. This name change will have no adverse impact on any entity covered by regulatory fees in FY 1998.

D. Procedures for Payment of Regulatory Fees

34. Generally, we propose to retain the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit ''payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer.'' *See* 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again proposing to establish three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) ''standard'' fees, (2) ''large'' fees, and (3) ''small'' fees.

i. Annual Payments of Standard Fees

35. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as ''standard fees'' which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the *Report and Order* terminating this proceeding or by public notice in the **Federal Register** pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

36. While we are mindful that time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of $12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, however, it is unlikely that there will be sufficient time for installment payments, and that regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

37. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as ''small'' fees subject to advance payment consistent with the requirements of section 9(f)(2). We propose that advance payments will be required from licensees of those services that we

decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers set forth herein.[11] We are also proposing that payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iv. Minimum Fee Payment Liability

38. As we have in the past, we are proposing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 1998.

v. Standard Fee Calculations and Payment Dates

39. As noted, the time for payment of standard fees and any installment payments will be published in the **Federal Register** pursuant to authority delegated to the Managing Director. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, we are proposing that fees be submitted for any authorization held as of *October 1, 1997*. October 1 is the date to be used for establishing liability for payment of standard fees.

40. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on *December 31, 1997*, will be used to calculate the fee payment.[12]

E. Schedule of Regulatory Fees

41. The Commission's proposed Schedule of Regulatory Fees for FY 1998 is contained in Attachment F of this *NPRM*.

IV. Procedural Matters

A. Comment Period and Procedures

42. Pursuant to procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 22, 1998, and reply comments on or before May 4, 1998. All relevant comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting materials. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Interested parties, who do not wish to formally participate in this proceeding, may file informal comments at the same address or may e-mail their comments to mcontee@fcc.gov. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20054.

B. Ex Parte Rules

43. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. *See* 47 CFR 1.1202, 1.1203 and 1026(a).

C. Initial Regulatory Flexibility Analysis

44. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM*, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Office of Public Affairs, Reference Operations Division, shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

45. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)–(j), 159, & 303(r). It is ordered that this *NPRM* is adopted. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

46. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418–0192.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[13] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1998*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided above in paragraph 42. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *NPRM* and IRFA (or summaries thereof)

[11] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS).

[12] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on ''a typical day in the last full week'' of December 1997, rather than on a count as of December 31, 1997.

[13] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

will be published in the **Federal Register**. *See id.*

I. Need for, and Objectives of, the Proposed Rules:

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees. For Fiscal Year 1998, we intend to collect regulatory fees in the amount of $162,523,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

II. Legal Basis

3. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

III. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[14] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [15] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[16] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[17] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [18] Nationwide, as of 1992, there were approximately 275,801 small organizations.[19] ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' [20] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[21] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[22] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. [23] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue. [24]

6. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[25] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[26] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [27] The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[28] Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450. [29] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, [30] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 66,000,000 subcribers, and we have based our fee revenue estimates on that figure.

8. Other Pay Services. Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[31] multipoint distribution systems (MDS),[32] satellite

[14] 5 U.S.C. § 603(b)(3).

[15] *Id.* § 601(6).

[16] 5 U.S.C. § 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. § 601(3).

[17] Small Business Act, 15 U.S.C. § 632 (1996).

[18] 5 U.S.C. § 601(4).

[19] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[20] 5 U.S.C. § 601(5).

[21] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[22] *Id.*

[23] 13 CFR. § 121.201, SIC code 4841.

[24] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[25] 47 CFR § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

[26] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for December 30, 1995).

[27] 47 U.S.C. § 543(m)(2).

[28] *Id.* § 76.1403(b).

[29] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[30] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. *See* 47 CFR § 76.1403(d).

[31] Direct Broadcast Services (DBS) are discussed with the international services, *infra.*

[32] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra.*

master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS).[33] According to data in the most recent report, there are 3,459 interstate carriers.[34] These carriers include, *inter* alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

10. The SBA has defined establishments engaged in providing ''Radiotelephone Communications'' and ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees.[35] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not ''small entities'' or ''small business concerns'' under the RFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term ''small ILECs'' to refer to any ILECs that arguably might be defined by the SBA as ''small business concerns.'' [36]

12. Total Number of Telephone Companies Affected. The U.S. Bureau of the Census (''Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[37] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not ''independently owned and operated.'' [38] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

13. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. [39] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[40] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.

14. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[41] According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services.[42] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

15. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[43] According to the most recent *Telecommunications Industry Revenue data,* 143 carriers reported that they were engaged in the provision of interexchange services.[44] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at

[33] FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (*Telecommunications Industry Revenue*).

[34] *Id.*

[35] 13 CFR § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

[36] *See* 13 CFR § 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order,* 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (August 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

[37] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size,* at Firm Size 1–123 (1995) *(1992 Census).*

[38] *See generally* 15 U.S.C. § 632(a)(1).

[39] *1992 Census, supra,* at Firm Size 1–123.

[40] 13 CFR § 121.201, SIC code 4813.

[41] *Id.*

[42] *Telecommunications Industry Revenue,* Figure 2.

[43] 13 CFR § 121.201, SIC code 4813.

[44] *Telecommunications Industry Revenue,* Figure 2.

this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the proposed rules, if adopted.

16. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.[45] According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services.[46] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the proposed rules, if adopted.

17. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[47] According to the most recent *Telecommunications Industry Revenue* data, 27 carriers reported that they were engaged in the provision of operator services.[48] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by the proposed rules, if adopted.

18. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[49] According to the most recent *Telecommunications Industry Revenue* data, 441 carriers reported that they were engaged in the provision of pay telephone services.[50] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by the proposed rules, if adopted.

19. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[51] According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service.[51a] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

20. 800 Service Subscribers.[51b] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 service (''toll free'') subscribers. The most reliable source of information regarding the number of 800 service subscribers appears to be data the Commission collects on the 800 numbers in use.[51c] According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. Similarly, the most reliable source of information regarding the number of 888 service subscribers appears to be data the Commission collects on the 888 numbers in use.[51d] According to our most recent data, at the end of August 1996, the number of 888 numbers that had been assigned was 2,014,059. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers and fewer than 2,014,059 small entity 888 subscribers that may be affected by the proposed rules, if adopted.

International Services

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[51e] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[51f] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million.[51g] The Census report does not provide more precise data.

22. International Broadcast Stations. Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six

[45] 13 CFR § 121.201, SIC code 4813.

[46] *Telecommunications Industry Revenue,* Figure 2.

[47] 13 CFR § 121.201, SIC code 4813.

[48] *Telecommunications Industry Revenue,* Figure 2.

[49] 13 CFR § 121.201, SIC code 4813.

[50] *Telecommunications Industry Revenue,* Figure 2.

[51] 13 CFR § 121.201, SIC code 4813.

[51a] *Telecommunications Industry Revenue,* Figure 2.

[51b] We include all toll-free number subscribers in this category, including 888 numbers.

[51c] FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends,* Tbl. 20 (May 16, 1996).

[51d] FCC, CCB Industry Analysis Division, *Long Distance Carrier Code Assignments,* p. 80, Tbl. 10B (Oct. 18, 1996).

[51e] An exception is the Direct Broadcast Satellite (DBS) Service, *infra.*

[51f] 13 CFR § 120.121, SIC code 4899.

[51g] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

international broadcast stations are subject to regulatory fee payments.

23. International Public Fixed Radio (Public and Control Stations).

There are 3 licensees in this service subject to payment of regulatory fees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 3000 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. Fixed Satellite Small Transmit/Receive Earth Stations. There are 3000 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations may constitute a small business under the SBA definition.

26. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of VSAT systems that would constitute a small business under the SBA definition.

27. Mobile Satellite Earth Stations. There are two licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

28. Radio Determination Satellite Earth Stations. There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

29. Space Stations (Geostationary). Commission records reveal that there are 46 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition.

30. Space Stations (Non-Geostationary). There are six Non-Geostationary Space Station licensees, of which only two systems are operational. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.'' [51h] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[51i] As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

Mass Media Services

32. Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[51j] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[51k] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[51l] Included in this industry are commercial, religious, educational, and other television stations.[52] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[53] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[54] There were 1,509 television stations operating in the nation in 1992.[55] That number has remained fairly constant as indicated by the approximately 1,564 operating television broadcasting stations in the nation as of December 31, 1997.[56] For 1992,[57] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[58] Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[59] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[60] Included in this industry are commercial, religious, educational,

[51h] 13 CFR § 120.121, SIC code 4841.

[51i] 13 CFR § 121.201, SIC code 4841.

[51j] While we tentatively believe that the SBA's definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Notice* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of ''small business'' as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Notice*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (August 27, 1996), *citing* 5 U.S.C. § 601(3).

[51k] 13 CFR § 121.201, SIC code 4833.

[51l] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S–1*, Appendix A–9 (1995) (*1992 Census, Series UC92-S–1*).

[52] *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes ''Television Broadcasting Stations'' (SIC code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[53] *1992 Census, Series UC92-S–1*, at Appendix A–9.

[54] *Id.*, SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[55] FCC News Release No. 31327 (Jan. 13, 1993); *1992 Census, Series UC92-S–1*, at Appendix A–9.

[56] FCC News Release, ''Broadcast Station Totals as of December 31, 1997.''

[57] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a ''2'' or ''7.'' *See 1992 Census, Series UC92-S–1*, at III.

[58] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[59] 13 CFR § 121.201, SIC code 4832.

[60] *1992 Census, Series UC92-S–1*, at Appendix A–9.

and other radio stations.[61] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[62] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[63] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[64] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[65] As of December 31, 1997, Commission records indicate that 12,27 radio stations were operating, of which 7,465 were FM stations.[66] Only commercial stations are subject to regulatory fees.

34. Thus, the proposed rules, if adopted, will affect approximately 1,558 full power television stations, approximately 1,200 of which are considered small businesses.[67] Additionally, the proposed rules will affect some 12,156 full power radio stations, approximately 11,670 of which are small businesses.[68] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 1,952 low power television stations (LPTV).[69] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is by number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.[70] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[71] We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 4,239.[72]

Auxiliary, Special Broadcast and Other Program Distribution Services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[73]

37. There are currently 2,720 FM translators and boosters, 4,952 TV translators.[74] The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[75]

38. Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[76] In connection with the 1996 MDS auction the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[77] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[78] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j). Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[79] MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 1,573 previously authorized and proposed MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,878 MDS licensees are subject to regulatory

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[65] FCC News Release, No. 31327 (Jan. 13, 1993).

[66] FCC News Release, ''Broadcast Station Totals as of December 31, 1997.''

[67] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1558 TV stations to arrive at 1,200 stations categorized as small businesses.

[68] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[69] FCC News Release, No. 7033 (Mar. 6, 1997).

[70] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and the opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

[71] *See, e.g.,* 47 CFR § 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket No. 96–16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines),* 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

[72] Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[73] 13 C.F.R. § 121.201, SIC code 4832.

[74] FCC News Release, *Broadcast Station Totals as of December 31, 1996,* No. 71831 (Jan. 21, 1997).

[75] 15 U.S.C. § 632.

[76] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[77] *See* 47 C.F.R. § 1.2110 (a)(1).

[78] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* 10 FCC Rcd 9589 (1995), 60 FR 36524 (July 17, 1995).

[79] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide,* 123rd Edition, pp. 36–39.

fees and the number which are small businesses is unknown.

Wireless and Commercial Mobile Services

39. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[80] According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[81] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[82] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

40. 220 MHz Radio Services. Because the Commission has not yet defined a small business with respect to 220 MHz services, we will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[83] With respect to 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Given that nearly all radiotelephone companies under the SBA definition employ no more than 1,500 employees (as noted *supra*), we will consider the approximately 1,500 incumbent licensees in this service as small businesses under the SBA definition.

41. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[84] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data.[85] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

42. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,[86] and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services.[87] Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

43. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[88] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. [89] These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA.[90] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[91] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

44. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS.

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[80] 13 C.F.R. § 121.201, SIC code 4812.

[81] *1992 Census, Series UC92–S–1*, at Table 5, SIC code 4812.

[82] *Telecommunications Industry Revenue*, Figure 2.

[83] 13 C.F.R. § 121.201, SIC code 4812.

[84] 13 C.F.R. § 121.201, SIC code 4812.

[85] *Telecommunications Industry Revenue*, Figure 2.

[86] 13 C.F.R. § 121.201, SIC code 4812.

[87] *Telecommunications Industry Revenue*, Figure 2.

[88] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); *see also* 47 C.F.R. § 24.720(b).

[89] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (July 1, 1996).

[90] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[91] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

45. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[92] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[93] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[94] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

46. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[95] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[96] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

47. Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[97] In the context of 900 MHz SMR, this regulation defining ''small entity'' has been approved by the SBA; approval concerning 800 MHz SMR is being sought.

48. The proposed fees in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

49. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses awarded to winning bidders, of which 38 were won by small or very small entities.

50. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

51. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs [98] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

52. Amateur Radio Service. We estimate that 10,000 applicants will apply for vanity call signs in FY 1998. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

53. Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.[99]

54. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate, however, that only 16,500 will be subject to FY 1998 regulatory fees.

55. Fixed Microwave Services. Microwave services include common carrier,[100] private-operational fixed,[101] and broadcast auxiliary radio services.[102] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone

[92] The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

[93] BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757, 22.759.

[94] 13 C.F.R. § 121.201, SIC code 4812.

[95] The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. §§ 22.99.

[96] 13 C.F.R. § 121.201, SIC code 4812.

[97] *See* 47 C.F.R. § 90.814(b)(1).

[98] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

[99] 13 C.F.R. § 121.201, SIC code 4812.

[100] 47 C.F.R. § 101 *et seq.* (formerly, Part 21 of the Commission's Rules).

[101] Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[102] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. § 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

companies—*i.e.*, an entity with no more than 1,500 persons.[103] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

56. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[104] There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[105] All licensees in this category are exempt from the payment of regulatory fees.

57. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signalling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[106] Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

58. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[107] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

59. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

60. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 (''FCC Remittance Advice''), and pay a regulatory fee based on the number of licenses or call signs.[108] Interstate telephone service providers must compute their annual regulatory fee based on their adjusted gross interstate revenue using information they already supply to the Commission in compliance with the Telecommunications Relay Service (TRS) Fund, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

61. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. This latter, optional procedure may require additional technical skills. Licensees who pay small fees in advance supply fee information as part of their application and do not need to use the FCC Form 159.

62. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of 25% in addition to the required fee.[109] Until payment is received, no new or pending

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[103] 13 C.F.R. § 121.201, SIC 4812.

[104] With the exception of the special emergency service, these services are governed by Subpart B of Part 90 of the Commission's Rules, 47 C.F.R. §§ 90.15–90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 C.F.R. §§ 90.15–90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33–90.55.

[105] 5 U.S.C. § 601(5).

[106] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of Part 95 of the Commission's Rules. 47 C.F.R. §§ 95.401–95.428; §§ 95.1–95.181; §§ 95.201–95.225; 47 C.F.R. §§ 95.191–95.194.

[107] This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001—22.1037.

[108] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs)and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[109] 47 U.S.C. 1.1164(a).

applications will be processed, and existing authorizations may be subject to rescission.[110] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[111] Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[112]

63. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[113] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

64. *The Omnibus Consolidated Appropriation Act,* Public Law 105–119, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 1998. *See* 47 U.S.C. § 159(a). We seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

65. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The methodology proposed in this *NPRM* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

66. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 108, *supra,* and Attachment H of the *NPRM, infra.*

VI. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

67. None.

Attachment B—Sources of Payment Unit Estimates for FY 1998

In order to calculate individual service fees for FY 1998, we adjusted FY 1997 payment units for each service to more accurately reflect expected FY 1998 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1998 estimates with actual FY 1997 payment units to ensure that our revised estimates were reasonable. Where it made sense, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 1998 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 1998 payment units are based on FY 1997 actual payment units, it does not necessarily mean that our FY 1998 projection is *exactly* the same number as FY 1997. It means that we have either rounded the FY 1998 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, IVDS[114], Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on actual FY 1997 payment units adjusted to take into consideration industry estimates of growth between FY 1997 and FY 1998 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS Messaging Services	Based on industry estimates of the number of units in operation.
AM/FM Radio Stations	Based on actual FY 1997 payment units.
UHF/VHF Television Stations	Based on actual FY 1997 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1997 payment units.
LPTV, Translators and Boosters	Based on actual FY 1997 payment units.
Auxiliaries	Based on actual FY 1997 payment units.
MDS/MMDS	Based on actual FY 1997 payment units.
Cable Antenna Relay Service (CARS).	Based on actual FY 1997 payment units.
Cable Television System Subscribers.	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers.	Based on actual FY 1997 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund, adjusted to take into consideration FY 1998 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1997 payment units.
Space Stations (GEOs & NGEOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimate.

[110] 47 U.S.C. 1.1164(c).

[111] Public Law 104–134, 110 Stat. 1321 (1996).

[112] 31 U.S.C. 7701(c)(2)(B).

[113] 47 U.S.C. § 1.1166.

Fee category	Sources of payment unit estimates
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on actual FY 1997 payment units.

[114] The Wireless Telecommunications Bureau's staff advises that they do not anticipate receiving any applications for IVDS in FY 1998. Therefore, since there is no volume, there will be no regulatory, fee in the IVDS category for FY 1998.

ATTACHMENT C—CALCULATION OF REVENUE REQUIREMENTS

Fee category	FY 1998 payment units	×	FY 1997 Fee	×	Payment years	=	Computed FY 1998 revenue requirement	Pro-rated revenue requirement
LM (220 MHz, >470 MHZ-Base, SMRS)	4,645		10		5		232,250	225,691
Private Microwave	3,830		10		10		383,000	372,184
Domestic Public Fixed/Commercial Microwave	5,150		10		10		515,000	500,456
IVDS	0		0		5		0	0
Marine (Ship)	16,500		5		10		825,000	801,702
GMRS/Other LM	72,465		5		5		1,811,625	1,760,465
Aviation (Aircraft)	3,500		5		10		175,000	170,058
Marine (Coast)	1,370		5		5		34,250	33,283
Aviation (Ground)	1,865		5		5		46,625	45,308
Amateur Vanity Call Signs	10,000		5		10		500,000	485,880
AM/FM Radio	8,646		1,126		1		9,735,396	9,460,469
AM Construction Permits	62		195		1		12,090	11,749
FM Construction Permits	473		950		1		449,350	436,660
Satellite TV	105		950		1		99,750	96,933
Satellite TV Construction Permit	10		345		1		3,450	3,353
VHF Markets 1–10	42		35,025		1		1,471,050	1,429,508
VHF Markets 11–25	61		28,450		1		1,735,450	1,686,441
VHF Markets 26–50	71		18,600		1		1,320,600	1,283,306
VHF Markets 51–100	118		9,850		1		1,162,300	1,129,477
VHF Remaining Markets	207		2,725		1		564,075	548,146
VHF Construction Permits	10		4,800		1		48,000	46,644
UHF Markets 1–10	94		16,850		1		1,583,900	1,539,171
UHF Markets 11–25	96		13,475		1		1,293,600	1,257,069
UHF Markets 26–50	124		8,750		1		1,085,000	1,054,360
UHF Markets 51–100	172		4,725		1		812,700	789,749
UHF Remaining Markets	182		1,350		1		245,700	238,761
UHF Construction Permits	50		2,975		1		148,750	144,549
Auxiliaries	20,000		25		1		500,000	485,880
International HF Broadcast	4		390		1		1,560	1,516
LPTV/Translators/Boosters	2,290		220		1		503,800	489,573
CARS	1,800		65		1		117,000	113,696
Cable Systems	66,000,000		0.54		1		35,640,000	34,633,530
Interstate Telephone Service Providers	70,103,000,000		0.00116		1		81,319,480	79,023,026
CMRS Mobile Services (Cellular/Public Mobile)	55,540,000		0.24		1		13,329,600	12,953,173
CMRS—Messaging	39,592,000		0.03		1		1,187,760	1,154,218
MDS/MMDS	1,878		215		1		403,770	392,368
International Circuits	325,000		5		1		1,625,000	1,579,110
International Public Fixed	3		310		1		930	904
Earth Stations	3,000		515		1		1,545,000	1,501,369
Space Stations (Geostationary Orbit)	46		97,975		1		4,506,850	4,379,577
Space Stations (Non-Geostationary Orbit)	2		135,675		1		271,350	263,687
****** Total Estimated Revenue Collected							167,246,011	162,523,000
****** Total Revenue Requirement							162,523,000	162,523,000
Difference							4,723,011	0

** 0.971760098 factor applied

ATTACHMENT D.—CALCULATION OF REGULATORY COSTS

Fee category	Actual FY 1997 regulatory costs	Overhead and other indirect pro rated	Total costs with overhead and other indirect pro rated	Total costs pro-rated to $162 million**	Adjusted pro-rated costs***
LM (220 MHz, >470 MHZ-Base, SMRS)	1,952,428	98,195	2,050,623	2,113,136	2,113,136
Microwave	4,860,809	244,469	5,105,277	5,260,912	5,260,912
IVDS	2,122,499	106,749	2,229,248	2,297,206	2,297,206
Marine (Ship)	2,754,238	138,521	2,892,759	2,980,945	2,980,945
GMRS/Other LM	5,943,682	298,930	6,242,612	6,432,918	6,432,918
Aviation (Aircraft)	980,895	49,333	1,030,228	1,061,635	1,061,635
Marine (Coast)	685,608	34,482	720,090	742,041	742,041
Aviation (Ground)	562,239	28,277	590,516	608,518	608,518
Amateur Vanity Call Signs	88,615	4,457	93,072	95,909	95,909
AM/FM Radio	14,125,529	710,427	14,835,955	15,288,230	14,396,926
AM Construction Permits					103,960
FM Construction Permits					787,344
Satellite TV					70,397
Satellite TV Construction Permit					11,690
VHF Television	4,957,533	249,333	5,206,866	5,365,598	
VHF Markets 1–10					1,291,499
VHF Markets 11–25					1,129,458
VHF Markets 26–50					1,371,983
VHF Markets 51–100					1,000,147
VHF Remaining Markets					502,757
VHF Construction Permits					30,584
UHF Television	2,954,865	148,611	3,103,476	3,198,086	
UHF Markets 1–10					1,023,388
UHF Markets 11–25					756,347
UHF Markets 26–50					531,842
UHF Markets 51–100					484,190
UHF Remaining Markets					202,119
UHF Construction Permits					166,940
Auxiliaries	146,460	7,366	153,826	158,515	158,515
International HF Broadcast	217,931	10,961	228,891	235,869	235,869
LPTV/Translators/Boosters	736,547	37,044	773,590	797,173	797,173
CARS	61,797	3,108	64,905	66,883	66,883
Cable Systems	20,125,023	1,012,164	21,137,187	21,781,555	21,781,555
Interstate Telephone Service Providers	53,234,026	2,677,341	55,911,367	57,615,828	57,615,828
CMRS Mobile Services (Cellular/Public Mobile)	11,273,798	567,002	11,840,801	12,201,768	12,201,768
CMRS—One Way Paging	6,015,701	302,552	6,318,254	6,510,866	6,510,866
MDS/MMDS	1,357,260	68,262	1,425,521	1,468,979	1,468,979
International Circuits	8,253,772	415,114	8,668,886	8,933,157	8,933,157
International Public Fixed	193,436	9,729	203,165	209,358	209,358
Earth Stations	339,999	17,100	357,099	367,985	367,985
Space Stations (Geostationary Orbit)	5,677,889	285,563	5,963,452	6,145,248	6,145,248
Space Stations (Non-Geostationary Orbit)	540,215	27,169	567,385	584,681	584,681
Overhead & Other Indirect Costs	7,552,257				
*****Total	157,715,049	7,552,257	157,715,049	162,523,000	162,532,656
*****Total Revenue Requirement	162,523,000		162,523,000	162,523,000	162,523,000
Difference	(4,807,951)		(4,807,951)		9,656

**1.046987 factor applied
***The pro rated costs shown in the previous column needed to be adjusted to sub-allocate TV and radio costs.
Note: Columns may not add due to rounding.

ATTACHMENT E.—CALCULATION OF FY 1998 REGULATORY FEES

Fee category	Pro-rated revenue requirement	Adjusted activity costs	Costs vs. revenue requirement difference (percent)	Pro-revenue requirement plus 25% ceiling	Round 1 Target revenue	Round 1 Adjustable target revenue	Round 1 Pro-rated target revenue	Round 2 Target revenue	Round 2 Adjustable target revenue	Round 2 Pro-rated target revenue	Computed new FY 1998 regulatory fee	Rounded new FY 1998 regulatory fee	Expected FY 1998 revenue
LM (220 MHz, >470MHZ-Base, SMRS)	225,691	2,113,136	836.30	282,114	282,114	.....	282,114	282,114	.....	282,114	12	12	278,700
Microwave	872,640	5,260,912	502.87	1,090,800	1,090,800	.....	1,090,800	1,090,800	.....	1,090,800	12	12	1,077,600
IVDS	0	2,297,206	.....	0	0	.....	0	0	.....	0	0	0	0
Marine (Ship)	801,702	2,980,945	271.83	1,002,128	1,002,128	.....	1,002,128	1,002,128	.....	1,002,128	6	6	990,000
GMRS/Other LM	1,760,465	6,432,918	265.41	2,200,581	2,200,581	.....	2,200,581	2,200,581	.....	2,200,581	6	6	2,173,950
Aviation (Aircraft)	170,058	1,061,635	524.28	212,573	212,573	.....	212,573	212,573	.....	212,573	6	6	210,000
Marine (Coast)	33,283	742,041	2129.49	41,604	41,604	.....	41,604	41,604	.....	41,604	6	6	41,100
Aviation (Ground)	45,308	608,518	1243.07	56,635	56,635	.....	56,635	56,635	.....	56,635	6	6	55,950
Amateur Vanity Call Signs	485,880	95,909	−80.26	607,350	607,350	95,909	128,310	128,310	128,310	128,757	1.29	1.29	128,757
AM/FM Radio	9,460,469	14,396,926	52.18	11,825,586	11,825,586	.....	11,825,586	11,825,586	.....	11,825,586	1,368	1,375	11,888,250
AM Construction Permits	11,749	103,960	784.84	14,686	14,686	.....	14,686	14,686	.....	14,686	237	235	14,570
FM Construction Permits	436,660	787,344	80.31	545,825	545,825	.....	545,825	545,825	.....	545,825	1,154	1,150	543,950
Satellite TV	96,933	70,397	−27.38	121,166	121,166	70,397	94,179	94,179	94,179	94,508	900	900	94,500
Satellite TV Construction Permit	3,353	11,690	248.64	4,191	4,191	.....	4,191	4,191	.....	4,191	419	420	4,200
VHF Markets 1–10	1,429,508	1,291,499	−9.65	1,786,885	1,291,499	1,291,499	1,727,804	1,727,804	1,727,804	1,733,829	41,282	41,275	1,733,550
VHF Markets 11–25	1,686,441	1,129,458	−33.03	2,108,051	1,129,458	1,129,458	1,511,021	1,511,021	1,511,021	1,516,290	24,857	24,850	1,515,850
VHF Markets 26–50	1,283,306	1,371,986	6.91	1,604,133	1,371,986	1,371,986	1,835,481	1,604,133	.....	1,604,133	22,593	22,600	1,604,600
VHF Markets 51–100	1,129,477	1,000,147	−11.45	1,411,846	1,000,147	1,000,147	1,338,025	1,338,025	1,338.025	1,342,691	11,379	11,375	1,342,250
VHF Remaining Markets	548,146	502,757	−8.28	685,183	502,757	502,757	672,602	672,602	672,602	674,948	3,261	3,250	672,750
VHF Construction Permits	46,644	30,584	−34.43	58,305	30,584	30,584	40,916	40,916	40,916	41,059	4,106	4,100	41,000
UHF Markets 1–10	1,539,171	1,023,388	−33.51	1,923,964	1,023,388	1,023,388	1,369,117	1,369,117	1,369,117	1,373,892	14,616	14,625	1,374,750
UHF Markets 11–25	1,257,069	756,347	−39.83	1,571,336	756,347	756,347	1,011,862	1,011,862	1,011,862	1,015,391	10,577	10,575	1,015,200
UHF Markets 26–50	1,054,360	531,842	−49.56	1,317,950	531,842	531,842	711,513	711,513	711,513	713,994	5,758	5,750	713,000
UHF Markets 51–100	789,749	484,190	−38.69	987,186	484,190	484,190	647,763	647,763	647,763	650,022	3,779	3,775	649,300
UHF Remaining Markets	238,761	202,119	−15.35	298,451	202,119	202,119	270,400	270,400	270,400	271,343	1,491	1,500	273,000
UHF Construction Permits	144,549	166,940	15.49	180,686	166,940	166,940	223,337	180,686	.....	180,686	3,614	3,625	181,250
Auxiliaries	485,880	158,515	−67.38	607,350	158,515	158,515	212,066	212,066	212,066	212,805	11	11	220,000
International HF Broadcast	1,516	235,869	15458.64	1,895	1,895	.....	1,895	1,895	.....	1,895	474	475	1,900
LPTV/Translators/Boosters	489,573	797,173	62.83	611,966	611,966	.....	611,966	611,966	.....	611,966	267	265	606,850
CARS	113,696	66,883	−41.17	142,120	66,883	66,883	89,478	89,478	89,478	89,790	50	50	90,000
Cable Systems	34,633,530	21,781,555	−37.11	43,291,913	21,781,555	21,781,555	29,139,975	29,139,975	29,139,975	29,241,595	0.44	0.44	29,241,595
Interstate Telephone Service Providers	79,023,026	57,615,828	−27.09	98,778,783	57,615,828	57,615,828	77,080,070	77,080,070	77,080,070	77,348,871	0.00110	0.00110	77,348,871
CMRS Mobile Services (Cellular/Public Mobile)	12,953,173	12,201,768	−5.80	16,191,466	12,201,768	12,201,768	16,323,867	16,191,466	.....	16,191,466	0.29	0.29	16,191,466
CMRS Messaging Services	1,154,218	6,510,866	464.09	1,442,773	1,442,773	.....	1,442,773	1,442,773	.....	1,442,773	0.04	0.04	1,442,773
MDS/MMDS	392,368	1,468,979	274.39	490,460	490,460	.....	490,460	490,460	.....	490,460	261	260	488,280
International Circuits	1,579,110	8,933,157	465.71	1,973,888	1,973,888	.....	1,973,888	1,973,888	.....	1,973,888	6	6	1,950,000
International Public Fixed	904	209,358	23059.07	1,130	1,130	.....	1,130	1,130	.....	1,130	377	375	1,125
Earth Stations	1,501,369	367,985	−75.49	1,876,711	367,985	367,985	492,301	492,301	492,301	494,017	165	165	495,000
Space Stations (Geostationary Orbit)	4,379,577	6,145,248	40.32	5,474,471	5,474,471	.....	5,474,471	5,474,471	.....	5,474,471	119,010	119,000	5,474,000
Space Stations (Non-Geostationary Orbit)	263,687	584,681	121.73	329,609	329,609	.....	329,609	329,609	.....	329,609	164,804	164,800	329,600
****** Total Estimated Revenue Collected	162,522,999	162,532,659	.....	203,153,749	128,453,011	100,850,097	162,523,000	162,116,000	116,537,401	162,523,000	.....	.....	162,499,486
****** Total Revenue Requirement	162,523,000	162,523,000	.....	162,523,000	162,523,000	.....	162,523,000	162,523,000	.....	162,523,000	.....	.....	162,523,000
Difference	(1)	9,659	.....	40,630,749	(34,069,989)	.....	0	(406,400)	.....	0	.....	.....	(23,514)

**1.33782803 factor applied
*** 1.003487295 factor applied

ATTACHMENT F.—PROPOSED FY 1998 SCHEDULE OF REGULATORY FEES

Fee category	Annual regulatory fee
PMRS (per license) (Formerly Land Mobile—Exclusive Use at 220–222 MHz, above 470 MHz, Base Station and SMRS) (47 CFR Part 90)	12
Microwave (per license) (47 CFR Part 101)	12
Interactive Video Data Service (per license) (47 CFR Part 95)	([1])
Marine (Ship) (per station) (47 CFR Part 80)	6
Marine (Coast) (per license) (47 CFR Part 80)	6
General Mobile Radio Service (per license) (47 CFR Part 95)	6
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	6
Aviation (Aircraft) (per station) (47 CFR Part 87)	6
Aviation (Ground) (per license) (47 CFR Part 87)	6
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	1.29
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 27, 80 and 90)	.29
CMRS One-Way Paging (per unit) (47 CFR Parts 20, 22 and 90)	.04
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	260
AM & FM Radio (47 CFR Part 73):	
Group 1	2,500
Group 2	2,250
Group 3	2,000
Group 4	1,750
Group 5	1,500
Group 6	1,250
Group 7	1,000
Group 8	750
Group 9	500
Group 10	250
AM Construction Permits	235
FM Construction Permits	1,150
TV (47 CFR Part 73) VHF Commercial:	
Markets 1–10	41,275
Markets 11–25	24,850
Markets 26–50	22,600
Markets 51–100	11,375
Remaining Markets	3,250
Construction Permits	4,100
TV (47 CFR Part 73) UHF Commercial:	
Markets 1–10	14,625
Markets 11–25	10,575
Markets 26–50	5,750
Markets 51–100	3,775
Remaining Markets	1,500
Construction Permits	3,625
Satellite Television Stations (All Markets)	900
Construction Permits—Satellite Television Stations	420
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	265
Broadcast Auxiliary (47 CFR Part 74)	11
Cable Antenna Relay Service (47 CFR Part 78)	50
Cable Television Systems (per subscriber)	.44
Interstate Telephone Service Providers (per revenue dollar)	.0011
Earth Stations (47 CFR Part 25)	165
Space Stations (per operational station in geostationary orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	119,000
Space Stations (per operational system in non-geostationary orbit) (47 CFR Part 25)	164,800
International Circuits (per active 64KB circuit)	6
International Public Fixed (per call sign) (47 CFR Part 23)	375
International (HF) Broadcast (47 CFR Part 73)	475

[1] No fee.

ATTACHMENT G.—COMPARISON BETWEEN FY 1997 AND PROPOSED FY 1998 REGULATORY FEES

Fee category	Annual regulatory fee FY 1997	Proposed regulatory fee FY 1998
PMRS (per license) (Formerly Land Mobile-Exclusive Use at 220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	10	12
Microwave (per license) (47 CFR Part 101)	10	12
Marine (Ship) (per station) (47 CFR Part 80)	5	6
Marine (Coast) (per license) (47 CFR Part 80)	5	6
General Mobile Radio Service (per license) (47 CFR Part 95)	5	6

ATTACHMENT G.—COMPARISON BETWEEN FY 1997 AND PROPOSED FY 1998 REGULATORY FEES—Continued

Fee category	Annual regulatory fee FY 1997	Proposed regulatory fee FY 1998
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	5	6
Aviation (Aircraft) (per station) (47 CFR Part 87)	5	6
Aviation (Ground) (per license) (47 CFR Part 87)	5	6
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	5	1.29
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 27, 80 and 90)	.24	.29
CMRS Messaging Services [formerly One Way Paging] (per unit) (47 CFR Parts 20, 22, and 90)	.03	.04
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	215	260
Radio (47 CFR Part 73):		
Group 1	2,000	2,500
Group 2	1,800	2,250
Group 3	1,600	2,000
Group 4	1,400	1,750
Group 5	1,200	1,500
Group 6	1,000	1,250
Group 7	800	1,000
Group 8	600	750
Group 9	400	500
Group 10	200	250
AM Construction Permits	195	235
FM Construction Permits	950	1,150
TV (47 CFR Part 73) VHF Commercial:		
Markets 1–10	35,025	41,275
Markets 11–25	28,450	24,850
Markets 26–50	18,600	22,600
Markets 51–100	9,850	11,375
Remaining Markets	2,725	3,250
Construction Permits	4,800	4,100
TV (47 CFR Part 73) UHF Commercial:		
Markets 1–10	16,850	14,625
Markets 11–25	13,575	10,575
Markets 26–50	8,750	5,750
Markets 51–100	4,725	3,775
Remaining Markets	1,350	1,500
Construction Permits	2,975	3,625
Satellite Television Stations (All Markets)	950	900
Construction Permits—Satellite Television Stations	345	420
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	220	265
Broadcast Auxiliary (47 CFR Part 74)	25	11
Cable Antenna Relay Service (47 CFR Part 78)	65	50
Earth Stations (47 CFR Part 25)	515	165
Cable Television Systems (per subscriber) (47 CFR Part 76)	.54	.44
Interstate Telephone Service Providers (per revenue dollar)	.00116	.0011
Space Stations (per operational station in geostationary orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	97,975	119,000
Space Stations (per operational system in non-geostationary orbit) (47 CFR Part 25)	135,675	164,800
International Bearer Circuits (per active 64KB circuit)	5	6
International Public Fixed (per call sign) (47 CFR Part 23)	310	375
International (HF) Broadcast (47 CFR Part 73)	390	475

Attachment H—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act, 47 U.S.C. § 159(g) as modified in the instant *NPRM*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994, 1995, 1996, and 1997 and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission. *See* 47 U.S.C. 159(b)(2), (3).

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity may be asked to submit a current IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees. *See* 47 U.S.C. § 159(b)(1)(A). In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Mobile Radio Services (PMRS) (Formerly Land Mobile Services):* Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[115] For FY 1998, PMRS licensees will pay a $12 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.[116] The total regulatory fee due is either $60 for a license with a five year term or $120 for a license with a 10 year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 1998, Microwave licensees will pay a $12 annual regulatory fee per license, payable for an entire ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $120 for the ten year license term.

6. *Interactive Video Data Service (IVDS):* The IVDS is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The IVDS provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The IVDS is offered on a private carrier basis. The Commission does not anticipate receiving any applications in the IVDS during FY 1998. Therefore, for FY 1998, there is no regulatory fee for IVDS licensees.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Thus, private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 1998, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $6 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $60 for the ten year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1998, licensees of Marine (Coast) Stations will pay a $6 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $30 per call sign for the five-year license term.

9. *Private Land Mobile (Other) Services:* These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one- or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 1998, licensees of services in this category will pay a $6 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $30 for the five-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The commission exercises that authority. Thus, private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 1998, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $6 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $60 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations

[115] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[116] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 1998 is less than one-tenth of one percent and, therefore, is statistically insignificant.

which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 1998, licensees of Aviation (Ground) Stations will pay a $6 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $30 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 1998, GMRS licensees will pay a $6 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $30 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs*: This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a $5 annual regulatory fee per call sign, as prescribed in the FY 1997 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 1998 fee schedule becomes effective. The total regulatory fee due would be $50 per license for the ten-year license term.[117] For FY 1998, Amateur Vanity Call Sign applicants will pay a $1.29 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $12.90 per call sign for the ten-year license term. We propose that there will be no refunds to applicants who submit applications before implementation of the FY 1998 fee.

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services*: The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (*e.g.*, Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);[118] Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, Rural Radio Service, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 1998, the regulatory fee is $.29 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services*: The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (e.g., one-way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 1998, the regulatory fee is $.04 per unit.

16. Finally, we are reiterating our definition of CMRS payment units to make it clear that fees are assessable on each PCS or cellular telephone and each one-way or two-way pager capable of receiving or transmitting information, whether or not the unit is ''active'' on the ''as-of'' date for payment of these fees. The unit becomes ''feeable'' if the end user or assignee of the unit has possession of the unit and the unit is capable of transmitting or receiving voice or non-voice messages or data and the unit is either owned and operated by the licensee of the CMRS system or a reseller, or the end user of a unit has a contractual agreement for the provision of a CMRS service from a licensee of a CMRS system or a reseller of a CMRS service. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and contractually obtains paging services from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular phones to a high school and the high school either pays for or obtains free cellular service from Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fees for these units.

2. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's Rules.[119] We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and

[117] Section 9(h) exempts ''amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)'' from the requirement. However, section 9(g)'s fee schedule explicitly includes ''Amateur vanity call signs'' as a category subject to the payment of a regulatory fee.

[118] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

[119] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 1998 are as follows:

Group 1	$2,500
Group 2	2,250
Group 3	2,000
Group 4	1,750
Group 5	1,500
Group 6	1,250
Group 7	1,000
Group 8	750
Group 9	500
Group 10	250

19. Licensees may determine the appropriate fee payment by referring to a list which will be provided as an attachment to the final *Report and Order* in this proceeding. This same information will be available on the FCC's internet world wide web site (http://www.fcc.gov), by calling the FCC's National Call Center (1–888–225–5322), and may be included in Public Notices mailed to each licensee.

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct new Commercial AM Stations. For FY 1998, permittees will pay a fee of $235 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated group within which the station appears.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct new Commercial FM Stations. For FY 1998, permittees will pay a fee of $1,150 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated group within which the station appears.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook*, Stations Volume No. 66, 1998 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10	$41,275
VHF Markets 11–25	24,850
VHF Markets 26–50	22,600
VHF Markets 51–100	11,375
VHF Remaining Markets	3,250
UHF Markets 1–10	14,625
UHF Markets 11–25	10,575
UHF Markets 26–50	5,750
UHF Markets 51–100	3,775
UHF Remaining Markets	1,500

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of $900 annually. Those stations designated as Television Satellite Stations in the 1998 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1998, VHF permittees will pay an annual regulatory fee of $4,100. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct new UHF Television Stations. For FY 1998, UHF Television permittees will pay an annual regulatory fee of $3,625. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 1998 is $420. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order.* Community based Translators are exempt from regulatory fees. For FY 1998, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $265 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 1998, licensees of Commercial Auxiliary Stations will pay an $11 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1998, MDS and MMDS

stations will pay an annual regulatory fee of $260 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 1998, Cable Systems will pay a regulatory fee of $.44 per subscriber.[120] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1997. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.,* apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order,* Appendix B at paragraph 31.

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1998, licensees will pay an annual regulatory fee of $50 per CARS license.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *infra*).

b. Interstate Telephone Service Providers

33. This category includes Inter-Exchange Carriers (IXCs), Local Exchange Carriers (LECs), Competitive Access Providers (CAPs), domestic and international carriers that provide operator services, Wide Area Telephone Service (WATS), 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers. This category also includes pre-paid calling card providers. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund. *See Telecommunications Relay Services,* 8 FCC Rcd 5300 (1993), 58 FR 39671 (July 26, 1993). In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues, as reported to NECA in connection with their TRS contribution, any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service. For this purpose, resold telecommunications facilities and services are only intended to include payments that correspond to revenues that will be included by another carrier reporting interstate revenue. For FY 1998, carriers must multiply their adjusted gross revenue figure (gross revenue reduced by the total amount of their payments to underlying common carriers for telecommunications facilities or services) by the factor 0.0011 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

	Total	Interstate
(1) Revenue reported in TRS Fund worksheets		
(2) Less: Access charges paid ..		
(3) Less: Other telecommunications facilities and services taken for resale		
(4) Adjusted revenues (1) minus (2) minus (3)		
(5) Fee factor		0.0011
(6) Fee due (4)times(5)		

5. International Services

a. Earth Stations

34. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. *Mobile Satellite Earth Stations,* operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[121] *Fixed-Satellite Transmit/ Receive and Transmit-Only Earth Station antennas,* authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 1998, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/ Receive and Transmit-Only Earth Stations will pay a fee of $165 per authorization or registration *as well as a separate fee of $165 for each associated Hub Station.*

35. *Receive-only earth stations.* For FY 1998, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geostationary Orbit)

36. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the

[120] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

[121] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 1998.

earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 1998, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of $119,000 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary Orbit)

37. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1998, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of $164,800 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 Report and Order at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to section 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because section 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we are clarifying our current definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to section 25.120(d).

d. International Bearer Circuits

38. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare* FY 1994 *Report and Order* at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 Kbps circuits, or equivalent circuits.

Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1998, the regulatory fee is $6.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 Kbps circuits
36	630
24	288
18	240

e. International Public Fixed

39. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1998, International Public Fixed Radio Service licensees will pay a $375 annual regulatory fee per call sign.

f. International (HF) Broadcast

40. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 KHz to 26,100 KHz range to provide service to the general public in foreign countries. For FY 1998, International HF Broadcast Stations will pay an annual regulatory fee of $475 per station license.

Attachment I—Description of FCC Activities

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.[122]

Policy and Rulemaking: Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rulemaking activities.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy

[122] Although Authorization of Service is described in this exhibit, it is *not* one of the activities included as a feeable activity for regulatory fee purposes pursuant to section 9(a)(1) of the Act. 47 U.S.C. 159(a)(1).

direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

Attachment J—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules. *See* 47 U.S.C. 73.150 and 73.152. Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in § 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials. *See* 47 U.S.C. 73.313. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–97–2714]

RIN 2127–AG17

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: This action withdraws the proposed rulemaking which considered allowing partial ejection of the Hybrid III dummy during crash tests under FMVSS No. 208. The NPRM addressing the proposed change was published on August 30, 1996. 61 FR 45927. NHTSA is terminating this rulemaking because it believes full containment is an important safety issue. Additionally while NHTSA was aware that the problem addressed by the petition occurs only in a limited number of vehicles and under limited circumstances before it issued the NPRM, it is now also aware that the problem is now being successfully addressed by vehicle manufacturers. The agency notes that future rulemakings in the area of glazing may provide manufacturers with an opportunity to further correct any partial ejection problems.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: Ms. Rebecca MacPherson, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1995, the American Automobile Manufacturers Association (AAMA) submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection.'' The petition sought to amend the standard's provisions which currently require that the test dummy must remain within the test vehicle throughout a crash test sequence. AAMA averred that the requirement is impracticable and outdated, stating that it is now widely recognized that air bags are a supplemental restraint system which cannot adequately restrain an unbelted occupant. AAMA also claimed that partial ejections of the test dummies were random and momentary. AAMA requested that S6.1.1 of FMVSS No. 208 be changed from ''[A]ll portions of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test'' to ''[T]he test device shall be within the vehicle passenger compartment at the completion of the test.''

After reviewing AAMA's petition, NHTSA issued an NPRM on August 30, 1996 (61 FR 45927). The agency stated that the question of whether to issue the amendment requested by the petitioner should be decided in the context of a rulemaking proceeding. NHTSA issued several specific requests for information so that it could accurately evaluate both the scope of the problem and whether there were options available other than eliminating the containment requirement in FMVSS No. 208. NHTSA said it would consider options ranging from making no change in the standard to adopting the amendment requested by the petitioner. The agency set forth proposed regulatory text that falls within the middle of the range of options:

> All portions of the test device shall be within the vehicle passenger compartment at the completion of the test. In the case of a test conducted with safety belts fastened, the head of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

NHTSA identified a number of relevant issues and requested information on the

extent of the problems faced by the vehicle manufacturers.

Summary of Comments

Four automobile manufacturers and two safety groups responded to the NPRM. Ford supported NHTSA's proposed amendment to S6.1.1 and S6.2.1, while Suzuki, Volkswagen and General Motors all supported the language suggested by AAMA. Advocates for Highway Safety and the Insurance Institute for Highway Safety (IIHS) both opposed the change suggested in the NPRM, although IIHS agreed that some loosening of the containment requirement may be advisable.

Volkswagen said that it has had no problems meeting FMVSS No. 208's current containment criteria. It also stated, however, that it is concerned that compliance problems may arise in the future which could require countermeasures which may not be in the best interest of overall vehicle safety. Suzuki stated that it has occasionally experienced problems with dummy containment, but only when the window is open. Suzuki maintains that changing the containment requirement will eliminate the need to test vehicles twice to assure that the containment requirement is met, once with the windows open (to aid in filming) and once with the windows closed (to confine the dummy). Suzuki would like to see the current standard changed so that it could eliminate testing redundancy.

Ford and GM both responded that they have had containment problems which have required countermeasures, primarily with light truck and vans (LTVs). Ford said that it has not had any problems with dummy containment in its passenger cars. GM reported that the problems that it encountered with its passenger cars have been resolved by closing the car windows. Both Ford and GM said they have experienced problems with their LTVs that have required more extensive corrective measures. Apparently, all problems with the LTVs are the result of the window glass breaking, allowing partial ejection.

According to Ford, all of its concerns relate to the unbelted dummy condition in the angular barrier test. Ford stated that its difficulty with its light trucks has been due to their higher seating position relative to the beltline and shorter front ends which lead to door deformation and resulting glass breakage. Ford also suggested that it believes the shoulder joint of the Hybrid III dummy was non-biofidelic and was responsible for some of its problems. Ford stated that it has been able to resolve these problems through various means which prevent glass breakage and a reduction of the dummy's lateral velocity.

GM stated it has experienced dummy containment problems largely during unbelted, angle impact testing, although it also indicated that problems have been noted during belted driver dummy rebound in angled impacts. GM has confidentially provided the agency with a discussion of the problems they have encountered as well as their methods of resolving those problems.

Decision To Withdraw

NHTSA has decided to withdraw this rulemaking because it does not believe there is a current justification for reducing this important safety requirement. Retention of the requirement is important since the requirement addresses partial ejection. An analysis of the Fatal Analysis Reporting System (FARS) from 1992 to 1996 indicates that partial ejection remains a significant safety problem. FARS indicates that, in that five year period, a partial ejection was involved in 8,234 fatalities. NHTSA cannot determine how many of these individuals would have survived their injuries had they not been partially ejected. During that same period, FARS reveals that in crashes involving at least one fatality, 1,103 people were partially ejected and suffered an incapacitating injury, while only 351 partially ejected people suffered a non-capacitating injury. An analysis of the General Estimate System (GES) for 1995 and 1996 [1] indicates that approximately 2,000 individuals who were partially ejected from a passenger vehicle suffered an incapacitating injury and approximately 1,000 people suffered non-incapacitating injuries.

Only Ford and GM expressed any problem with meeting the dummy containment criteria. Both of these companies have reported that they have been able to resolve their problems through various means.

Based on the manufacturers' comments to the NPRM, NHTSA does not believe that the partial ejections in the compliance tests noted by manufacturers in those comments support the concerns raised in the AAMA petition. AAMA contended that the partial ejections are random. If the partial ejections in compliance tests were truly random, manufacturers should not have been able to successfully address those ejections. Likewise, AAMA's contention that the dummy containment requirement is outdated since air bags are a supplemental restraint system has been contradicted by the information supplied by manufacturers, i.e., information indicating that GM is having some containment problems with belted dummies.

To the extent that dummy containment problems are thought to be due to a non-biofidelic shoulder on the Hybrid III dummy, either manufacturer can file a petition for rulemaking on that issue. Ford had previously filed such a petition which was denied due to a lack of supporting data. Ford indicated in response to the NPRM that it has since generated that data.

As noted above, NHTSA believes that partial ejection of vehicle occupants remains a serious safety problem. Accordingly, the agency has embarked on several safety initiatives since the promulgation of the NPRM which may result in the development of countermeasures that will aid manufacturers in addressing dummy containment issues both in the context of FMVSS No. 208 and in the real world. Objective 6B of the agency's Strategic Execution Plan states that NHTSA will improve the crash protection performance of motor vehicles for occupants, pedestrians, and cyclists through research and engineering standards. Its first milestone under this objective is to assess the need and develop procedures for ejection-mitigating vehicle improvements, including glazing, door latch integrity, and restraints, in front, side, and rear crashes.

Based on the above discussion, the agency has decided that it is in the best interests of safety to withdraw this rulemaking.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: March 26, 1998.

L. Robert Shelton,

Associate Administrator for Performance Safety Standards.

[FR Doc. 98–8451 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–59–P

[1] Prior to 1995, the GES data collection system did not distinguish ejections between total ejections and partial ejections.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Reclassification of Four Candidate Taxa: Pediocactus Paradinei (Kaibab Plains Cactus), Castilleja Elongata (Tall Paintbrush), Dalea Tentaculoides (Gentry's Indigobush), and Astragalus Oophorus var. Clokeyanus (Clokey's Eggvetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of candidate taxa reclassification.

SUMMARY: In this document, the U.S. Fish and Wildlife Service (Service) provides the explanation for changes in the status of *Pediocactus paradinei* (Kaibab plains cactus), *Castilleja elongata* (tall paintbrush), *Dalea tentaculoides* (Gentry's indigobush), and *Astragalus oophorus* var. *clokeyanus* (Clokey's eggvetch), plant taxa that are under review for possible addition to the List of Endangered and Threatened Plants under the Endangered Species Act of 1973, as amended (Act). These taxa are being removed from candidate status at this time.

ADDRESSES: Questions concerning this notice should be submitted to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mail Stop 452 ARLSQ, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species (see **ADDRESSES** section) (telephone: 703/358–2171).

SUPPLEMENTARY INFORMATION:

Background

Candidate taxa are those taxa for which the Service has on file sufficient information to support issuance of a proposed rule to list under the Act. In addition to its annual review of all candidate taxa, the Service has an on-going review process, particularly to update taxa whose status may have changed markedly. This notice provides the specific explanation for the reclassification of four plant taxa.

It is important to note that candidate assessment is an ongoing function and changes in status should be expected. Taxa that are removed from the candidate list may be restored to candidate status if additional information supporting such a change becomes available to the Service. Requests for such information were issued by the Service most recently in the plant and animal candidate notice of review published in the **Federal Register** on September 19, 1997 (62 FR 49398).

Findings

Pediocactus paradinei (Kaibab plains cactus) occurs in pinyon-juniper woodlands and sagebrush valleys in Coconino County, Arizona. The cactus is known from 36 sites across a 150 square mile (390 square kilometer) area. The species was considered to be threatened by off-road vehicle use for recreation and fuelwood gathering, road construction, recreational activities, livestock grazing, vegetation manipulation, and collection. In October of 1996 the U.S. Forest Service and the Bureau of Land Management developed a Conservation Assessment and Strategy for management of the species. Implementation of the strategy since that time has resulted in off-road vehicle use and other recreational activities being restricted in certain areas; road construction impacts being addressed in project proposals; fuelwood harvesting being restricted or prohibited; livestock grazing being eliminated in certain areas; vegetation manipulation of pinyon-juniper woodland being addressed through better management coordination and research; and ongoing research to address management needs on an ecosystem level. The available information currently indicates that the degree of the threats to *P. paradinei* does not warrant issuance of a proposed rule nor continuation of candidate status for this species.

Castilleja elongata (tall paintbrush) is known from four populations in Big Bend National Park in Texas, administered by the National Park Service. Habitat loss from range management practices is thought to have caused extirpation of *C. elongata* from historical locations. The remaining four populations are considered threatened primarily by trail construction and maintenance, trail erosion, natural events, and genetic problems associated with small population size. However, the taxonomy of *C. elongata* is now in question. The available information concerning whether *C. elongata* should be classified as a distinct species is conflicting. Several university scientists considered experts on this group agree that more information is needed before a determination can be made regarding the taxonomy of *C. elongata.* The last published treatment of *C. elongata* incorporates the species into *C. integra,* while publication of two other treatments which maintain *C. elongata* as a species have been canceled. Based on the available information, the Service cannot conclude at this time that *C. elongata* meets the Act's definition of ''species.'' Research is underway to clarify the taxonomic status of this plant. If information becomes available indicating that *C. elongata* should be considered a distinct taxon, the Service will reevaluate its status. The National Park Service has advised the Service that it is committed to conserving the populations of *C. elongata* by (1) not locating new trails or other recreational amenities in habitat areas of the plant; (2) developing policies and procedures to improve communication between resource managers, trail crews, and other maintenance personnel to prevent impacts to the plant from maintenance activities; (3) if necessary, rerouting trails to decrease visitor access and actual or potential impacts to the plant and its habitat, placing signs to encourage hikers to stay on trails, and prohibiting tethering of horses and trail animals; (4) improving visitor interpretation programs and staff and volunteer training materials to increase awareness of the potential adverse impacts of activities in fragile habitats; (5) conducting studies to determine the need for prescribed fire in maintaining the habitat for the plant, and until management needs are identified, protecting all known populations of the plant from fire; and (6) designing any revegetation or erosion control projects to avoid impacts to the plant and its habitat. In addition, seeds of *C. elongata* are being collected and transferred from known populations into seed banks or cultivation refugia. Therefore, the Service is removing *C. elongata* from candidate status.

Prior to 1995, *Dalea tentaculoides* (Gentry's indigobush) was known from a single site in the Sycamore Canyon drainage within the Coronado National Forest in Arizona. The species was considered to be threatened by erosion and sedimentation caused by the impacts of livestock grazing in the upper watershed, grazing by cattle entering the U.S. from Mexico through cut border fences, and natural events. Since 1995, two additional populations have been discovered, one in southern Arizona, and one in Mexico over 250 miles (402 kilometers) south of the U.S. border. The Sycamore Canyon site is located within a designated Wilderness Area and Research Natural Area. Although the upper watershed is not within the Wilderness Area and Research Natural Area, it is within designated critical habitat for the Sonoran chub (*Gila ditaenia*), a

threatened species. Institution of improved livestock grazing practices in the upper watershed through the section 7 consultation process for the Sonoran chub has lessened the threat of impacts to *D. tentaculoides* from erosion and sedimentation. There is no evidence that grazing by cattle entering the U.S. from Mexico has reduced the size of the Sycamore Canyon population. The discovery of two additional populations has reduced the threat that a natural event which could extirpate a population could cause extinction of the species. The available information indicates that the degree of the threats to *D. tentaculoides* does not warrant issuance of a proposed rule nor continuation of candidate status for this species.

Until 1995, *Astragalus oophorus* var. *clokeyanus* (Clokey's eggvetch) was believed to occur at only 13 sites in the Spring Mountains in Nevada. The taxon was considered to be threatened primarily by recreational activities at the U.S. Forest Service's Spring Mountains National Recreation Area, by military activities and feral horses at the Nellis Air Force Range, and by military and energy projects at the Department of Energy's Tonopah Test Range and Nevada Test Site. Since 1995, 15 additional populations have been discovered. Also, conservation actions and policies to protect *A. oophorus* var. *clokeyanus* on Forest Service, Air Force, and Department of Energy lands are now in place and are being implemented. Based on this information, continuation of candidate status for this taxon is not warranted.

Author

This notice was compiled from materials supplied by staff biologists located in the Service's regional and field offices. The materials were compiled by Martin J. Miller, Division of Endangered Species (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: March 30, 1998.

Jamie Rappaport Clark,

Director, U. S. Fish and Wildlife Service.

[FR Doc. 98–8610 Filed 3–31–98; 9:04 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: New 12-month Finding for a Petition to List the Utah Wasatch Front and West Desert Populations of Spotted Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of new 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a new 12-month finding for a petition to list the Wasatch Front population (Utah) and West Desert population (Utah) of the spotted frog (*Rana luteiventris*) under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service finds that listing these two distinct vertebrate populations of spotted frog is not warranted at this time. This finding supersedes the previous 12-month petition finding that found the listing of these two populations to be warranted but precluded by higher priority listing actions. Prior and subsequent to publication of the warranted but precluded finding, the State of Utah and other cooperating agencies began implementing significant recovery actions to reduce or remove species' threats. More recently the State of Utah and other agencies developed the Spotted Frog Conservation Agreement to ensure that additional conservation measures and recovery actions needed for the frog's continued existence and recovery are initiated and carried out. The Service finds that a mechanism has been put in place that sufficiently protects the Wasatch Front and West Desert populations of spotted frog and that ongoing actions, including those identified in the Conservation Agreement, have substantially reduced threats to the spotted frog populations in Utah such that they will not become endangered within the foreseeable future and, therefore, do not warrant listing pursuant to the Act at this time.

DATES: The finding announced in this document was made on March 27, 1998.

ADDRESSES: Data, information, comments, or questions concerning this notice should be sent to the Field Supervisor, Utah Field Office, Ecological Services, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. The complete administrative file for this finding is available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Janet A. Mizzi, Fish and Wildlife Biologist, Utah Field Office (see **ADDRESSES** above), telephone (801) 524–5001.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action is: (a) Not warranted; (b) warranted; or (c) warranted but precluded from immediate proposal by other pending listing proposals of higher priority.

On May 1, 1989, the Service received a petition from the Board of Directors of the Utah Nature Study Society requesting the Service add the spotted frog (then referred to as *Rana pretiosa*) to the List of Threatened and Endangered Species and to specifically consider the status of the Wasatch, Utah, population. The Service subsequently published a notice of a 90-day finding in the **Federal Register** (54 FR 42529) on October 17, 1989, and a notice of the 12-month petition finding in the **Federal Register** (58 FR 27260) on May 7, 1993. In the 12-month petition finding the Service found that listing of the spotted frog as threatened in some portions of its range was warranted but precluded by other higher priority listing actions. The Service found, based on geographic and climatic separation and supported by genetic separation, five distinct vertebrate populations of spotted frog. Listing of both the populations occurring in Utah, the Wasatch Front and West Desert populations, was found to be warranted but precluded and both populations were designated as candidates for listing. The Wasatch Front population was assigned a listing priority number of 3 because the magnitude of the threats were high and imminent, while the West Desert population was assigned a listing priority of 9 because of moderate to low threats.

The spotted frog belongs to the family of true frogs, the Ranidae. Adult frogs have large, dark spots on their backs and pigmentation on their abdomens ranging from yellow to red (Turner 1957). Spotted frogs along the Wasatch Front generally possess a salmon color ventrally, while West Desert and Sanpete County, Utah, populations

generally have a yellow to yellow-orange color ventrally. Spotted frogs in Utah are reported to have fewer and lighter colored spots (Colburn, U.S. Fish and Wildlife Service, pers. comm. 1992) than other populations. The spotted frog is closely associated with water (Dumas 1966, Nussbaum et al. 1983). Habitat includes the marshy edges of ponds, lakes, slow-moving cool water streams and springs (Licht 1974; Nussbaum et al. 1983; Morris and Tanner 1969; Hovingh 1987). The present distribution of the spotted frog includes a main population in southeast Alaska, Alberta, British Columbia, eastern Washington, northeastern Oregon, northern and central Idaho, and western Montana and Wyoming. Additional disjunct populations occur in northeastern California, southern Idaho, Nevada, Utah, and western Washington and Oregon.

The Services' warranted but precluded finding identified that habitat loss and modification from reservoir construction and from urban and agricultural developments was a primary cause of the decline in the Wasatch Front population (Dennis Shirley, pers. comm. 1992). The petition finding further identified that, while less habitat loss has occurred with the West Desert population of Utah than with the other southern and western populations, habitat availability is limited. Degradation of spring habitats and water quality from cattle grazing and other agricultural activities in these limited habitats were identified as potential threats to the spotted frog of the West Desert population (Hovingh 1987; Peter Hovingh, pers. comm. 1992; Dennis Shirley, pers. comm. 1992).

On November 28, 1997, the Service announced the availability of a Draft Conservation Agreement for the Wasatch Front and West Desert populations (Utah) of spotted frog (Rana luteiventris) for review and comment (62 FR 63375). The Service received a request to extend the comment period, and on December 24, 1997, announced that the comment period on the Draft Conservation Agreement had been extended until January 16, 1998 (62 FR 67398). The Service subsequently signed the Conservation Agreement on February 13, 1998.

The goal of this agreement developed by the Utah Department of Natural Resources in cooperation with the Bureau of Land Management, Bureau of Reclamation, Utah Reclamation Mitigation and Conservation Commission, Central Utah Water Conservancy District, the Confederated Tribes of the Goshute Federation, and the Service, is to ensure the long-term conservation of spotted frog within its historical range in Utah. Two objectives have been identified as necessary to attain the goal of the Agreement. These are: (1) to eliminate or significantly reduce threats to the spotted frog and its habitat to the extent necessary to prevent the danger that populations will become extinct throughout all or a part of their range in Utah, or the likelihood that these populations will become endangered within the foreseeable future throughout all or a part of their range in Utah; and (2) to restore and maintain a sufficient number of populations of spotted frog and the habitat to support these populations throughout its historical range in Utah to ensure the continued existence of the species. The Conservation Agreement puts in place a mechanism for the recovery of spotted frog by establishing a framework for interagency cooperation and coordination of conservation efforts and setting recovery priorities.

In addition to the Conservation Agreement, the Utah Department of Natural Resources has provided the Service with a letter outlining specific actions and approximate time lines for implementation and/or completion of conservation actions that will occur in the next 18 months. These actions include: (1) Habitat acquisition (990 acres total to benefit spotted frog in the Wasatch Front population); (2) habitat enhancement in the West Desert and Wasatch Front, including protective fencing, springhead re-openings, reseeding of native plants; and (3) range expansion, including reestablishment of spotted frog populations within historic habitat in the Wasatch Front and surveys to assess the distribution of spotted frog in the Bear River drainage. The Bureau of Reclamation has provided the Service with a letter outlining their funding commitment for fiscal year 1998 for use on a spotted frog translocation project in the Wasatch Front. The Bureau will also continue to monitor and maintain ponds adjacent to the Jordanelle wetland for the spotted frog.

Actions taken to date to alleviate the threat of habitat loss to the species have focused on both habitat enhancement and maintenance as well as habitat protection. Since the Service's 1993 warranted but precluded finding numerous habitat enhancement, maintenance and protection activities have occurred. In the West Desert these include: (1) Construction of a cattle exclosure on part of the Gandy Salt Marsh Complex to protect occupied springs; and (2) communications with a private landowner to install cattle exclosures at two additional spring sites. In Wasatch Front these include: (1) Acquisition of 126.1 acres of riverine/riparian habitat by Utah Reclamation Mitigation and Conservation Commission along the Provo River between Jordanelle Dam and Deer Creek Reservoir as part of the environmental mitigation of the Central Utah Project; (2) acquisition by the Utah Reclamation Mitigation and Conservation Commission of an additional 184 acres of river corridor is currently in progress as part of the environmental mitigation for the Central Utah Project; (3) acquisition of another 681 acres of riparian corridor is being pursued by the Utah Reclamation Mitigation and Conservation Commission between Jordanelle Dam and Deer Creek Reservoir; (4) minimum flows of 50 cubic feet per second were maintained in the Provo River between Jordanelle Dam and Deer Creek Reservoir from 1993 through July 1996 in an interim agreement; (5) a minimum of 125 cfs has been maintained in the Provo River between Jordanelle Dam and Deer Creek Reservoir since 1996; (6) a draft cooperative agreement has been developed for the acquisition of approximately 125 acres of spotted frog occupied wetland habitat to protect the Mona population; and (7) year-long water has been provided to the Jordanelle mitigation ponds to provide habitat for over-wintering spotted frogs. Numerous additional activities and studies are ongoing and/or are planned pursuant to the Conservation Agreement.

The Service believes that the status of the species in Utah has improved. A mechanism has been put in place that sufficiently protects the Wasatch Front and West Desert populations of spotted frog. Completed and ongoing actions, including those identified in the Conservation Agreement, have substantially reduced threats to the spotted frog populations in Utah through control of nonnative species, increased regulatory control, and habitat acquisition, such that the species will not become endangered within the foreseeable future. Furthermore, the Service believes that completed and ongoing conservation actions have resulted in increased habitat enhancement and maintenance, and an increase in the known occupied range, distribution and population size of the species, in both the West Desert and Wasatch Front populations.

The regulatory and management agencies with oversight for the conservation of spotted frog in Utah have worked closely to conserve the species and obtain the goals and objectives outlined in the Conservation

Agreement. The objectives for the West Desert population (one population with an effective population size of 1000 individuals in three out of every five years in each of three subunits, with any and all additional populations maintained with an effective population size of 50 individuals each) are close to being met. In 1997, only one population in the West Desert had an effective population size of less than 50 individuals. Three to five years of monitoring will be required to determine if the objectives have been met. The objectives for the Wasatch Front population are more complex involving three separate management units. However, conservation activities have been completed in each of these management units that has resulted in improved status for the Wasatch Front population, particularly in the Heber Valley population, the largest along the Wasatch Front. Continued implementation of the Conservation Agreement will be monitored closely to ensure improvement in the status of the Wasatch Front population.

The Service has considered the current status of the Wasatch Front and West Desert populations, including evaluating the five listing factors identified in the Act, and has taken into account those efforts being made to protect the species including development of the Conservation Agreement, the extent of implementation of the Conservation Agreement to date, Federal efforts to protect and conserve the species, and the time commitments made by the principal action agencies for completion of conservation actions. The Service believes that a mechanism has been put in place that sufficiently protects the Wasatch Front and West Desert populations of spotted frog and that ongoing actions, including those identified in the Conservation Agreement, have substantially reduced threats to the spotted frog populations in Utah such that they will not become endangered within the foreseeable future and, therefore, no longer warrant listing pursuant to the Act. Furthermore, because the definition of a candidate species, one for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule, no longer applies to the West Desert and Wasatch Front populations of spotted frog, the Service removes these two populations from the candidate species list.

Endangered Species Act Oversight

The Service will continue to monitor these populations of spotted frog throughout the term of the Conservation Agreement and will maintain oversight. Should the Service deem necessary, an emergency listing of the Wasatch Front and/or West Desert population of spotted frog would not be precluded by the sixty (60) day written notice required to withdraw from the Conservation Agreement. The process for listing the Wasatch Front and/or West Desert populations of spotted frog will be reinitiated if:

1. An emergency which poses a significant threat to the spotted frog is identified and not immediately and adequately addressed;

2. The biological status of the spotted frog is such that it is in danger of extinction throughout all or a significant portion of its range; or

3. The biological status of the spotted frog is such that it is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

References Cited

A complete list of all references cited is available upon request from the Utah Field Office (see **ADDRESSES** above).

Authors

The primary author of this document is Janet A. Mizzi (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: March 27, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–8611 Filed 3–31–98; 9:04 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 980320071–8071–01; I.D. 012198C]

RIN 0648–AK87

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna Annual Quota Specifications and Effort Controls

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes specifications for the Atlantic tuna fisheries to: Set annual Atlantic bluefin tuna (ABT) fishing category quotas and General category effort controls. The proposed specifications are necessary to implement the 1996 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding fishing quotas for bluefin tuna, as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives. NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding these proposed specifications.

DATES: Comments are invited and must be received on or before May 4, 1998.

ADDRESSES: Comments on the proposed specifications should be sent to, and copies of supporting documents, including a Draft Environmental Assessment-Regulatory Impact Review (EA/RIR), are available from, Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown at 978-281-9260; Sarah McLaughlin at 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to issue regulations as may be necessary to carry out the recommendations of ICCAT. The authority to issue regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

ICCAT has identified the western stock of ABT as overexploited and recommends fishing quotas for contracting parties. Based on the 1996 revised stock assessment, parties at the 1996 meeting of ICCAT adopted a recommendation to increase the annual scientific monitoring quota of ABT in the western Atlantic Ocean from 2,200 metric tons (mt) to 2,354 mt. The share allocated to the United States was increased from 1306 mt to 1,344 mt to apply each year for the 1997 and 1998 fishing years. NMFS amended the Atlantic tuna fisheries regulations in 1997 to implement that ICCAT recommendation as required by ATCA.

These proposed specifications would implement the ICCAT quota recommendation and allocate the total among the several established fishing categories. NMFS proposes no changes to the baseline quotas established for 1997. However, the ICCAT recommendation allows, and U.S. regulations require, the addition of any

underharvest in 1997 to that same category for 1998. Therefore, NMFS proposes to adjust the annual quota specifications for the ABT fishery to account for underharvest in 1997. NMFS would maintain the proposed annual quota specifications (i.e., the baseline 1997–1998 category allocations) until further changes are deemed necessary, in order to achieve domestic management objectives, or in implementing ICCAT quotas.

NMFS also proposes to maintain the General category quota subdivisions and restricted-fishing day pattern established in 1997. Given the carryover quota for the General category, adjustments are necessary to allocate the carryover across the established subperiods. Additionally, calendar adjustments are necessary to match restricted-fishing days with the pattern established in 1997.

Background

The 1992 ABT allocations were established based on historical share of the U.S. catch for the preceding 10 years (57 FR 2905, July 24, 1992). In 1995, 51 mt were transferred out of the Purse Seine category quota to account for increased participation in the handgear fisheries and to provide further data collection opportunities for scientific monitoring (60 FR 38505, July 27, 1995). In 1997, public comments on the proposed quota allocations indicated support for increased allocation to the Angling and General categories based on increased participation rates and the usefulness of scientific data obtained. NMFS agreed that the General and Angling category fisheries should be kept open as long as possible to achieve high survey sampling rates over the widest possible geographic area. For this reason, NMFS reallocated the 145 mt that had been in the 1995 Reserve to the Angling and General categories (62 FR 35107, June 30, 1997). A total of 33 mt was maintained in the Reserve to allow NMFS to transfer tonnage to keep fisheries open for the longest period possible without exceeding the quota set by ICCAT.

In making the 1997 quota allocations, NMFS attempted to balance the needs for scientific monitoring with enhanced fishing opportunities for traditional user groups. However, many fishery participants have continued to express concerns that the allocations and/or tuna regulations have increased fishing mortality, excluded traditional user groups from recent ICCAT quota increases, or contributed to increased regulatory discards. NMFS continues to research alternative management measures to address these concerns and anticipates further public input during the course of developing the Highly Migratory Species Fishery Management Plan utilizing the input of the HMS Advisory Panel.

While FMP development continues, NMFS must take action for the current year. The 1998 fishery is underway and advance notice of quota allocations and effort controls is important to fishery participants for planning purposes. With no new ICCAT recommendation on western ABT quotas at the 1997 meeting, extensive public comment during rulemaking in 1997, and no new, specific information arising that would cause NMFS to alter current allocations and General category effort controls, NMFS proposes to maintain the status quo for quota specifications and effort controls as established in 1997.

HMS Advisory Panel

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, NMFS created the Highly Migratory Species Advisory Panel (HMS AP), required by law to be of balanced representation, to assist in the development of an HMS FMP to implement measures designed to rebuild stocks of all Atlantic HMS. NMFS held 21 public scoping meetings throughout the Atlantic, Gulf of Mexico, and Caribbean regions to solicit public input on these fisheries, particularly on existing management measures and on what the U.S. long-term strategy should be both nationally and internationally in managing these species. At its second meeting on January 11 and 12, 1998, the HMS AP considered the scoping comments, and long-term allocation and effort control issues for ABT, including: Quota reallocation, reduced catch of small fish, limited access, additional set-asides for the General category for Connecticut/Rhode Island/New York and for North Carolina, realignment of Angling category areas, the use of spotter aircraft, North Carolina fishery quotas, and readjusting boundaries for geographic subquotas. These issues are important for consideration in FMP development; however, because the required analyses are still under development, NMFS is not proposing any modifications based on these issues. The HMS AP and NMFS will continue deliberations on these issues in the context of addressing overfishing and developing the FMP. NMFS encourages further public comment on issues to be considered by the HMS AP for the HMS FMP and to implement future ICCAT recommendations.

While there was no clear consensus on allocation and effort controls during the scoping process and AP meeting, there was some support for the status quo. Even with the proposed continuation of the 1997 management program, some of the concerns raised at the scoping and AP meetings could still be addressed through inseason actions: Catch limit adjustments, transfer from the Reserve or between categories, and interim closures of the Angling category.

Proposed Fishing Category Quotas

On June 30, 1997 (62 FR 35107), NMFS issued the regulations that implemented the ICCAT recommendation for 1997 and 1998. ICCAT's recommendations for the 1997–98 quota shares included the recommendation that any unused quota or overage in 1997 may be added or subtracted, as appropriate, from the 1998 quota. Fishing category quotas for ABT are established at 50 CFR 285.22. Under § 285.22(h), the AA is authorized to adjust annual categories or subcategories based on landing statistics and other available information and subtract overharvest from or add underharvest to that category for the following year, provided that the total of the adjusted quotas and the reserve is consistent with ICCAT recommendations.

At the end of 1997, the following subquotas had not been harvested: 19 mt in the Reserve, 4 mt in the Incidental category, 24 mt in the General category, and 12 mt in the Angling category. NMFS proposes that no changes be made to the baseline quotas established for 1997, and that underharvest from 1997 be added to the respective quota categories. Therefore, the proposed specifications would set the Reserve at 52 mt, would maintain the Purse Seine category quota at 250 mt, would increase the Incidental category quota to 114 mt, would increase the General category quota to 657 mt, would maintain the Harpoon category quota at 53 mt, and would increase the Angling category quota to 277 mt.

NMFS proposes to subdivide the Angling category quota of 277 mt as follows: School bluefin—108 mt (consistent with the ICCAT limitation on annual catch of school bluefin to 8 percent by weight of the total annual domestic quota, i.e., 1,344 mt), with 57 mt to the northern area (New Jersey and north) and 51 mt to the southern area (Delaware and south); large school/small medium bluefin—161 mt, with 85 mt to the northern area and 76 mt to the southern area; large medium/giant bluefin—8 mt, with 3 mt to the northern area and 5 mt to the southern area.

Incidental Category

NMFS proposes that the adjusted Incidental category quota of 114 mt be subdivided as follows: 89 mt to longline vessels operating south of 34° N. lat.; 24 mt to longline vessels operating north of 34° N. lat.; and 1 mt to fishermen using other gear authorized for incidental take.

Proposed General Category Quota Subdivision

In the last three years, NMFS has implemented General category time period subquotas and restricted-fishing days to increase the likelihood that fishing would continue throughout the summer and fall for scientific monitoring purposes. These subquotas also were designed to address concerns regarding allocation of fishing opportunities, to allow for a late season fishery, and to improve market conditions.

As in 1997, NMFS proposes three General category subquotas, based upon historical catch patterns (1983-96), distributed as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. These percentages would be applied only to the adjusted coastwide General category of 647 mt, with the remaining 10 mt being reserved for the New York Bight fishery in October. Thus, of the 647 mt, 388 mt would be available in the period beginning June 1 and ending August 31, 194 mt would be available in the period beginning September 1 and ending September 30, and 65 mt would be available in the period beginning October 1 and ending December 31.

When the October through December General category catch is projected to have reached 65 mt, NMFS would set aside the remaining 10 mt of the General category quota for the New York Bight only. Upon the effective date of the New York Bight set-aside, fishing for, retaining, or landing large medium or giant ABT would be prohibited in all waters outside the set-aside area. The New York Bight set-aside area was redefined in 1997 as the area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat.

Attainment of the subquota in any fishing period would result in a closure until the beginning of the following fishing period, whereupon any underharvest or overharvest would be carried over to the following period, with the subquota for the following period adjusted accordingly. Announcements of inseason closures would be filed with the Office of the Federal Register, stating the effective date of closure, and further communicated through the Highly Migratory Species (HMS) Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure would be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line to check the status of the fishery before leaving for a fishing trip. The phone numbers for the Atlantic Tunas Information Line are (301) 713-1279 and (978) 281-9305. Information regarding the Atlantic tuna fisheries is also available through NextLink Interactive, Inc., at (888) USA-TUNA.

Proposed Restricted-Fishing Days

In 1997, NMFS implemented restricted-fishing days for July and August based on proposals received from three associations representing General category fishermen and dealers and, after receiving numerous comments on the need to lengthen the General category fishery, implemented additional restricted-fishing days for September. NMFS proposes a schedule of restricted-fishing days similar to that of 1997, making the necessary calendar adjustments to coordinate with Japanese market holidays. Persons aboard vessels permitted in the General category would be prohibited from fishing (including tag and release fishing) for ABT of all sizes on the following days: July 15, 16, 22, and 29; August 2, 5, 9, 11, 12, 13, 16, 19, 23, 26, and 30; and September 2, 6, 9, 13, 16, 19, 20, 23, 27, and 30. These proposed restricted-fishing days would improve distribution of fishing opportunities without increasing ABT mortality.

A Reminder of Recent Changes for the General and Charter/Headboat Permit Categories

NMFS published by final rule on June 5, 1997 (62 FR 30741) a measure that was effective January 1, 1998, prohibiting persons aboard vessels permitted in the General category from retaining ABT less than the large medium size class. This action effectively separated the commercial and recreational fisheries, with the exception of charter/headboats.

In the same final rule, NMFS specified that anglers aboard vessels permitted in the Charter/Headboat category may collectively fish under either the daily Angling category limits or the daily General category limit as applicable on that day. The size category of the first ABT retained or possessed will determine the fishing category of all persons aboard the vessel, and the applicable catch limits, for that day. On designated restricted-fishing days, persons aboard vessels permitted in the Charter/Headboat category may fish for school, large school, and small medium ABT only, provided the Angling category remains open, and are subject to the Angling category catch limits in effect.

Public Hearings

NMFS will hold public hearings to receive comments on these proposed specifications. These hearings will be scheduled at a later date and before the end of the comment period. Advanced notice of these hearings will be published in the **Federal Register** and will be announced via the HMS Fax Network.

Classification

These proposed specifications are published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* Preliminarily, the AA has determined that these specifications are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries.

NMFS prepared a draft EA for these proposed specifications with a preliminary finding of no significant impact on the human environment. In addition, a draft RIR was prepared with a preliminary finding of no significant impact.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed specifications, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed specifications would set quota specifications and General category effort controls for the Atlantic bluefin tuna fishery in accordance with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and domestic fishery management objectives. Because quota allocations would remain the same or increase, and many of the designated restricted-fishing days have been scheduled to correspond directly to Japanese market closures, the likelihood of extending the fishing season is increased and additional revenues may accrue to many small businesses as market prices received by U.S. fishermen may improve.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

These proposed specifications have been determined to be not significant for purposes of E.O. 12866.

NMFS reinitiated consultation on the Atlantic tuna fishery under section 7 of the Endangered Species Act on September 25, 1996. This consultation considered new information concerning the status of the northern right whale. On May 29, 1997, NMFS issued a biological opinion, which concluded that: Continued operation of the longline and purse seine component may adversely affect but is not likely to jeopardize the continued existence of any endangered or threatened species under NMFS jurisdiction, and continued operation of the hand gear fisheries is not likely to adversely affect the continued existence of any endangered or threatened species under NMFS jurisdiction. The biological opinion was amended August 29, 1997 by the identification of a reasonable and prudent alternative regarding the driftnet component of the swordfish and tuna fisheries, and therefore is not relevant to the Atlantic bluefin tuna fishery. NMFS has determined that proceeding with these proposed specifications would not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures to reduce adverse impacts on protected resources. These proposed specifications would implement effort controls (time period quotas and restricted-fishing days) and implement a domestic quota equal to that of 1997, with minor quota adjustments to individual category quotas to account for underharvest in 1997, and therefore would not likely increase fishing effort nor shift activities to new fishing areas. Therefore, the proposed specifications are not expected to increase endangered species or marine mammal interaction rates.

Dated: March 27, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8596 Filed 4–1–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 032698A]

RIN 0648-AJ99

Fisheries of the Exclusive Economic Zone Off Alaska; Gear Allocation of Shortraker and Rougheye Rockfish in the Aleutian Islands Subarea

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

ACTION: Notice of availability, request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 53 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) for Secretarial review. This amendment would allocate shortraker rockfish and rougheye rockfish (SR/RE) in the Aleutian Islands subarea (AI) between vessels using trawl gear and vessels using non-trawl gear. This action is necessary to prevent SR/RE bycatch in trawl fisheries from causing closure of non-trawl fisheries and is intended to further the objectives of the FMP.

DATES: Comments on Amendment 53 must be submitted by June 1, 1998.

ADDRESSES: Comments on the FMP amendment should be submitted to Susan Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 53, the environmental assessment and the regulatory impact review prepared for the proposed action are available from NMFS, at the above address, or by calling the Alaska Region, NMFS at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, after receiving a fishery management plan or amendment, immediately publish a document in the **Federal Register** that the fishery management plan or amendment is available for public review and comment. This action constitutes such notice for Amendment 53 to the FMP.

Amendment 53 was adopted by the Council at its February 1998 meeting. If approved by NMFS, this amendment would allocate 30 percent of the total allowable catch of SR/RE in the Aleutian Islands subarea to non-trawl gear and 70 percent to trawl gear. This action is necessary to prevent SR/RE bycatch in the Atka mackerel and Pacific ocean perch trawl fisheries from closing non-trawl fisheries in which SR/RE are also taken.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendment. A proposed rule to implement Amendment 53 has been submitted for Secretarial review and approval. The proposed rule to implement this amendment is scheduled to be published within 15 days of this document. Public comments on the proposed rule must be received by the end of the comment period on the FMP/amendment to be considered in the approval/disapproval decision on the FMP/amendment.

Dated: March 27, 1998.

Gary C. Matlock,

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

[FR Doc. 98–8673 Filed 4–1–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 63

Thursday, April 2, 1998

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. PY–98–004]

Notice of Request for Approval of an Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed information collection: Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an approval of an information collection in support of customer-focused improvement initiatives for USDA-procured poultry, livestock, fruit, and vegetable products.

DATES: Comments on this notice must be received by June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Douglas Bailey, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0259, Washington, DC 20050-0259, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Title: Customer Service Survey for USDA-Donated Food Products.

OMB Number: 0581-XXXX.

Expiration Date of Approval:

Type of Request: Approval of a new information collection.

Abstract: In 1996 AMS piloted the use of a 4-by 6-inch postcard to enable customers to voluntarily submit their perceptions of poultry and livestock products procured by USDA for school lunch and other domestic food programs. These cards have proven to be a quick and inexpensive way for AMS to know what its customers are thinking and to learn how to make meaningful improvements to its products. AMS would like to continue the use of the customer opinion postcards to get voluntary customer feedback on various products each year by creating the Customer Opinion Postcard, Form AMS–11. In this way AMS will be better able to meet the quality expectations of school food service personnel and the 26 million school children who consume these products daily.

Information about customers' perception of USDA-procured products is sought as a sound management practice to support AMS activities under 7 CFR 250, Regulations for the Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction. The information collected will be used primarily by authorized representatives of USDA (AMS, and the Food and Nutrition Service) and shared with State government agencies and product suppliers. To enable customers to mail cards directly to the commodity program that is soliciting the information, several versions of the Form AMS–11 will be used, each with a different return address. Response information about products produced by a particular supplier may be shared with that supplier. Similarly, response information from customers located in a particular State may be shared with government agencies within that State.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours (5 minutes) per response.

Respondents: State, local, and tribal governments, and not-for-profit businesses.

Estimated Number of Respondents: 8,400.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 700 hours.

Copies of this information collection can be obtained from Douglas Bailey, Standardization Branch, at (202) 720-3506.

Send comments regarding, but not limited to, the following: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, to: Douglas C. Bailey, Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 0259, Washington, DC 20250-0259.

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

Dated: March 27, 1998.

D. Michael Holbrook,

Deputy Administrator, Poultry Programs.

[FR Doc. 98–8648 Filed 4–1–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Crop Revenue Coverage

ACTION: Notice of availability.

SUMMARY: In accordance with section 508(h) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) approves for reinsurance and subsidy the insurance of corn, grain sorghum, soybeans and cotton in select states and counties under the Crop Revenue Coverage (CRC) plan of insurance for the 1998 crop year. This notice is intended to inform eligible producers and the private insurance industry of the expanded availability of the CRC plan of insurance for corn, grain sorghum, soybeans, and cotton and its terms and conditions.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, Missouri, 64131, telephone (816) 926–7387.

SUPPLEMENTARY INFORMATION: Section 508(h) of the Act allows for the submission of a policy to FCIC's Board and authorizes the Board to review and, if the Board finds that the interests of

producers are adequately protected and that any premiums charged to the producers are actuarially appropriate, approve the policy for reinsurance and subsidy in accordance with section 508(e) of the Act.

In accordance with the Act, the Board approved a program of insurance known as CRC, originally submitted by American Agrisurance, a managing general agency for Redland Insurance Company.

The CRC program has been approved for reinsurance and premium subsidy, including subsidy for administrative and operating expenses. CRC is designed to protect producers against both price and yield losses. CRC provides a harvest revenue guarantee that pays losses from the established yield coverage at a higher price if the harvest time price is higher than the spring price.

In the 1996 crop year, the CRC program was available for corn and soybeans in all counties in Iowa and Nebraska. In the 1997 crop year, the CRC program was expanded for corn into Colorado, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Ohio, Oklahoma, South Dakota, and Texas, and soybeans into Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Ohio, Oklahoma, South Dakota, and Texas. New CRC programs were also made available for grain sorghum in Colorado, Nebraska, Oklahoma, and crop reporting districts 20, 30, 50, and 70 in Kansas, 40 in Missouri, 50 and 80 in South Dakota, and 40, 51, 52, 81, 82, 90, 96, and 97 in Texas; for cotton in Arizona, Georgia, Oklahoma, and crop reporting districts 11, 12, 21, and 22 in Texas; and for wheat into Kansas, Michigan, Minnesota, Nebraska, South Dakota, Texas, Washington, and twenty-three counties each in Montana and North Dakota.

In the 1998 crop year, the CRC program was expanded for corn into Alabama, Arizona, Arkansas, California, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Montana, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Utah, Virginia, Washington, Wisconsin, and Wyoming; for soybeans into Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, North Dakota, South Carolina, Tennessee, Virginia, and Wisconsin; for grain sorghum into Alabama, Arkansas, California, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, New Mexico, North Carolina, North Dakota, Ohio, South Carolina, Tennessee, Virginia, Wisconsin, and the remaining counties in Kansas, Missouri, South Dakota, and Texas; for cotton into Alabama, Arkansas, California, Kansas, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, South Carolina, Tennessee, Virginia, and the remaining counties in Texas; and for wheat into Alabama, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Utah, Virginia, Wisconsin, Wyoming, and remaining counties in Montana and North Dakota. Prior to the 1998 crop year, the CRC policy only provided coverage for basic and optional units as selected by the insured. Beginning with the 1998 crop year, producers can select basic, optional or enterprise units for corn and soybeans and a 95 or 100 price percentage for corn, grain sorghum, soybeans and cotton. The CRC program also provides insurance for any producer that has been identified on the nonstandard classification system (NCS).

FCIC herewith gives notice of the above stated changes for the 1998 crop year for corn, grain sorghum, soybeans and cotton for use by private insurance companies.

The CRC underwriting rules, rate factors and forms for corn, grain sorghum, soybeans, and cotton will be released electronically to all reinsured companies through FCIC's Reporting Organization Server. FCIC will also make available the terms and conditions of the CRC reinsurance agreement. Requests for this information should be sent to Heyward Baker, Director, Reinsurance Services Division, Federal Crop Insurance Corporation, 14th & Independence Ave, SW, Room 6727, Washington, D.C. 20250.

Following is a complete list of insurable CRC crops by state for the 1998 crop year:

Alabama
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Arizona
  Corn, Cotton, Wheat
Arkansas
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
California
  Corn, Cotton, Grain Sorghum, Wheat
Colorado
  Corn, Grain Sorghum, Wheat
Georgia
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Idaho
  Corn, Wheat
Illinois
  Corn, Grain Sorghum, Soybeans, Wheat
Indiana
  Corn, Grain Sorghum, Soybeans, Wheat
Iowa
  Corn, Grain Sorghum, Soybeans, Wheat
Kansas
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Kentucky
  Corn, Grain Sorghum, Soybeans, Wheat
Louisiana
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Michigan
  Corn, Grain Sorghum, Soybeans, Wheat
Minnesota
  Corn, Grain Sorghum, Soybeans, Wheat
Mississippi
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Missouri
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Montana
  Corn, Wheat
Nebraska
  Corn, Grain Sorghum, Soybeans, Wheat
New Mexico
  Corn, Cotton, Grain Sorghum, Wheat
North Carolina
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
North Dakota
  Corn, Grain Sorghum, Soybeans, Wheat
Ohio
  Corn, Grain Sorghum, Soybeans, Wheat
Oklahoma
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Oregon
  Corn, Wheat
South Carolina
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
South Dakota
  Corn, Grain Sorghum, Soybeans, Wheat
Tennessee
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Texas
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Utah
  Corn, Wheat
Virginia
  Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Washington
  Corn, Wheat
Wisconsin

Corn, Grain Sorghum, Soybeans, Wheat
Wyoming
Corn, Wheat

Notice: The Basic Provisions and Crop Provisions for the CRC corn, grain sorghum, soybeans, and cotton programs of insurance are as follows.

Crop Revenue Coverage Insurance Policy

(This is a continuous policy. Refer to section 3.)

This policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the authority of section 508(h) of the Federal Crop Insurance Act, as amended (7 U.S.C. 1508(h)). The provisions of the policy may not be waived or varied in any way by the crop insurance agent or any other agent or employee of the company. In the event the company cannot pay a loss, the claim will be settled in accordance with the provisions of the policy and paid by FCIC. No state guarantee fund will be liable to pay the loss. Throughout the policy, ''you'' and ''your'' refer to the named insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the company. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Agreement to Insure: In return for the payment of the premium, and subject to all of the provisions of this policy, the company agrees with the insured to provide the insurance as stated in the policy. If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Basic Provisions; (2) the Special Provisions; and (3) the Crop Provisions, with (1) controlling (2), etc.

Basic Provisions

Terms and Conditions

1. Definitions

Abandon. Failure to continue to care for the crop, providing care so insignificant as to provide no benefit to the crop, or failure to harvest in a timely manner, unless an insured cause of loss prevents you from properly caring for or harvesting the crop or causes damage to it to the extent that most producers of the crop on acreage with similar characteristics in the area would not normally further care for or harvest it.

Acreage report. A report required by section 7 of these Basic Provisions that contains, in addition to other required information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

Acreage reporting date. The date contained in the Special Provisions or as provided in section 7 by which you are required to submit your acreage report.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office, and which show the revenue guarantees, coverage levels, premium rates, practices, insurable acreage, and other related information regarding crop insurance in the county.

Agricultural commodity. All insurable crops and other fruit, vegetable or nut crops produced for human or animal consumption.

Another use, notice of. The written notice required when you wish to put acreage to another use (see section 15).

Application. The form required to be completed by you and accepted by us before insurance coverage will commence. This form must be completed and filed in your agent's office not later than the sales closing date of the initial insurance year for each crop for which insurance coverage is requested. If cancellation or termination of insurance coverage occurs for any reason, including but not limited to indebtedness, suspension, debarment, disqualification, cancellation by you or us, or violation of the controlled substance provisions of the Food Security Act of 1985, a new application must be filed for the crop. Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.

Approved yield. The yield determined in accordance with 7 CFR part 400, subpart (G). This yield is established for basic or optional units. The approved yield for each basic unit comprising an enterprise unit is retained for premium and final guarantee purposes.

Assignment of indemnity. A transfer of policy rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

Base price. The initial price determined in accordance with the Commodity Exchange Endorsement and used to calculate your premium and Minimum Guarantee.

CRC low price factor. A premium factor, as set forth in the actuarial documents, used to calculate the risk associated with a decrease in the Harvest Price relative to the Base Price.

CRC high price factor. A premium factor, as set forth in the actuarial documents, used to calculate the risk associated with an increase in the Harvest Price relative to the Base Price.

CRC rate. A premium rate, as set forth in the actuarial documents, used to calculate the risk associated with producing a level of production.

Cancellation date. The calendar date specified in the Crop Provisions on which coverage for the crop will automatically renew unless canceled in writing by either you or us, or terminated in accordance with the policy terms.

Claim for indemnity. A claim made on our form by you for damage or loss to an insured crop and submitted to us not later than 60 days after the end of the insurance period (see section 15).

Consent. Approval in writing by us allowing you to take a specific action.

Contract. (see ''policy'').

Contract change date. The calendar date by which we make any policy changes available for inspection in the agent's office (see section 5).

County. Any county, parish, or other political subdivision of a state shown on your accepted application, including acreage in a field that extends into an adjoining county if the county boundary is not readily discernible.

Coverage. The insurance provided by this policy against insured loss of revenue, by unit as shown on your summary of coverage.

Coverage begins, date. The calendar date insurance begins on the insured crop, as contained in the Crop Provisions, or the date planting begins on the unit (see section 12 of these Basic Provisions for specific provisions relating to prevented planting).

Crop Provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period within which the insured crop is normally grown and designated by the calendar year in which the insured crop is normally harvested.

Damage. Injury, deterioration, or loss of revenue of the insured crop due to insured or uninsured causes.

Damage, notice of. A written notice required to be filed in your agent's office whenever you initially discover the insured crop has been damaged to the extent that a loss is probable (see section 15).

Days. Calendar days.

Deductible. The amount determined by subtracting the coverage level percentage you choose from 100 percent. For example, if you elected a 65 percent coverage level, your deductible would be 35 percent (100% − 65% = 35%).

Delinquent account. Any account you have with us in which premiums, and

interest on those premiums, is not paid by the termination date specified in the Crop Provisions, or any other amounts due us, such as indemnities found not to have been earned, which are not paid within 30 days of our mailing or other delivery of notification to you of the amount due.

Earliest planting date. The earliest date established for planting the insured crop (see the Special Provisions and section 14).

End of insurance period, date of. The date upon which your crop insurance coverage ceases for the crop year (see the Crop Provisions and section 12).

Field. All acreage of tillable land within a natural or artificial boundary (e.g., roads, waterways, fences, etc).

Final guarantee. The number of dollars guaranteed per acre determined to be the higher of the minimum guarantee or the harvest guarantee, where:

(1) Minimum guarantee—The approved yield per acre multiplied by the base price multiplied by the coverage level percentage you elect.

(2) Harvest guarantee—The approved yield per acre multiplied by the harvest price, multiplied by the coverage level percentage you elect.

If you elect enterprise unit coverage, the final guarantee for each basic unit comprising the enterprise unit will be calculated separately.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full final guarantee.

FSA. The Farm Service Agency, an agency of the USDA, or a successor agency.

FSA farm serial number. The number assigned to the farm by the local FSA office.

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

Harvest price. The final price determined in accordance with the Commodity Exchange Endorsement and used to calculate your calculated revenue and the harvest guarantee.

Insured. The named person as shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application.

Insured crop. The crop for which coverage is available under these Basic Provisions and the applicable Crop Provisions as shown on the application accepted by us.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

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

Late planted. Acreage initially planted to the insured crop after the final planting date.

Late planting period. The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date, unless otherwise specified in the Crop Provisions or Special Provisions.

Loss, notice of. The notice required to be given by you not later than 72 hours after certain occurrences or 15 days after the end of the insurance period, whichever is earlier (see section 15).

MPCI. Multiple peril crop insurance program, a program of insurance offered under the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (Act) and implemented in 7 CFR part 400.

Negligence. The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

Non-contiguous. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Palmer Drought Severity Index. A meteorological index calculated by the National Weather Service to indicate prolonged and abnormal moisture deficiency or excess.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. ''Person'' does not include the United States Government or any agency thereof.

Planted acreage. Land in which seed, plants, or trees have been placed appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

Policy. The agreement between you and us consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable endorsements or options, the actuarial documents for the insured crop, and the applicable regulations published in 7 CFR chapter IV.

Practical to replant. Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period, or the final planting date if no late planting period is applicable, unless replanting is generally occurring in the area. Unavailability of seed or plants will not be considered a valid reason for failure to replant.

Premium billing date. The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions.

Prevented planting. Failure to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or by the end of the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that also prevented most producers from planting on acreage with similar characteristics in the surrounding area.

Production report. A written record showing your annual production and used by us to determine your yield for insurance purposes (see section 4). The report contains yield information for previous years, including planted acreage and harvested production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop, by measurement of farm-stored production, or by other records of production approved by us on an individual case basis.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed insured crop and then replacing the seed or plants of the same crop in the insured acreage with the expectation of producing at least the yield used to determine the final guarantee.

Representative sample. Portions of the insured crop that must remain in the field for examination and review by our loss adjuster when making a crop appraisal, as specified in the Crop Provisions. In certain instances we may allow you to harvest the crop and require only that samples of the crop residue be left in the field.

Sales closing date. A date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

Section (for the purposes of unit structure). A unit of measure under a rectangular survey system describing a tract of land usually one mile square and usually containing approximately 640 acres.

Share. Your percentage of interest in the insured crop as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss, or the beginning of harvest.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

State. The state shown on your accepted application.

Substantial benefit interest. An interest held by any person of at least 10 percent in the applicant or insured.

Summary of coverage. Our statement to you, based upon your acreage report, specifying the insured crop and the revenue guarantee provided by unit.

Tenant. A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of ''share'' above).

Termination date. The calendar date contained in the Crop Provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Unit.

(a) Basic unit—A unit established in accordance with section 2(a).

(b) Optional unit—A unit established from basic units in accordance with section 2(b).

(c) Enterprise unit—A unit established from basic units in accordance with section 2(c).

USDA. United States Department of Agriculture.

Void. When the policy is considered not to have existed for a crop year as a result of concealment, fraud, or misrepresentation (see section 27).

2. Unit Structure

(a) Basic unit—All insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have 100 percent crop share; or

(2) Which is owned by one person and operated by another person on a share basis. (Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units; one for each crop share lease and one that combines the two cash leases and the land you own.) Land which would otherwise be one unit may, in certain instances, be divided according to guidelines contained in section 2(b) and the applicable Crop Provisions.

(b) Optional unit—Unless limited by the Crop Provisions or Special Provisions, a basic unit as determined in section 2(a) may be divided into optional units if, for each optional unit:

(1) You meet the following:

(A) You have records that are acceptable to us, of planted acreage and the production from each optional unit for at least the last crop year used to determine your final guarantee;

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

(C) All optional units you select for the crop year are identified on the acreage report for that crop year (Units will be determined when the acreage is reported but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made after the acreage reporting date for any reason); and

(D) You have records of marketed or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each optional unit is kept separate until loss adjustment is completed by us.

(2) Each optional unit must meet one or more of the following, unless otherwise specified in the Crop Provisions:

(A) Optional units may be established if each optional unit is located in a separate section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure such as Spanish grants, as the equivalents of sections for unit purposes. In areas which have not been surveyed using sections, section equivalents or in areas where boundaries are not readily discernible, each optional unit must be located in a separate FSA farm serial number; and

(B) In addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number, optional units may be based on irrigated and non-irrigated acreage. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the final guarantee is based, except the corners of a field in which a center-pivot irrigation system is used may be considered as irrigated acreage if the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit. In this case, production from both practices will be used to determine your approved yield.

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

(c) Enterprise unit—A unit that consists of all insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. If you select and qualify for an enterprise unit, you will qualify for a premium discount based on the insured crop and number of acres in the enterprise unit. The following requirements must be met to qualify for an enterprise unit:

(1) The enterprise unit must contain 50 or more acres;

(2) The enterprise unit must be comprised of two or more basic units of the same insured crop as defined in section 2(a);

(3) The basic units which comprise the enterprise unit must each have insurable acreage of the same crop in the crop year insured;

(4) You must comply with all reporting requirements for each basic unit comprising the enterprise unit;

(5) Basic units may not be combined into an enterprise unit on any basis other than as described under this section; and

(6) If you do not comply fully with these provisions, and if at any time we discover that you have failed to comply with these provisions, we will assign you the basic unit structure and adjust the premium accordingly.

(d) Selection of unit structure—Basic, optional, or enterprise units will be determined when the acreage is reported but may be adjusted, combined, or separated to reflect the actual unit structure when adjusting a loss. If you select an enterprise unit structure, you must elect that option in writing by the sales closing date. If you do not qualify for an enterprise unit when the acreage is reported, you will be assigned a basic unit structure.

(e) All applicable unit structures must be stated on the acreage report for each crop year. If you elect enterprise units, both the enterprise unit and all basic units that comprise the enterprise unit must also be elected on the acreage report.

3. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy, or by us.

(b) Your application for insurance must contain all the information required by us to insure the crop. Applications that do not contain all social security numbers and employer identification numbers, as applicable, (except as stated herein) coverage level, price percentage, crop, type, variety, or class, plan of insurance, and any other material information required to insure the crop, are not acceptable. If a person with a substantial beneficial interest in the insured crop refuses to provide a social security number or employer identification number and that person is:

(1) Not on the nonstandard classification system list, the amount of coverage available under the policy will be reduced proportionately by that person's share of the crop; or

(2) On the nonstandard classification system list, the insurance will not be available to that person and any entity in which the person has a substantial beneficial interest.

(c) After acceptance of the application, you may not cancel this policy for the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(d) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the Crop Provisions.

(e) If any amount due, including premium, is not paid on or before the termination date for the crop on which an amount is due:

(1) For a policy with the unpaid premium, the policy will terminate effective on the termination date immediately subsequent to the billing date for the crop year;

(2) For a policy with other amounts due, the policy will terminate effective on the termination date immediately after the account becomes delinquent;

(3) Ineligibility will be effective as of the date that the policy was terminated for the crop for which you failed to pay an amount owed and for all other insured crops with coincidental termination dates;

(4) All other policies that are issued by us under the authority of the Act will also terminate as of the next termination date contained in the applicable policy;

(5) If you are ineligible, you may not obtain any crop insurance under the Act until payment is made, you execute an agreement to repay the debt and make the payments in accordance with the agreement, or you file a petition to have your debts discharged in bankruptcy;

(6) If you execute an agreement to repay the debt and fail to timely make any scheduled payment, you will be ineligible for crop insurance effective on the date the payment was due until the debt is paid in full or you file a petition to discharge the debt in bankruptcy and subsequently obtain discharge of the amounts due. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate;

(7) Once the policy is terminated, the policy cannot be reinstated for the current crop year unless the termination was in error;

(8) After you again become eligible for crop insurance, if you want to obtain coverage for your crops, you must reapply on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year); and

(9) If we deduct the amount due us from an indemnity, the date of payment for the purpose of this section will be the date you sign the properly executed claim for indemnity.

(10) For example, if crop A, with a termination date of October 31, 1997, and crop B, with a termination date of March 15, 1998, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 1997, and crop A's policy is terminated on that date. Crop B's policy is terminated as of March 15, 1998. If you enter an agreement to repay the debt on April 25, 1998, you can apply for insurance for crop A by the October 31, 1998, sales closing date and crop B by the March 15, 1999, sales closing date. If you fail to make a scheduled payment on November 1, 1998, you will be ineligible for crop insurance effective on November 1, 1998, and you will not be eligible unless the debt is paid in full or you file a petition to have the debt discharged in bankruptcy and subsequently receive discharge.

(f) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. The premium will be deducted from the indemnity or collected from the estate. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(g) We may terminate your policy if no premium is earned for 3 consecutive years.

(h) The cancellation and termination dates are contained in the Crop Provisions.

(i) You are not eligible to participate in the Crop Revenue Coverage program if you have elected the MPCI Catastrophic Risk Protection Endorsement except if you execute a High Risk Land Exclusion Option for a Crop Revenue Coverage Policy, you may elect to insure the ''high risk land'' under an MPCI Catastrophic Risk Protection Endorsement. If both policies are in force, the acreage of the crop covered under the Crop Revenue Coverage policy and the acreage covered under an MPCI Catastrophic Risk Protection Endorsement will be considered as separate crops for insurance purposes, including the payment of administrative fees.

4. Coverage Level, Price Percentage, and Approved Yield for Determining Final Guarantee and Indemnity

(a) For each crop year, the final guarantee, coverage level, and price percentage at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage. The information necessary to determine those factors will be contained in the Special Provisions or in the actuarial documents.

(b) You may select only one coverage level from among those offered by us for each insured crop. You may change the coverage level for the following crop year by giving written notice not later than the sales closing date for the affected insured crop. If you do not change the coverage level for the succeeding crop year, you will be assigned the same coverage level that was in effect the previous crop year.

(c) You may select only one price percentage for each insured crop. You may change the price percentage for the following crop year by giving written notice to us not later than the sales closing date for the insured crop. The price percentage you select applies to both the base price and harvest price. Since the price percentage may change each year, if you do not select a new price percentage on or before the sales closing date, we will assign a price percentage which bears the same relationship to the price percentage schedule that was in effect for the preceding year. (For example: If you selected a price percentage of 100 for the previous crop year, and you do not select a new price percentage for the current crop year, we will assign a price percentage of 100 for the current crop year.)

(d) This policy is an alternative to the MPCI program and satisfies the requirements of section 508(b)(7) of the Act.

(e) You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date unless otherwise stated in the Special Provisions.

(1) If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year. The production report or assigned yield will be used to compute your approved yield for the purpose of determining your final guarantee for the current crop year.

(2) If you have filed a claim for any crop year, the documents signed by you which state the amount of production used to complete the claim for indemnity will be the production report for that year unless otherwise specified by FCIC.

(3) Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date. If you do not provide the information stated above, the optional units will be combined into the basic unit.

(f) We may revise your final guarantee for any unit, and revise any indemnity paid based on that final guarantee, if we find that your production report under paragraph (e) of this section:

(1) Is not supported by written verifiable records in accordance with the definition of production report; or

(2) Fails to accurately report actual production, acreage, or other material information.

5. Contract Changes

(a) We may change the terms of your coverage under this policy from year to year.

(b) Any changes in policy provisions, premium rates, and program dates will be provided by us to your crop insurance agent not later than the contract change date contained in the Crop Provisions. You may view the documents or request copies from your crop insurance agent.

(c) You will be notified, in writing, of changes to the Basic Provisions, Crop Provisions, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

6. Liberalization

If we adopt any revision that broadens the coverage under this policy subsequent to the contract change date without additional premium, the broadened coverage will apply.

7. Report of Acreage

(a) An annual acreage report must be submitted to us on our form for each insured crop in the county on or before the acreage reporting date contained in the Special Provisions, except as follows:

(1) If you insure multiple crops that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

(3) Notwithstanding the provisions in sections 7(a)(1) and (2):

(i) If the Special Provisions designate separate planting periods for a crop, you must submit an acreage report for each planting period on or before the acreage reporting date contained in the Special Provisions for the planting period; and

(ii) If planting of the insured crop continues after the final planting date or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(A) The acreage reporting date contained in the Special Provisions;

(B) The date determined in accordance with sections 7(a)(1) or (2); or

(C) Five (5) days after the end of the late planting period for the insured crop, if applicable.

(b) If you do not have a share in an insured crop in the county for the crop year, you must submit an acreage report on or before the acreage reporting date, so indicating.

(c) Your acreage report must include the following information, if applicable:

(1) All acreage of the crop in the county (insurable and not insurable) in which you have a share;

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The date the insured crop was planted.

(d) Because incorrect reporting on the acreage report may have the effect of changing your premium and any indemnity that may be due, you may not revise this report after the acreage reporting date without our consent.

(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed.

(f) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice, or to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit.

(g) If the information reported by you on the acreage report for share, acreage, practice, type or other material

information is inconsistent with the information that is determined to actually exist for a unit and results in:

(1) A lower liability than the actual liability determined, the final guarantee on the unit will be reduced to an amount that is consistent with the reported information. In the event that insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity; and

(2) A higher liability than the actual liability determined, the information contained in the acreage report will be revised to be consistent with the correct information. If we discover that you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years that substantiates your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense.

(h) Errors in reporting units may be corrected by us at the time of adjusting a loss to reduce our liability and to conform to applicable unit division guidelines.

8. Annual Premium

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for premium due not earlier than the premium billing date specified in the Special Provisions. The premium due, plus any accrued interest, will be considered delinquent if it is not paid on or before the termination date specified in the Crop Provisions.

(b) Any amount you owe us related to any crop insured with us under the authority of the Act will be deducted from any prevented planting payment or indemnity due you for any crop insured with us under the authority of the Act.

(c) The annual premium amount is determined by:

(1) Multiplying the approved yield times the coverage level, times the base rate specified in the actuarial documents, times the base price as defined in the Commodity Exchange Endorsement;

(2) Multiplying the approved yield times the coverage level, times the CRC rate specified in the actuarial documents, times the CRC low price factor specified in the actuarial documents;

(3) Multiplying the approved yield times the coverage level, times the base rate specified in the actuarial documents, times the CRC high price factor specified in the actuarial documents;

(4) Totaling section 8(c)(1), (2), and (3);

(5) Multiplying the result of section 8(c)(4) times the acres insured, times your share at the time coverage begins, and as applicable, times any rate map adjustment factor; rate class option factor and; option factor specified in the actuarial documents;

(6) Multiplying the approved yield times the coverage level, times the base rate specified in the actuarial documents, times the MPCI market price election, times the insured acres, times your share at the time coverage begins, and as applicable, times any rate map adjustment factor; rate class option factor and; option factor specified in the actuarial documents, and times the applicable producer subsidy percentage to calculate the appropriate amount of subsidy. The producer subsidy percentage is based upon the coverage level and is contained in the actuarial documents; and

(7) Subtracting the result of section 8(c)(6) from the result of section 8(a)(5) to determine the annual producer paid premium.

(d) The annual premium amount for any applicable nonstandard classification system designations is determined by:

(1) Multiplying the approved yield (with yield adjustments specified in the actuarial documents) times the coverage level, times the NCS rate specified in the actuarial documents, times the rate differential specified in the actuarial documents, and times the base price as defined in the Commodity Exchange Endorsement;

(2) Multiplying the result of section 8(d)(1) times the acres insured, times your share at the time coverage begins, times any applicable rate class option factor specified in the actuarial documents, times any applicable option factor specified in the actuarial documents, and times the NCS premium factor calculated using the NCS premium factor formula specified in the actuarial documents;

(3) Multiplying the approved yield (with yield adjustments specified in the actuarial documents) times the coverage level, times the NCS rate specified in the actuarial documents, times the rate differential specified in the actuarial documents, times the MPCI market price election, times the acres insured, times your share at the time coverage begins, and as applicable, times any rate class option factor and/or option factor specified in the actuarial documents, and times the applicable producer subsidy percentage to calculate the appropriate amount of subsidy (The producer subsidy percentage is based upon the coverage level and is contained in the actuarial documents); and

(4) Subtracting the result of section 8(d)(3) from the result of section 8(d)(2) to determine the annual producer paid premium.

9. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in the Crop Provisions or Special Provisions and must be grown on insurable acreage.

(b) A crop which will NOT be insured will include, but will not be limited to, any crop:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates or final guarantee have been established;

(2) Of a type, class or variety established as not adapted to the area or excluded by the policy provisions;

(3) That is a volunteer crop;

(4) That is a second crop following the same crop (insured or not insured) harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions;

(5) That is planted for the development or production of hybrid seed or for experimental purposes, unless permitted by the Crop Provisions or unless we agree, in writing, to insure such crop; or

(6) That is used solely for wildlife protection or management. If the lease states that specific acreage must remain unharvested, only that acreage is uninsurable. If the lease specifies that a percentage of the crop must be left unharvested, your share will be reduced by such percentage.

10. Insurable Acreage

(a) Acreage planted to the insured crop in which you have a share is insurable except acreage:

(1) That has not been planted and harvested within one of the 3 previous crop years, unless:

(i) Such acreage was not planted:

(A) To comply with any other USDA program;

(B) Because of crop rotation, (*e.g.*, corn, soybean, alfalfa; and the alfalfa remained for 4 years before the acreage was planted to corn again);

(C) Due to an insurable cause of loss that prevented planting; or

(D) Because a perennial crop was grown on the acreage.

(ii) Such acreage was planted but was not harvested due to an insurable cause of loss; or

(iii)The Crop Provisions specifically allow insurance for such acreage.

(2) That has been strip-mined, unless an agricultural commodity other than a

cover, hay, or forage crop (except corn silage), has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed;

(3) On which the insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(4) That is interplanted, unless allowed by the Crop Provisions;

(5) That is otherwise restricted by the Crop Provisions or Special Provisions; or

(6) That is planted in any manner other than as specified in the policy provisions for the crop.

(b) If insurance is provided for an irrigated practice, you must report as irrigated only that acreage for which you have adequate facilities and adequate water, or the reasonable expectation of receiving adequate water at the time coverage begins, to carry out a good irrigation practice. If you knew or had reason to know that your water may be reduced before coverage begins, no reasonable expectation exists.

(c) Notwithstanding the provisions in section 9(b)(1), if acreage is irrigated and we do not provide a premium rate for an irrigated practice, you may either report and insure the irrigated acreage as ''non-irrigated,'' or report the irrigated acreage as not insured.

(d) We may restrict the amount of acreage that we will insure to the amount allowed under any acreage limitation program established by the United States Department of Agriculture if we notify you of that restriction prior to the sales closing date.

11. Share Insured

(a) Insurance will attach only to the share of the person completing the application and will not extend to any other person having a share in the crop unless the application clearly states that:

(1) The insurance is requested for an entity such as a partnership or a joint venture; or

(2) You as landlord will insure your tenant's share, or you as tenant will insure your landlord's share. In this event, you must provide evidence of the other party's approval (lease, power of attorney, etc.). Such evidence will be retained by us. You also must clearly set forth the percentage shares of each person on the acreage report.

(b) We may consider any acreage or interest reported by or for your spouse, child or any member of your household to be included in your share.

(c) Acreage rented for a percentage of the crop, or a lease containing provisions for BOTH a minimum payment (such as a specified amount of cash, bushels, pounds, *etc.*,) AND a crop share will be considered a crop share lease.

(d) Acreage rented for cash, or a lease containing provisions for EITHER a minimum payment OR a crop share (such as a 50/50 share or $100.00 per acre, whichever is greater) will be considered a cash lease.

12. Insurance Period

(a) Except for prevented planting coverage (see section 18), coverage begins on each unit or part of a unit at the later of:

(1) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 3);

(2) The date the insured crop is planted; or

(3) The calendar date contained in the Crop Provisions for the beginning of the insurance period.

(b) Coverage ends at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on a unit;

(4) The calendar date contained in the Crop Provisions for the end of the insurance period;

(5) Abandonment of the crop on the unit; or

(6) As otherwise specified in the Crop Provisions.

13. Causes of Loss

The insurance provided is against only unavoidable loss of revenue directly caused by specific causes of loss contained in the Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

(a) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(b) Failure to follow recognized good farming practices for the insured crop;

(c) Water contained by any governmental, public, or private dam or reservoir project;

(d) Failure or breakdown of irrigation equipment or facilities; or

(e) Failure to carry out a good irrigation practice for the insured crop, if applicable.

14. Replanting Payment

(a) If allowed by the Crop Provisions, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured planted acreage for the unit (as determined on the final planting date or within the late planting period if a late planting period is applicable.)

(b) No replanting payment will be made on acreage:

(1) On which our appraisal establishes that production will exceed the level set by the Crop Provisions;

(2) Initially planted prior to the earliest planting date established by the Special Provisions; or

(3) On which one replanting payment has already been allowed for the crop year.

(c) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the Crop Provisions.

(d) No replanting payment will be paid if we determine it is not practical to replant.

15. Duties in the Event of Damage or Loss

Your Duties—

(a) In case of damage to any insured crop you must:

(1) Protect the crop from further damage by providing sufficient care;

(2) Give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), by unit, for each insured crop (we may accept a notice of loss provided later than 72 hours after your initial discovery if we still have the ability to accurately adjust the loss);

(3) Leave representative samples intact for each field of the damaged unit as may be required by the Crop Provisions; and

(4) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:

(i) Show us the damaged crop;

(ii) Allow us to remove samples of the insured crop; and

(iii) Provide us with records and documents we request and permit us to make copies.

(b) You must obtain consent from us before, and notify us after you:

(1) Destroy any of the insured crop that is not harvested;

(2) Put the insured crop to an alternative use;

(3) Put the acreage to another use; or

(4) Abandon any portion of the insured crop. We will not give consent for any of the actions in sections 15(b)(1) through (4) if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(c) In addition to complying with all other notice requirements, you must

submit a claim for indemnity declaring the amount of your loss not later than 60 days after the end of the insurance period. This claim must include all the information we require to settle the claim.

(d) Upon our request, you must:

(1) Provide a complete harvesting and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured; and

(2) Submit to examination under oath.

(e) You must establish the total production or value received for the insured crop on the unit, that any loss of production or value occurred during the insurance period, and that the loss of production or value was directly caused by one or more of the insured causes specified in the Crop Provisions.

(f) All notices required in this section that must be received by us within 72 hours may be made by telephone or in person to your crop insurance agent but must be confirmed in writing within 15 days.

Our Duties—

(a) If you have complied with all the policy provisions, we will pay your loss within 30 days after:

(1) We reach agreement with you;

(2) Completion of arbitration or appeal proceedings; or

(3) The entry of a final judgment by a court of competent jurisdiction.

(b) In the event we are unable to pay your loss within 30 days, we will give you notice of our intentions within the 30-day period.

(c) We may defer the adjustment of a loss until the amount of loss can be accurately determined. We will not pay for additional damage resulting from your failure to provide sufficient care for the crop during the deferral period.

(d) We recognize and apply the loss adjustment procedures established or approved by the Federal Crop Insurance Corporation.

16. Production Included in Determining Indemnities

(a) The total production to be counted for a unit will include all production determined in accordance with the policy.

(b) The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

17. Late Planting

Unless limited by the Crop Provisions, insurance will be provided for acreage planted to the insured crop after the final planting date in accordance with the following:

(a) The final guarantee for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date.

(b) Acreage planted after the late planting period (or after the final planting date for crops that do not have a late planting period) may be insured as follows:

(1) The final guarantee for each acre planted as specified in this subsection will be determined by multiplying the final guarantee that is provided for acreage of the insured crop that is timely planted by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Planting on such acreage must have been prevented by the final planting date (or during the late planting period, if applicable) by an insurable cause occurring within the insurance period for prevented planting coverage;

(3) The final guarantee for any acreage on which an insured cause of loss prevents completion of planting, as specified in the definition of ''planted acreage'' (*e.g.*, seed is broadcast on the soil surface but cannot be incorporated), will be determined as indicated in this section; and

(4) All production from acreage as specified in this section will be included as production to count for the unit.

(c) The premium amount for insurable acreage specified in section 17(a) or (b) will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for such acreage exceeds the liability, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid).

18. Prevented Planting

(a) Unless limited by the policy provisions, a prevented planting payment may be made to you for eligible acreage if:

(1) You were prevented from planting the insured crop by an insured cause that occurs:

(i) On or after the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on or after the sales closing date for the previous crop year for the insured crop in the county, provided insurance has been in force continuously since that date. Cancellation for the purpose of transferring the policy to a different insurance provider for the subsequent crop year will not be considered a break in continuity for the purpose of the preceding sentence; and

(2) You include any acreage of the insured crop that was prevented from being planted on your acreage report.

(b) The actuarial documents may contain additional levels of prevented planting coverage that you may purchase for the insured crop:

(1) Such purchase must be made on or before the sales closing date.

(2) If you do not purchase one of those additional levels by the sales closing date, you will receive the prevented planting coverage specified in the Crop Provisions.

(3) If you have an MPCI Catastrophic Risk Protection Endorsement for any acreage of ''high risk land,'' the additional levels of prevented planting coverage will not be available for that acreage; and

(4) You may not increase your elected or assigned preventing planting coverage level for any crop year if a cause of loss that will or could prevent planting is evident prior to the time you wish to change your prevented planting coverage level.

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage that is prevented from being planted exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

(d) Drought or failure of the irrigation water supply will not be considered to be an insurable cause of loss for the purposes of prevented planting unless, on the final planting date:

(1) For non-irrigated acreage, the area that is prevented from being planted is classified by the Palmer Drought Severity Index as being in a severe or extreme drought; or

(2) For irrigated acreage, there is not a reasonable probability of having adequate water to carry out an irrigated practice.

(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on

double cropped acreage in accordance with section 18(f)(3) or (4). The eligible acres for each insured crop will be determined in accordance with the following table.

Type of crop	Eligible acres if, in any of the 4 most recent crop years, you have produced any crop for which insurance was available	Eligible acres if, in any of the 4 most recent crop years, you have not produced any crop for which insurance was available
(i) The crop is not required to be contracted with a processor to be insured.	(A) The maximum number of acres certified for actual production history (APH) purposes or reported for insurance for the crop in any one of the 4 most recent crop years (not including reported prevented planting acreage that was planted to a substitute crop other than an approved cover crop). The number of acres determined above for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that you submit proof to us that for the current crop year you have purchased or leased additional land or that acreage will be released from any USDA program which prohibits harvest of a crop. Such acreage must have been purchased, leased, or released from the USDA program, in time to plant it for the current crop year using good farming practices. No cause of loss that will or could prevent planting may be evident at the time the acreage is purchased, leased, or released from the USDA program.	(B) The number of acres specified on your intended acreage report which is submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us. The total number of acres listed may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report. The number of acres determined above for a crop may only be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the number of acres listed on your intended acreage report, if you meet the conditions stated in section 18(e)(1)(i)(A).
(ii) The crop must be contracted with a processor to be insured.	(A) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year; or the result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted. (For the purposes of establishing the number of prevented planting acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used.).	(B) The number of acres of the crop as determined in section 18(e)(1)(ii)(A).

(2) Any eligible acreage determined in accordance with the table contained in section 18(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section 17(b).

(f) Regardless of the number of eligible acres determined in section 18(e), prevented planting coverage will not be provided for any acreage:

(1) If at least one contiguous block of prevented planting acreage does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less. We will assume that any prevented planting acreage within a field that contains planted acreage would have been planted to the same crop that is planted in the field, unless the prevented planting acreage constitutes at least 20 acres or 20 percent of the insurable acreage in the field and you can prove that you have previously produced both crops in the same field in the same crop year;

(2) Used for conservation purposes or intended to be left unplanted under any program administered by the USDA;

(3) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year (excluding share arrangements), unless you have coverage greater than the catastrophic risk protection plan of insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(4) On which the insured crop is prevented from being planted, if any crop from which any benefit is derived under any program administered by the USDA is planted and fails, or if any crop is harvested, hayed or grazed on the same acreage in the same crop year (other than a cover crop which may be hayed or grazed after the final planting date for the insured crop), unless you have coverage greater than that applicable to the catastrophic risk protection plan of insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(5) Of a crop that is prevented from being planted if a cash lease payment is also received for use of the same acreage in the same crop year (not applicable if acreage is leased for haying or grazing only). If you state that you will not be cash renting the acreage and claim a prevented planting payment on the acreage, you could be subject to civil and criminal sanctions if you cash rent the acreage and do not return the prevented planting payment for it;

(6) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(7) That exceeds the number of acres eligible for a prevented planting payment;

(8) That exceeds the number of eligible acres physically available for planting;

(9) For which you cannot provide proof that you had the inputs available to plant and produce a crop with the expectation of at least producing the yield used to determine the final guarantee (Evidence that you have previously planted the crop on the unit will be considered adequate proof unless your planting practices or rotational requirements show that the acreage would have remained fallow or been planted to another crop);

(10) Based on an irrigated practice final guarantee unless adequate irrigation facilities were in place to carry out an irrigated practice on the

acreage prior to the insured cause of loss that prevented you from planting; or

(11) Of a crop type that you did not plant in at least one of the four most recent years. Types for which separate final guarantees are available must be included in your APH database in at least one of the most recent four years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on APH) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 18(e)(1)(i)(B).

(g) The prevented planting payment for any eligible acreage within a basic or optional unit will be determined by:

(1) Multiplying the final guarantee for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 18(g)(1) by the number of eligible prevented planting acres in the unit; and

(3) Multiplying the result of section 18(g)(2) by your share.

(h) The prevented planting payment for any eligible acreage within an enterprise unit will be determined by:

(1) Multiplying the final guarantee for each basic unit within the enterprise unit, for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage.

(2) Multiplying the result of section 18(h)(1) by the number of eligible prevented planting acres in each basic unit within the enterprise unit; and

(3) Multiplying the result of section 18(h)(2) by your share.

(4) Total the results from section 18(h)(3).

19. Crops as Payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

20. Arbitration

(a) If you and we fail to agree on any factual determination, the disagreement will be resolved in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by FCIC must be resolved through the FCIC appeal provisions published at 7 CFR part 11.

(b) No award determined by arbitration or appeal can exceed the amount of liability established or which should have been established under the policy.

21. Access to Insured Crop and Records, and Record Retention

(a) We reserve the right to examine the insured crop as often as we reasonably require.

(b) For three years after the end of the crop year, you must retain, and provide upon our request, complete records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit. This requirement also applies to the records used to establish the basis for the production report for each unit. You must also provide, upon our request, separate records showing the same information for production from any acreage not insured. We may extend the record retention period beyond three years by notifying you of such extension in writing. Your failure to keep and maintain such records will, at our option, result in:

(1) Cancellation of the policy;

(2) Assignment of production to the units by us;

(3) Combination of the optional units; or

(4) A determination that no indemnity is due.

(c) Any person designated by us will, at any time during the record retention period, have access:

(1) To any records relating to this insurance at any location where such records may be found or maintained; and

(2) To the farm.

(d) By applying for insurance under the authority of the Act or by continuing insurance for which you previously applied, you authorize us, or any person acting for us, to obtain records relating to the insured crop from any person who may have custody of those records including, but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist us in obtaining all records which we request from third parties.

22. Other Insurance

(a) Other Like Insurance—You must not obtain any other crop insurance issued under the authority of the Act on your share of the insured crop. If we determine that more than one policy on your share is intentional, you may be subject to the sanctions authorized under this policy, the Act, or any other applicable statute. If we determine that the violation was not intentional, the policy with the earliest date of application will be in force and all other policies will be void. Nothing in this paragraph prevents you from obtaining other insurance not issued under the Act.

(b) Other Insurance Against Fire—If you have other insurance, whether valid or not, against damage to the insured crop by fire during the insurance period, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this policy without regard to such other insurance; or

(2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

(c) For the purpose of subsection (b) of this section, the amount of loss from fire will be the reduction in revenue of the insured crop on the unit involved determined pursuant to this policy.

23. Conformity to Food Security Act

Although your violation of a number of federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provision (title XVII of the Food Security Act of 1985 (Pub. L. 99–198)) and the regulations promulgated under the Act by USDA. Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

24. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount due us. For the purpose of premium amounts due us, the interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us. The

amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.

(c) All amounts paid will be applied first to expenses of collection (see subsection (d) of this section) if any, second to the reduction of accrued interest, and then to the reduction of the principal balance.

(d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

25. Legal Action Against Us

(a) You may not bring legal action against us unless you have complied with all of the policy provisions.

(b) If you do take legal action against us, you must do so within 12 months of the date of denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(j).

(c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is limited or excluded by this contract or by Federal Regulations.

26. Payment and Interest Limitations

(a) Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.

(b) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form. Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year, and may vary with each publication.

27. Concealment, Misrepresentation or Fraud

(a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:

(1) This policy will be voided; and

(2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Even though the policy is void, you may still be required to pay 20 percent of the premium due under the policy to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

(c) Voidance of this policy will result in you having to reimburse all indemnities paid for the crop year in which the voidance was effective.

(d) Voidance will be effective on the first day of the insurance period for the crop year in which the act occurred and will not affect the policy for subsequent crop years unless a violation of this section also occurred in such crop years.

28. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

29. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have the right to submit all loss notices and forms as required by the policy. If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within 60 days after the end of the insurance period, the assignee may submit the claim for indemnity not later than 15 days after the 60-day period has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

30. Subrogation (Recovery of Loss From a Third Party)

Since you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve this right. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

31. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

32. Notices

(a) All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or a Federal holiday, or, if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.

(b) All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your crop insurance agent. Notice sent to such address will be conclusively presumed to have been received by you. You should advise us immediately of any change of address.

Crop Revenue Coverage

Coarse Grains Crop Provisions

This is a risk management program. This risk management tool may be reinsured under the authority provided by section 508(h) of the Federal Crop Insurance Act. If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Special Provisions; (2) these Crop Provisions; and (3) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Calculated revenue. The production to count multiplied by the harvest price.

Coarse grains. Corn, grain sorghum, and soybeans.

Grain sorghum. The crop defined as sorghum under the United States Grain Standards Act.

Harvest. Combining, threshing, or picking the insured crop for grain.

Local market price. The cash grain price per bushel for U.S. No. 2 yellow corn, U.S. No. 2 grain sorghum, or U.S. No. 1 soybeans, offered by buyers in the area in which you normally market the insured crop. The local market price

will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade for yellow corn and grain sorghum, or U.S. No. 1 grade for soybeans. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein and oil, will not be considered.

Planted acreage. In addition to the definition contained in the Basic Provisions, coarse grains must initially be planted in rows (corn must be planted in rows far enough apart to permit mechanical cultivation), unless otherwise provided by the Special Provisions or actuarial documents.

Prevented planting guarantee. That percentage of the final guarantee for timely planted acres as set forth in section 12.

Silage. A product that results from severing the plant from the land and chopping it for the purpose of livestock feed.

2. Coverage Level, Price Percentage, and Approved Yield for Determining Final Guarantee and Indemnity

In addition to the requirements of section 4 of the Basic Provisions all the insurable acreage of each crop in the county insured as grain under this policy will have the same coverage level and price percentage elections.

3. Contract Changes

In accordance with Section 5 of the Basic Provisions, the contract change date is December 31 preceding the cancellation date.

4. Cancellation and Termination Dates

In accordance with section 3(h) of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
(a) For corn and grain sorghum:	
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina.	February 28.
All other Texas counties and all other states	March 15.
(b) For soybeans:	
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.
All other Texas counties and all other states	March 15.

5. Insured Crop

(a) In accordance with section 9 of the Basic Provisions, the crop insured will be each coarse grain crop you elect to insure for which premium rates and prices are provided by the actuarial documents:

(1) In which you have a share;

(2) That is adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area, including air seeded soybeans subject to our approval;

(3) That is not (unless allowed by the Special Provisions):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume; and

(4) Planted for harvest as grain.

(b) For corn only, in addition to the provisions of section 5(a), the corn crop insured will be all corn that is yellow dent or white corn, including mixed yellow and white, waxy, high—lysine corn, high-oil corn blends containing mixtures of at least ninety percent high yielding yellow dent female plants with high-oil male pollinator plants, commercial varieties of high-protein hybrids, and excluding:

(1) High—amylose, high-oil except as defined in section 5(b), flint, flour, Indian, or blue corn, or a variety genetically adapted to provide forage for wildlife or any other open pollinated corn.

(2) A variety of corn adapted for silage use when the corn is reported for insurance as grain.

(c) For grain sorghum only, in addition to the provisions of section 5(a), the grain sorghum crop insured will be all of the grain sorghum in the county:

(1) That is planted for harvest as grain;

(2) That is a combine—type hybrid grain sorghum (grown from hybrid seed); and

(3) That is not a dual—purpose type of grain sorghum (a type used for both grain and forage).

(d) For soybeans only, in addition to the provisions of section 5(a), the soybean crop insured will be all of the soybeans in the county that are planted for harvest as beans.

6. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that most producers in the surrounding area with acreage with similar characteristics would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

In accordance with the provisions under section 12 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) For corn insured as grain:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30.
(2) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington.	October 31.
(3) All other counties and states	December 10.
(b) For grain sorghum insured as grain:	
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30.
(2) All other Texas counties and all other states	December 10.
(c) For soybeans insured as beans:	
All states	December 10.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against an unavoidable loss of revenue due to the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

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

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

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply, if applicable, due to a cause of loss contained in section 8(a) through (g) occurring within the insurance period; or

(i) A harvest price that is less than the base price.

9. Replanting Payments

(a) In accordance with section 14 of the Basic Provisions, replanting payments for coarse grains are allowed if the coarse grains are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the minimum guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the minimum guarantee or:

(1) For corn grain, 8 bushels multiplied by the base price, multiplied by your insured share;

(2) For grain sorghum, 7 bushels multiplied by the base price, multiplied by your insured share; and

(3) For soybeans, 3 bushels multiplied by the base price multiplied by your insured share.

(c) When the crop is replanted using a practice that is uninsurable as an original planting, the final guarantee for the unit will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

10. Duties in the Event of Damage or Loss

In accordance with the requirements of section 15 of the Basic Provisions, if you initially discover damage to any insured crop within 15 days of or during harvest, and you do not intend to harvest the acreage, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide, extend the entire length of each field in the unit, and must not be harvested or destroyed until after our inspection.

11. Settlement of Claim

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

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

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

(b) In the event of loss or damage covered by this policy, we will settle your claim on any insured basic or optional unit of coarse grains by:

(1) Multiplying the insured acreage of the crop by the final guarantee;

(2) Subtracting the calculated revenue from the result of section 11(b)(1); and

(3) Multiplying the result of 11(b)(2) by your share.

If the result of section 11(b)(3) is greater than zero, an indemnity will be paid. If the result of section 11(b)(3) is less than zero, no indemnity will be due.

(c) In the event of loss or damage covered by this policy, we will settle your claim on any insured enterprise unit by:

(1) Multiplying the insured acreage of the crop by the final guarantee for each basic unit within the enterprise unit;

(2) For each basic unit in 11(c)(1), compute the calculated revenue;

(3) Subtract each result in section 11(c)(2) from the respective result of section 11(c)(1);

(4) Multiplying each result of section 11(c)(3) by your share; and

(5) Total the results of section 11(c)(4).

If the result of section 11(c)(5) is greater than zero, an indemnity will be paid. If the result of section 11(c)(5) is less than zero, no indemnity will be due.

(d) The total production in bushels to count from all insurable acreage for the crop on the unit will include:

(1) All appraised production as follows:

(i) Not less than that amount of production that when multiplied by the harvest price equals the final guarantee for the acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 11(e)); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

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

use will be used to determine the amount of production to count.); or

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

(2) All harvested production from the insurable acreage.

(e) Mature coarse grain production may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of:

(i) Fifteen percent for corn (If moisture exceeds 30 percent, production will be reduced 0.2 percent for each 0.1 percentage point above 30 percent);

(ii) Fourteen percent for grain sorghum; and

(iii) Thirteen percent for soybeans.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in:

(A) Corn not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor;

(B) Grain sorghum not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor (except smut odor), or meets the special grade requirements for smutty grain sorghum; or

(C) Soybeans not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor (except garlic odor), or which meet the special grade requirements for garlicky soybeans; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health (Test weight for quality adjustment purposes may be determined by our loss adjuster).

(4) Coarse grain production that is eligible for quality adjustment, as specified in sections 11(e)(2) and 11(e)(3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(f) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your final guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Crop Revenue Coverage

Cotton Crop Provisions

This is a risk management program. This risk management tool will be reinsured under the authority provided by section 508 (h) of the Federal Crop Insurance Act. If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Special Provisions; (2) these Crop Provisions; and (3) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Calculated Revenue. The production to count multiplied by the harvest price.

Cotton. Varieties identified as American Upland Cotton.

Growth area. A geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

Harvest. The removal of the seed cotton from the open cotton boll, or the severance of the open cotton boll from the stalk by either manual or mechanical means.

Mature cotton. Cotton that can be harvested either manually or mechanically.

Planted acreage. In addition to the definition contained in the Basic Provisions, cotton must be planted in rows, unless otherwise provided by the Special Provisions or actuarial documents. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other spring planted crop.

Prevented Planting Guarantee. That percentage of the final guarantee for timely planted acres as set forth in section 11(b).

Skip-row. A planting pattern that:

(1) Consists of alternating rows of cotton and fallow land or land planted to another crop the previous fall; and

(2) Qualifies as a skip-row planting pattern as defined by FSA or a successor agency.

2. Coverage Level, Price Percentage, and Approved Yield for Determining Final Guarantee and Indemnity

In addition to the requirements of section 4 of the Basic Provisions, all the insurable acreage of each crop in the county insured as cotton under this policy will have the same coverage level and price percentage elections.

3. Contract Changes

In accordance with Section 5 of the Basic Provisions, the contract change date is December 31 preceding the cancellation date.

4. Cancellation and Termination Dates

In accordance with section 3(h) of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15.

State and county	Cancellation and termination dates
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crocket, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.
All other Texas counties and all other states	March 15.

5. Insured Crop

In accordance with section 9 of the Basic Provisions, the crop insured will be all the cotton lint, in the county for which premium rates are provided by the actuarial documents:

(a) In which you have a share; and

(b) That is not (unless allowed by the Special Provisions):

(1) Colored cotton lint;

(2) Planted into an established grass or legume;

(3) Interplanted with another spring planted crop;

(4) Grown on acreage from which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(5) Grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than 50 percent of the small grain plants reach the heading stage.

6. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions:

(a) The acreage insured will be only the land occupied by the rows of cotton when a skip row planting pattern is utilized; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that most producers in the area with acreage with similar characteristics would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

(a) In lieu of section 12(b)(2) of the Basic Provisions, insurance will end upon the removal of the cotton from the field.

(b) In accordance with the provisions under section 12 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows:

(1) September 30 in Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof;

(2) January 31 in Arizona, California, New Mexico, Oklahoma, and all other Texas counties; and

(3) December 31 in all other states.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against an unavoidable loss of revenue due to the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

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

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

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply, if applicable, due to a cause of loss contained in section 8(a) through (g) occurring within the insurance period; or

(i) A harvest price that is less than the base price.

9. Duties in the Event of Damage or Loss

(a) In addition to your duties under section 15 of the Basic Provisions, in the event of damage or loss:

(1) The cotton stalks must remain intact for our inspection; and

(2) If you initially discover damage to the insured crop within 15 days of harvest, or during harvest, and you do not intend to harvest the acreage, you must leave representative samples of the unharvested crop in the field for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit.

(b) The stalks must not be destroyed or harvested, until after our inspection.

10. Settlement of Claim

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

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

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

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

(1) Multiplying the insured acreage of the crop by the final guarantee;

(2) Subtracting the calculated revenue from the result of section 10(b)(1); and

(3) Multiplying the result of 10(b)(2) by your share.

If the result of section 10(b)(3) is greater than zero, an indemnity will be paid. If the result of section 10(b)(3) is less than zero, no indemnity will be due.

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

(1) All appraised production as follows:

(i) Not less than that amount of production that when multiplied by the harvest price equals the final guarantee for the acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes;

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

(E) On which the cotton stalks are destroyed, in violation of section 9;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production of white cotton may be adjusted for quality deficiencies in accordance with section 10(d)); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop we may give you consent to put the acreage to another use if you agree to leave intact, and

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

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

(2) All harvested production from the insurable acreage, including any mature cotton retrieved from the ground.

(d) Mature white cotton may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for cotton of like quality (price quotation ''A'') for the applicable growth area is less than 75 percent of price quotation ''B.'' Price quotation ''B'' is defined as the price quotation for the applicable growth area for cotton of the color and leaf grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. Price quotations ''A'' and ''B'' will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If the date the last bale classed is not available, the price quotations will be determined on the date the last bale from the unit is delivered to the warehouse, as shown on the producer's account summary obtained from the gin. If eligible for adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation ''A'' by 75 percent of price quotation ''B.''

(e) Colored cotton lint will not be eligible for quality adjustment.

11. Prevented Planting

(a) In addition to the provisions contained in section 18 of the Basic Provisions, your prevented planting final guarantee will be based on your approved yield without adjustment for skip-row planting patterns.

(b) Your prevented planting coverage will be 45 percent of your final guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C. on March 26, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–8590 Filed 4–1–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Nutrition Program for the Elderly; Initial Level of Assistance From October 1, 1997 to September 30, 1998

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the initial level of per-meal assistance for the Nutrition Program for the Elderly (NPE) for Fiscal Year 1998. The Fiscal Year 1998 initial level of assistance is set at $.5607 for each eligible meal in accordance with section 311(a)(4) of the Older Americans Act of 1965, as amended by section 310 of the Older Americans Act Amendments of 1992 and preempted by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ellen Henigan, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.570 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984.)

Paperwork Reduction Act of 1995

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Regulatory Flexibility Act

This action has been reviewed with regards to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service (FNS) has certified that this action will not have a significant economic impact and will not affect a substantial number of small entities. The procedures in this notice would primarily affect FNS regional offices, and the State Agencies on aging and local meal providers. While some of these entities constitute small entities, a substantial number will not be affected. Furthermore, any economic impact will not be significant.

Legislative Background

Section 310 of Pub. L. 102–375, the Older Americans Act Amendments of 1992, amended section 311(a)(4) of the Older Americans Act of 1965, 42 U.S.C. 3030a(a)(4), to require the Secretary of Agriculture to maintain an annually programmed level of assistance equal to the greater of: (1) The current appropriation divided by the number of meals served in the preceding fiscal year; or (2) 61 cents per meal adjusted annually beginning with Fiscal Year 1993 to reflect changes in the Consumer Price Index. Section 311(c)(2) of the Older Americans Act (42 U.S.C. 3030a(c)(2)) was amended to provide that the final reimbursement claims must be adjusted so as to utilize the entire program appropriation for the fiscal year for per-meal support. However, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1996 (Pub. L. 104–37) imposed, for Fiscal Year 1996 and succeeding years, the same NPE rate management requirements as applied to Fiscal Year 1994. That is, Title IV, Domestic Food Programs, of the Appropriations Act provides that ''* * * hereafter notwithstanding any other provision of law, for meals provided pursuant to the Older Americans Act of 1965, a maximum rate of reimbursement to States will be established by the Secretary, subject to reduction if obligations would exceed the amount of available funds, with any unobligated funds to remain available only for obligation in the fiscal year beginning October 1, 1996.''

Notwithstanding the initial rates established by the Older Americans Act, the Department is required to comply with the spending clause of the U.S. Constitution and 31 U.S.C. 1341(a)(1)(A) (known as the Antideficiency Act),

which prohibit the obligation or expenditure of funds in excess of the available appropriation. Thus the Department is required to establish (and if necessary, adjust) rates in such a manner as to not exceed the program appropriation.

Fiscal Year 1997 Level of Assistance

Based on its projection of the number of meals to be claimed during the fiscal year, and in light of constitutional and statutory prohibitions on obligating or spending funds in excess of the available appropriation, the Department announced an initial per-meal reimbursement rate of $.5857 for Fiscal Year 1997, the highest rate which it believed could be sustained throughout the fiscal year. This initial level of per-meal assistance was announced in the April 8, 1997 **Federal Register** (62 FR 16757).

The Department's meal service projection for Fiscal Year 1997 assumed a slightly higher rate of growth than occurred in the preceding fiscal year. This initial per-meal support level of $.5857 was sustained throughout Fiscal Year 1997, and thus no adjustment was necessary to keep expenditures within the limit of the $140 million NPE appropriation established by Pub. L. 104–180. Funds in the estimated amount of $500 thousand were not paid out for Fiscal Year 1997 and will, in accordance with the legislative mandate in Pub. L. 104–180, be carried over into Fiscal Year 1998 and expended in per-meal reimbursement for that year.

Fiscal Year 1998 Initial Level of Assistance

It is the Department's goal to establish the highest rate that can be sustained throughout the fiscal year so as to maximize the flow of program funds to States during the fiscal year. However, the Department wants also to minimize the possibility of a rate reduction and the hardship it causes to program operators. In order to guard against the need for a reduction, the Department, once again, has projected a slightly higher rate of growth in meal service than occurred in the preceding fiscal year. Based on its projections, the Department announces an initial per-meal support level of $.5607, which will not be increased, and which will be decreased only if necessary to keep expenditures within the limit of the $140 million NPE Fiscal Year 1998 appropriation established by Pub. L. 105–86 and the $500 thousand estimated to be available from Fiscal Year 1997. Any of these funds not paid out for Fiscal Year 1998 reimbursement will, in accordance with Pub. L. 105–86, remain available through Fiscal Year 1999. In the unlikely event that the rate needs to be decreased, States will be notified directly.

Dated: March 9, 1998.

Yvette Jackson,

Administrator, Food and Nutrition Service.

[FR Doc. 98–8587 Filed 4–1–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–015N]

The National Advisory Committee on Meat and Poultry Inspection; Nominations for Membership

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Meat and Poultry Inspection. The full Committee consists of 16-members, and each person selected is expected to serve a 2-year term.

DATES: The names of the nominees and their typed curricula vitae or resumes must be postmarked no later than June 30, 1998.

ADDRESSES: Nominating materials should be submitted to Ms. Margaret O'K. Glavin, Deputy Administrator, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, USDA, Room 350–E, Administration Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Micchelli, Evaluation and Analysis Division, FSIS, Room 3833, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700; telephone (202) 720–6269; FAX (202) 690–1030; E-mail: michael.micchelli@usda.gov.

SUPPLEMENTARY INFORMATION: USDA again is seeking nominees for membership on the National Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendations to the Secretary on the meat and poultry inspection programs, pursuant to sections 7(c), 24, 301(a)(3) and 301(c) of the Federal Meat Inspection Act, 21 U.S.C. 607(c), 624, 645, 661(a)(3) and 661(c) and to sections 5(a)(3), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act, 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e). Nominations for membership are being sought from persons representing producers; processors; exporters and importers of meat and poultry products; academia; Federal and State government officials; and consumers.

Appointments to the Committee will be made by the Secretary. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, persons with demonstrated ability to represent minorities, women, and persons with disabilities. It is anticipated that the Committee will meet at least annually.

Done at Washington, DC, on: March 26, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–8652 Filed 4–1–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–002N]

Pathogen Reduction Performance Standards: Salmonella Testing Data

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: At its December 16, 1997, Hazard Analysis and Critical Control Points (HACCP) Implementation Meeting, FSIS discussed its strategy for testing raw meat and poultry products to determine establishment compliance with the pathogen reduction performance standards for *Salmonella.* The Agency also presented its views on the public release of *Salmonella* testing results. The issue papers on these subjects that were made available at the meeting are published in this notice.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION: On December 16, 1997, in Washington, D.C., FSIS held the first of four one-day meetings to brief managers of large (500+ employees) official meat and poultry establishments on how the Agency will conduct inspection operations after January 26, 1998. This is the date when, under the ''Pathogen Reduction (PR); Hazard Analysis and Critical Control Point (HACCP) Systems'

final rule (61 FR 38806), those establishments are required to be operating HACCP systems. At the meeting, FSIS officials discussed the Agency's strategy for testing raw meat and poultry products to determine establishment compliance with the pathogen reduction performance standards for *Salmonella* that are set forth in the final rule. The officials also presented Agency views on the release of *Salmonella* testing results.

FSIS summarized its views on these subjects in two issue papers that were distributed at the meeting. The Agency is aware that there is considerable interest in the testing strategy and results and wishes to make the information in the papers available to a wider public. The issue papers are therefore published below:

Issue Paper: Strategy for Salmonella Testing

Background

The PR/HACCP final rule set pathogen reduction performance standards for *Salmonella* that apply to establishments preparing carcasses and raw ground products. The performance standards are intended to ensure that each establishment is consistently achieving an acceptable level of performance with regard to controlling and reducing harmful bacteria on raw meat and poultry products. FSIS is carrying out a microbiological testing program to ensure that the establishments are meeting the performance standards. The standards complement the process control performance criteria for fecal contamination on carcasses and *E. coli* testing that slaughtering establishments are expected to meet.

FSIS has selected *Salmonella* as the target organism in its microbiological testing for four reasons. First, it is the most common bacterial cause of foodborne illness. Second, FSIS baseline data show that *Salmonella* colonizes the intestinal tracts of a variety of mammals and birds and occurs often enough to be detected and monitored. Third, current methodologies can recover *Salmonella* from a variety of meat and poultry products. And, finally, intervention strategies aimed at reducing *Salmonella* on raw product should be effective against other pathogens.

The purpose of the *Salmonella* performance standards is to provide incentives for producers of raw meat and poultry products to reduce the prevalence of *Salmonella* on their products and to provide an objective basis for judging the effectiveness of establishments' HACCP plans by both FSIS and establishments.

Testing Program

The testing program will be carried out in two phases, pre-implementation testing and compliance testing.

FSIS began the pre-implementation phase in August 1996 with a trial period to allow the laboratories, inspectors, and headquarters employees to refine the process for scheduling, collecting and analyzing samples. During this trial period, FSIS provided training for Agency employees who were involved, determined what resources were needed in Agency laboratories and in the field, and assessed the processes used to collect samples and perform analyses. Official pre-implementation sampling began on June 1, 1997 in large establishments. Pre-implementation testing in small and very small establishments will begin in 1998.

Establishments are subject to compliance-phase testing on the dates when, according to the PR/HACCP final rule, the HACCP regulations become applicable respectively to large, small, and very small establishments. The HACCP regulations become applicable to large establishments on January 26, 1998, to small establishments on January 25, 1999, and to very small establishments on January 25, 2000. After the year 2000, all official establishments, regardless of size, will be subject to the HACCP regulations.

The compliance-phase testing strategy consists of three elements:

- *Product-specific testing*—Plants preparing products for which the performance standards are in double digits—*e.g.*, chicken (20.0% positive), ground chicken (44.6%), ground turkey (49.9%)—will be targeted. FSIS will schedule these plants for the collection and analysis of sample sets.
- *Plant-specific targeting*—A plant failing to meet a performance standard when the first in a series of up to three consecutive sample sets has been tested will be targeted for additional testing. FSIS will schedule the plant for testing of a second sample set.
- *On-going random testing*—Plants not included in either of the targeted-sampling frames will be subject to random testing.

Enforcement

The enforcement policy follows the framework established by the PR/HACCP rule.

First Sample Set

If an establishment does not meet a performance standard, FSIS Headquarters will notify the District Manager (DM) for the district in which the establishment is located. The DM, in turn, will notify the establishment that it is not in compliance with the performance standard and must take immediate action to meet the standard. The fact of the establishment's noncompliance will be documented in a noncompliance report (NR). FSIS will schedule the establishment for a second sample set, normally within 60 days, but the Agency may change the sampling schedule if the DM recommends faster or slower action.

Second Sample Set

If an establishment does not meet the performance standard, FSIS Headquarters will notify the DM. The DM, in turn, will notify the establishment of its noncompliance, citing the regulatory requirement for the establishment to reassess its HACCP plan for that product and take corrective action. The fact of the establishment's noncompliance will be documented in an NR.

FSIS will schedule the establishment for a third sample set, with sampling to begin at a time recommended by the DM. Before recommending that sampling resume, the DM will consider factors such as the establishment's progress on reassessing its HACCP plan, its adherence to process control performance criteria as measured by testing for *E. coli*, or its pattern of failing checks for fecal contamination.

Third Sample Set

If the establishment fails to meet the performance standard, FSIS Headquarters will notify the DM. The DM will inform the establishment orally and by certified letter that it has failed to maintain an adequate HACCP plan for the affected product in accordance with 9 CFR Part 417. The fact of the establishment's noncompliance will be documented in an NR. Inspection service for that product will be suspended and will remain suspended until the establishment submits to the FSIS Administrator, or designee, satisfactory written assurances detailing actions it has taken to correct the HACCP system. (9 CFR 310.25(b)(3), 381.94(b)(3)).

During compliance-phase testing, any plant that is targeted for sampling and achieves a ''pass'' result in sample-set testing will be returned to the ''random pool.'' FSIS may select the establishment from that pool for testing at some later time.

Issue Paper: Public Release of Salmonella Testing Results

Issue

The Food Safety and Inspection Service (FSIS) is providing its views on the release of *Salmonella* testing data collected by FSIS in connection with the HACCP/Pathogen Reduction final rule.

Background

With the publication of its HACCP/Pathogen Reduction final rule, FSIS adopted pathogen reduction performance standards for raw meat and poultry products using *Salmonella* as the target organism. To verify that this requirement is being met, FSIS will conduct *Salmonella* testing in establishments that produce raw meat and poultry products.

The goal of the *Salmonella* testing program is to verify that pathogen reduction performance standards are being met by each establishment, with an ultimate goal of reducing the incidence of that organism and other enteric pathogens on raw meat and poultry products nationwide. The pathogen reduction standard for *Salmonella* requires testing of products not to determine product disposition but as a measure of process effectiveness in limiting contamination with this pathogen. Individual test results are not meaningful under this program because the performance standards have been established to measure performance over time; thus, multiple samples are required to make an appropriate compliance determination.

FSIS is carrying out the *Salmonella* testing program in two phases: a pre-implementation phase and a compliance phase. The principal objective of the pre-implementation phase was to acquire test data to enable both FSIS and establishments to see how they were performing with respect to the performance standards. The pre-implementation phase began on June 1, 1997. The compliance phase begins on January 26, 1998. The effective dates for establishment compliance with the *Salmonella* performance standards are the same as the effective dates for HACCP implementation: January 26, 1998, for large plants; January 25, 1999, for small plants; and January 25, 2000, for very small plants. After the effective date(s), establishment failure to meet the performance standards set forth in the HACCP/Pathogen Reduction final rule will trigger enforcement action.

Availability of Salmonella Testing Data

- Pre-implementation *Salmonella* testing data: This refers to *Salmonella* testing data collected between June 1, 1997 and the date when the HACCP regulations are applicable to an establishment. FSIS does not intend to use the data collected between June 1, 1997, and January 26, 1998, for any purpose because it did not collect as much data as originally intended; there are many incomplete sets of data. FSIS will collect pre-implementation testing data from small and very small plants and will determine appropriate use and disclosure of this data as data collection proceeds. Requests for pre-implementation data under the Freedom of Information Act will be addressed on a case-by-case basis.
- Compliance-phase *Salmonella* testing data: This refers to *Salmonella* testing data FSIS collects in plants subject to the HACCP requirements. FSIS will send individual establishments the results of testing on their own product upon completion of the full sample sets. In addition, plant-specific testing data will be available in accordance with the Freedom of Information Act. The Agency does not consider testing to be complete until there is a full sample set. In all cases, the Agency intends to provide an explanation of the purpose of the testing and the meaning of the data (in general terms) with any *Salmonella* testing data released. FSIS has no specific plans to post the *Salmonella* data on its website.
- FSIS believes that it should publish annually a report on the *Salmonella* testing program. The contents and format of the report have not yet been decided.

Done at Washington, DC, on: March 23, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–8586 Filed 4–1–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

[Docket No. 98–013N]

National Advisory Committee on Meat and Poultry Inspection; Public Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection will meet to continue its consideration of Hazard Analysis and Critical Control Point (HACCP) inspection models and the roles of Federal, State, and local governments in farm-to-table food safety. The Committee will begin discussion on five new issues: (1) voluntary and mandatory inspection, including exemptions; (2) policy and procedures for the recall of food; (3) review of Department of Agriculture research policy and budget; (4) the Agency's strategic plan; and (5) hands-off lamb inspection. The meeting is open to the public. Written comments and suggestions on issues the Committee might consider may be submitted to the FSIS Docket Clerk at the above address.

DATES: The meeting will be held on May 12, 13, and 14, 1998. Subcommittees will meet on May 12 from 3:00 to 6:00 p.m. to continue work on addressing HACCP inspection models and the roles of governments at all levels in farm-to-table food safety. The full Committee will meet on May 13, 1998, from 8:30 a.m. to 5:30 p.m. Subcommittees will meet on May 13 from 7:00 to 9:00 p.m. to continue work on the five new issues discussed during the full Committee session. The full Committee will meet again from 8:30 a.m. to 5:30 p.m. on May 14, 1998.

ADDRESSES: The meeting will be held at the Hyatt Regency On Capitol Hill Hotel, 400 New Jersey Avenue, NW, Washington, DC; telephone (202) 737–1234. The full Committee will meet in the Capitol room; subcommittees will meet in the Grand Teton, Yosemite, and Glacier rooms.

FOR FURTHER INFORMATION CONTACT: Members of the public will be required to register at the meeting; no pre-registration is required. For further information, contact Michael N. Micchelli at (202) 720–6269, by FAX at (202) 690–1030, or e-mail Michael.Micchelli@usda.gov. A schedule of events is available on the FSIS Homepage at http//www.usda.gov/agency/fsis/homepage.htm. This schedule also is available by FAST FAX, FSIS' automated FAX retrieval system at (800) 238–8281 or (202) 690–3754. The reference number to access FAST FAX is 4000. Send comment on issues to be discussed at the May meeting to the FSIS Docket Clerk, Docket #98–013N, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. Please provide three copies of the comments. All comments and the official transcript of the meeting, when it becomes available, will be available for review in the Docket Clerk's office from 8:30 a.m. to 4:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: On February 12, 1997, the Secretary of Agriculture renewed the charter for the Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendation to

the Secretary on Federal and State meat and poultry programs pursuant to sections 7(c), 24, 205, 301(c) of the Federal Meat Inspection Act and sections 5(a)(3), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act. The FSIS Administrator is the Committee Chair. Committee membership is drawn from representatives of consumer groups, producers, processors, and marketers from the meat and poultry industry and State government officials.

The current members of the Committee are:

Dr. Deloran M. Allen, Excel Corporation
Dr. William L. Brown, ABC Research Corporation
Terry Burkhardt, Wisconsin Bureau of Meat Safety and Inspection
Caroline Smith-DeWaal, Center for Science in the Public Interest
Nancy Donley, Safe Tables Our Priority
Michael J. Gregory, Tyson's Foods Inc.
Dr. Cheryl Hall, Zacky Farms, Inc.
Dr. Margaret Hardin, National Pork Producers
Alan Janzen, Circle Give Feedyards, Inc.
Dr. Daniel E. LaFontaine, South Carolina Meat-Poultry Inspection Department
Dr. Dale Morse, New York Office of Public Health
Rosemary Mucklow, National Meat Association
William Rosser, Texas Department of Public Health
J. Myron Stolzfus, Stolzfus Meats
Dr. David M. Theno, Jr., Foodmaker Inc.

The Committee has three standing subcommittees to deliberate on specific issues and make recommendations to the whole Committee and the Secretary of Agriculture. The Committee encourages interested persons to attend and submit comments. Space is available on a first-come, first-served basis.

Done in Washington, DC, on: March 26, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–8653 Filed 4–1–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

North Fork Hughes River Watershed, Ritchie County, WV

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of availability of supplemental record of decision.

SUMMARY: William J. Hartman, responsible Federal official, is hereby providing notification that a Supplemental Record of Decision to proceed with the installation of the North Fork Hughes River Watershed Project, West Virginia, is available. Single copies of this Supplemental Record of Decision may be obtained from Mr. William J. Hartman at the address shown below:

FOR FURTHER INFORMATION CONTACT: William J. Hartman, State Conservationist, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone 304–291–4153.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: March 25, 1998.

William J. Hartman,

State Conservationist.

[FR Doc. 98–8609 Filed 4–1–98; 11:25 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: MAF and TIGER Update Activities.

Form Number(s): Will vary by activity.

Agency Approval Number: 0607–0809.

Type of Request: Revision of an existing collection.

Burden: 146,662 hours.

Number of Respondents: 5,357,993.

Avg Hours Per Response: About 1.64 minutes.

Needs and Uses: The Census Bureau requests approval from the Office of Management and Budget (OMB) for an extension of the generic clearance for a number of activities it plans to conduct to create and update its Master Address File (MAF) and maintain the linkage between the MAF and the Topologically Integrated Geographic Encoding and Referencing (TIGER) data base of address ranges and associated geographic information. The Census Bureau plans to use the MAF for mailing and delivering questionnaires to households for Census 2000 and as a sampling frame for the American Community Survey and our other demographic current surveys. In the past, the Census Bureau has built a new address list for each decennial census. The MAF we are building during Census 2000 is meant to be kept current thereafter, eliminating the need to build a completely new address list for future censuses and surveys. The TIGER is a geographic system that maps the entire country in Census Blocks with applicable address range or living quarter location information. Linking MAF and TIGER allows us to assign each address to the appropriate Census Block, produce maps as needed and publish results at the appropriate level of geographic detail.

The generic clearance for the past three years has proved to be very beneficial to the Census Bureau. The generic clearance has allowed us to focus our limited resources on actual operational planning and development of procedures. This extension will be especially beneficial over the upcoming three years by allowing us to focus on the huge amount of other work involved in making Census 2000 happen.

The activities to be conducted are: Address Listing, Block Canvassing, Field Verification For Local Update of Census Addresses, Update/ Leave, Urban Update/Leave, List/Enumerate, Master Address File Quality Improvement Program, and Master Address File Update for Otero County, New Mexico.

Under the terms of this extension to the generic clearance, we will not submit a separate clearance package for each updating activity. We will send a letter to OMB at least five days before the planned start of each activity that gives more exact details, examples of forms, and final estimates of respondent burden. We will also file a year-end summary with OMB after the close of each fiscal year giving results of each activity conducted.

The total respondent burden associated with this clearance is increasing considerably. This increase is an expected result of the normal decennial census cycle. The current clearance covered only some small test activities plus some early Census 2000 Dress Rehearsal activities. This request will cover the bulk of the Dress Rehearsal activities plus all of the Census 2000 MAF and TIGER update activities. Our intention when the generic clearance was established was to maintain it throughout the decennial and beyond to support the stated objective of ''updat[ing] the MAF and TIGER data base on a regular basis so they will be available for use in conducting the 2000 decennial census* * *''

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 141 and 193.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8679 Filed 4–1–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Bureau: International Trade Administration.

Title: Request for Duty-Free Entry of Scientific Instruments or Apparatus.

Agency Form Number: ITA–338P.

OMB Number: 0625–0037.

Type of Request: Extension-Regular Submission.

Burden: 400 hours.

Number of Respondents: 200.

Avg. Hours Per Response: 2 hours.

Needs and Uses: The Departments of Commerce and Treasury are required to determine whether nonprofit institutions established for scientific or educational purposes are entitled to duty-free entry under the Florence Agreement of scientific instruments they import. Form ITA–338P enables (1) Treasury to determine whether the statutory eligibility requirements for the institution and the instrument are fulfilled, and (2) Commerce to make a comparison and finding as to the scientific equivalency of comparable instruments being manufactured in the United States. Without the collection of the information, Treasury and Commerce would not have the necessary information to carry out the responsibilities of determining eligibility for duty-free entry assigned by law.

Affected Public: State or local governments; Federal agencies; nonprofit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: Dennis Marvich, (202) 395–5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Dennis Marvich, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8680 Filed 4–1–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

Agency: DOC/Office of the Secretary/ Office of Civil Rights.

Title: Complaint of Employment Discrimination for the Decennial Census.

Agency Form Number: CD–498A.

OMB Approval Number: None.

Type of Request: New collection—Emergency Review.

Burden: 200 hours.

Number of Respondents: 400.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: In preparation for the Census Dress Rehearsal which will begin on April 18, 1998, the Office of Civil Rights has created a new equal employment opportunity complaint form to be used by employees and applicants for employment with the Bureau of the Census during the 2000 Decennial Census. This form will be used for the filing of a formal written complaint of employment discrimination against the Department of Commerce and to determine whether the complaint meets the procedural and jurisdictional prerequisites of the Equal Employment Opportunity Commission regulations at 29 CFR Part 1614.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary but required to file a complaint.

OMB Desk Officer: Dennis Marvich, (202) 395–7340.

Copies of the above information collected proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Dennis Marvich, OMB Desk Officer, Room 10202, New Executive Officer building, 725 17th Street, N.W., Washington, DC 20503. A clearance has been requested by April 8, 1998.

Dated: March 27, 1998

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8681 Filed 4–1–98; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Open Meeting

A meeting of the Materials Technical Advisory Committee will be held April 30, 1998, 10:30 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street between Constitution & Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to advanced materials and related technology.

Agenda

1. Opening remarks by the Chairman.
2. Overview of status of the Chemical Weapons Convention.
3. Update on status of the Biological Weapons Convention protocol.
4. Discussion on triggers and appropriate content of data declarations.

5. Discussion regarding producers of pipes and valves subject to Export Control Commodity Number 2A292.

6. Presentation of Papers or comments by the public.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, OAS/EA MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: March 27, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–8651 Filed 4–1–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 1997 through December 31, 1997. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period October 1, 1997 through December 31, 1997.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702 (g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: March 27, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix—Subsidy Programs on Cheese Subject to an In-Quota Rate of Duty

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Austria	European Union Restitution Payments	$0.21	$0.21
Belgium	EU Restitution Payments	0.08	0.08
Canada	Export Assistance on Certain Types of Cheese	0.25	0.25
Denmark	EU Restitution Payments	0.15	0.15
Finland	EU Restitution Payments	0.28	0.28
France	EU Restitution Payments	0.04	0.04
Germany	EU Restitution Payments	0.22	0.22
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.16	0.16
Italy	EU Restitution Payments	0.04	0.04
Luxembourg	EU Restitution Payments	0.08	0.08
Netherlands	EU Restitution Payments	0.10	0.10
Norway	Indirect (Milk) Subsidy	0.38	0.38
	Consumer Subsidy	0.17	0.17
Total		0.55	0.55
Portugal	EU Restitution Payments	$011	0.11
Spain	EU Restitution Payments	0.02	0.02
Switzerland	Deficiency Payments	0.32	0.32

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
U.K.	EU Restitution Payments	0.10	0.10

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 98–8678 Filed 4–1–98; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities: Proposed Collection; Comment Request; Northeast Region Dealer Purchase Reports

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 1, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kelley McGrath, One Blackburn Drive, Gloucester, MA 01940, (978)281–9307.

SUPPLEMENTARY INFORMATION:

I. Abstract

Reporting from fish dealers is needed to obtain fishery-dependent data on the landings and purchases of fish and shellfish to monitor, evaluate and enforce fishery regulations, collect basic fisheries statistics (species, pounds, and value), and to collect certain effort information for economic and biological assessment of the stocks.

II. Method of Collection

Dealer purchase forms are provided to respondents. Weekly reports for some species will be made via telephone with an Interactive Voice Response (IVR) system.

III. Data

OMB Number: 0648–0229.

Form Number: NOAA Forms 88–30, 88–142.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,245.

Estimated Time Per Response: 2 minutes for dealer purchase reports (88–30), 30 minutes for shellfish processor reports (88–142), and 4 minutes for IVR reporting. These estimates do not include the time for entries that respondents would make to their own business records as part of their normal business practices.

Estimated Total Annual Burden Hours: 3,391.

Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8616 Filed 4–1–98; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request; Weather Modification Activities Reports

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 1, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Joe Golden, NOAA/OAR, Station 11426, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–0460, ext. 123).

SUPPLEMENTARY INFORMATION:

I. Abstract

Public Law 92–205, as amended, requires that all non-Federal weather modification activities in the U.S. and its territories be reported to the Secretary of Commerce. NOAA retains these reports and makes them available to a variety of users interested in weather modification activities. Information is also forwarded to Canada on activities within 200 miles of our common border, and to the World Meteorological Organization.

II. Method of Collection

Each project must file an initial and a final report, and also maintain a daily log of activities.

III. Data

OMB Number: 0648–0025.

Form Number: NOAA Forms 17–4, 17–4A, and 17–4B.

Type of Review: Regular Submission.

Affected Public: Businesses and other for-profit organizations; and State, local, or tribal governments.

Estimated Number of Respondents: 40.

Estimated Time Per Response: 30 minutes per report, 5 hours for recordkeeping.

Estimated Total Annual Burden Hours: 240 hours.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8617 Filed 4–1–98; 8:45 am]

BILLING CODE 3510–12–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Public Comment Period on the Elimination of the Paper Visa Requirement with the Government of the Philippines

March 27, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Seeking public comments on the elimination of the paper visa requirement with the Government of the Philippines

FOR FURTHER INFORMATION CONTACT: Lori Mennitt, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3821.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Electronic Visa Information System (ELVIS) allows foreign governments to electronically transfer shipment information to the U.S. Customs Service on textile and apparel shipments subject to bilateral provisions. On November 9, 1995, a notice was published in the **Federal Register** (60 FR 56576) seeking public comments on the implementation of ELVIS. Subsequently, a document published on August 18, 1997 (62 FR 43993) announced that the Government of the Philippines, starting on September 1, 1997, would begin an ELVIS test implementation phase. This test phase does not eliminate the requirement for a valid paper visa to accompany each shipment for entry into the United States.

As a result of successful use of the dual visa system, preparations are under way to move beyond the current dual system to the paperless ELVIS system with the Philippines. However, exempt goods will still require a proper and correct exempt certification.

The Committee for the Implementation of Textile Agreements is requesting interested parties to submit comments on the elimination of the paper visa requirement for the Philippines and utilization of the ELVIS system exclusively. Comments must be received on or before June 1, 1998. Comments may be mailed to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, room 3001, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–8615 Filed 4–1–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Board of Trade for Designation as a Contract Market in TVA Hub Electricity Futures and Options and ComEd Hub Electricity Futures and Options, Submitted Under 45-Day Fast Track Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed terms and conditions for applications for contract market designation.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in TVA (Tennessee Valley Authority) Hub electricity futures and option contracts and ComEd (Commonwealth Edison) Hub electricity futures and option. The proposals were submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made CBT TVA Hub electricity futures and option contracts and ComEd Hub futures and options contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov.

SUPPLEMENTARY INFORMATION: The proposed designation applications were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule

amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on May 8, 1998, 45 days after receipt of the proposals. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposed terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under ''What's Pending''.

Other materials submitted by the CBT in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposals, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on March 27, 1998.

John R. Mielke,

Acting Director.

[FR Doc. 98–8593 Filed 4–1–98; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter ''Corporation''), 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 (PRA95) (44 U.S.C. 3506(c)(2)(A)). 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning two proposed forms:

(1) A revision of its *Federal Education Loan Forbearance Request* form (OMB #3045–0030), and

(2) A new form, entitled ''*Interest Accrual Form*''.

Copies of the forms can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section on or before May 27, 1998.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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.

ADDRESSES: Send comments to Levon Buller, National Service Trust, Corporation for National and Community Service, Mail Stop 7200, 1201 New York Ave., N.W., Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Levon Buller, (202) 606–5000, ext. 383.

SUPPLEMENTARY INFORMATION:

I. Background

After completing a period of national service in an AmeriCorps project, an AmeriCorps member receives an ''education award'' that can be used to make a payment towards a student loan or pay for post-secondary educational expenses. This award is an amount of money set aside in the member's ''account'' in the National Service Trust Fund. Members have seven years in which to draw against any unused balance.

By law, during the period of time the AmeriCorps members are participating in national service, they are eligible for a postponement (a forbearance) on the repayment of any qualified student loan they have. The purpose of this is to temporarily suspend their obligation to make loan payments while they are earning a minimal living allowance in their national service position. Interest continues to accrue during this period, but payments are not required.

Also, the Corporation's enabling legislation requires that it pay, on behalf of AmeriCorps members, all or a portion of the interest that accrues during their service period, if their loans were in forbearance during their service and if they successfully complete their terms of service. For an AmeriCorps member who serves in a full-time term (which includes serving a minimum of 1700 hours) for a year or less, the Corporation will pay all of the interest that accrued. For a person who serves in anything less than a full-time term, the percentage of accrued interest the Corporation pays is determined by a formula included in the Trust's regulations. The legislative intent for paying the interest is to keep the AmeriCorps members' qualified student loan debts from increasing during their service period.

II. Current Action

Two forms with two separate sets of circumstances are being addressed by this **Federal Register** notice. Each form will be individually discussed below.

A. Federal Education Loan Forbearance Request—renewal (OMB #3045–0030) (Proposed new title: *Forbearance Request for National Service*)

Currently, AmeriCorps members use an OMB-approved form entitled ''*Federal Education Loan Forbearance Request*'' to obtain certification that they are in an approved national service position. The form also serves as the borrower's official request to the loan companies for forbearance. Since forbearance can be granted by the loan holder and not the Corporation, the form requests of the loan holder that a

forbearance be approved for the national service. The Corporation's role is to verify that the borrower is an AmeriCorps member and is eligible for this mandatory forbearance on qualified student loans. An AmeriCorps member completes one part of the form and sends it to the office of the National Service Trust. The Trust provides written verification that the borrower is in an approved national service position, then forwards the form to the loan holder at the address provided by the AmeriCorps member. The loan holder will act upon the request.

This form has been adopted by many of the larger loan holders (e.g., Sallie Mae) and is given to their borrowers with the loan holders' own logos at the top of the form. Indeed, the form was originally developed with the assistance of Sallie Mae and representatives of several student loan associations. Having a separate form for forbearance based on AmeriCorps service clearly distinguishes it from forbearance requests based on one of the other conditions for which a borrower may be eligible (e.g., military service, employment in certain low income areas, student status).

Several other loan holders have chosen to modify their own existing forbearance request forms by including an additional option— ''AmeriCorps service'' or ''national service'' —to the choices already available. The Corporation verifies national service participation using all types of forms presented to it, on a loan holder's unique form as well as the OMB approved form.

The form needs some minor revisions. First, we propose changing the name of the form to better reflect its actual purpose—it is a form used by a borrower to request forbearance on a qualified student loan based on involvement in national service. Experience has shown that the form could use a more useful set of instructions for explaining the process for requesting forbearance and for completing the form.

The Corporation seeks to continue using this particular form, albeit in a revised version. This is a voluntary form. It is one way to provide verification to a loan holder that one of its borrowers is eligible for the mandatory forbearance, at the same time allowing the borrower to request the forbearance from the loan company. The Corporation will continue its policy of verifying AmeriCorps participation on any form the loan holder wishes to use. The current form (*Federal Education Loan Forbearance Request*) is due to expire September 30, 1998.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: (Proposed new title) Forbearance Request for National Service.

OMB Number: None.

Agency Number: None.

Affected Public: AmeriCorps participants and the holders of their qualified student loans.

Total Respondents: 6,000 annually.

Frequency: Average of once per year per loan.

Average Time Per Response: One minute for the AmeriCorps member to complete the form.

Estimated Total Burden Hours: 100 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

B. Interest Accrual—new form.

The Corporation pays all or a portion of the interest that accrues during a period of national service for those who successfully complete their service and have had their loans in forbearance during the service. Currently, AmeriCorps members ask their loan holders to report to the Corporation the amount of interest that accrued on their qualified student loans while they were in their national service position. When the Corporation receives this information, it is reviewed for accuracy and is either paid or returned to the loan holder for additional information.

This information comes to the Corporation is many formats, with varying degrees of clarity and accuracy. Frequently, an amount of interest is reported without any accompanying dates—there is no indication of the period of time upon which the calculation was based. The Corporation can only pay the interest that accrued while the borrower was in the AmeriCorps program and the amount of interest the loan holder reports includes interest that began accruing well before or well after the national service period. Many times the Corporation receives from a loan holder a printout of the member's account, from which it is difficult or impossible to deduce the amount of interest that accrued during the service period. Sometimes the information from the loan holder reports interest that has accrued, but it is for a period of time that is different from the service period.

This proposed form is intended to obtain clear and accurate information from loan holders in order to expedite the interest payments for AmeriCorps members. Members will complete the top section and indicate their dates of service. Then, they will mail the form to their loan holders where they will indicate the total amount of interest that accrued between those dates (or indicate a daily accrual amount), fill in the address where the payment should be sent, and return the form to the National Service Trust for payment.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Interest Accrual.

OMB Number: None.

Agency Number: None.

Affected Public: AmeriCorps members and the holders of their qualified student loans.

Total Respondents: 6,000 annually.

Frequency: Average of once per year per loan.

Average Time Per Response: 2½ minutes, total (one minute for the AmeriCorps member to complete the form and one and a half minutes for the loan holder).

Estimated Total Burden Hours: 250 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 30, 1998.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 98–8607 Filed 4–1–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 4, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th

Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. 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.

Dated: May 27, 1998.

Gloria Parker,

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

Office of Postsecondary Education

Type of Review: Extension.

Title: Federal Pell Grant Program Institution Payment Record and Payment Data.

Frequency: On occasion.

Affected Public: Individuals or households, Businesses or other for-profits; State, local or Tribal Gov't; SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 5,918.

Burden Hours: 355,080.

Abstract: The Federal Pell Grant Program provides grants to eligible students based on financial need to meet the costs of postsecondary education. The institution payment record and payment data is how the institution reports to the Department student recipients and the funds to be disbursed under the program.

[FR Doc. 98–8606 Filed 4–1–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Establish the Nuclear Energy Research Advisory Committee

Pursuant to Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015(a), this is notice of intent to establish the Nuclear Energy Research Advisory Committee. This intent to establish follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR Subpart 101–6.10.

The purpose of the Committee is to provide the Secretary of Energy and the Director of the Office of Nuclear Energy, Science and Technology with advice, information, and recommendations on national research needs and priorities. The Committee will provide an organized forum for the scientific community to conduct an in-depth assessment of the Nuclear Energy Research Programs.

Committee members will be chosen to ensure an appropriately balanced membership to bring into account a diversity of viewpoints including representatives from universities, industry, Department of Energy operating contractors, and others who may significantly contribute to the deliberations of the Committee. All meetings of this Committee will be published ahead of time in the **Federal Register**.

Additionally, the establishment of the Nuclear Energy Research Advisory Committee has been determined to be compelled by considerations of national security, essential to the conduct of Department of Energy business, and in the public interest in connection with the performance of duties imposed on the Department of Energy by law and agreement.

Further information regarding this Committee may be obtained from Mr. William D. Magwood, IV, Associate Director of Planning and Analysis, Office of Nuclear Energy, Science and Technology, U.S. Department of Energy, Washington, D.C. 20585, phone (202) 586–6630.

Issued in Washington, D.C., on March 30, 1998.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 98–8670 Filed 4–1–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board, Open Meeting

AGENCY: Department of Energy.

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 meeting:

Name: State Energy Advisory Board.

Date and Time: May 14, 1998 from 9:00 am to 5:00 pm, and May 15, 1998 from 9:00 am to 12:00 pm.

Place: The Southgate Tower, 371 Seventh Avenue, New York, NY 10001. 212–563–1800.

Contact: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

Purpose of the Board

To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda

Briefings on, and discussions of:

- Federal efforts to market energy efficiency and renewable energy technologies.
- Issues related to Electric Utility Industry restructuring and financing.
- Relationships between DOE Regional Support Offices and DOE headquarters offices.

Public Participation

The meeting is open to the public. Written statements may be filed with

the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 30, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–8672 Filed 4–1–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed extension to FE–329R, ''Regulations Implementing the Powerplant and Industrial Fuel Use Act of 1978.''

DATES: Written comments must be submitted by June 1, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to make a submission as soon as possible.

ADDRESSES: Send comments to Ms. Ellen Russell, Fossil Energy, FE–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (Phone—(202) 586–9624) (e-mail address—ellen.russell@hq.doe.gov) and FAX (202–586–6050).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ms. Russell at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting documents. This program helps to prepare data requests in the desired format, minimize reporting burden, develop clearly understandable reporting documents, and assess the impact of collection requirements on respondents. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, Title 44, U.S.C. Chapter 35).

A three-year extension of OMB's approval for the information collection requirements contained in 10 CFR parts 500, 501, 503, and 504 regulations (OMB No. 1901–0297) is being requested. The owners/operators of powerplants may self-certify the alternate fuel capability of their powerplants. The Office of Fossil Energy uses the data to verify that the Powerplant and Industrial Fuel Use Act of 1978 provisions are met.

II. Current Actions

This request is for a three-year extension of the current OMB expiration date, with no changes to the regulations in 10 CFR 500, 501, 503, and 504.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 20 hours per response. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C. March 26, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–8668 Filed 4–1–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Notice of Open Meeting

AGENCY: Department of Energy.

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 meeting:

Name: American Statistical Association Committee on Energy Statistics.

Date and Time: Thursday, April 23, 9:00 a.m.—4:45 p.m. Friday, April 24, 9:00 a.m.—12:30 p.m.

Place: Holiday Inn-Capitol, 550 C Street, S.W., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, Washington, DC 20585, Telephone: (202) 426–1101.

SUPPLEMENTARY INFORMATION:

Purpose of Committee

To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, April 23, 1998

A. Opening Remarks
B. Greenhouse Gases and Analysis
C. Modeling the New England Power Pool
D. An Introduction to Web-site Related Challenges
E. Public Comment

Friday, April 24, 1998

A. Addressing Declining Budgets with Improved Survey Technologies
B. Future Electric Power Data
C. Efforts to Minimize Impacts of Deregulation on Respondent Cooperation
D. Public Comment
E. Closing Comments by the Chairperson

Public Participation

The meeting is open to the public. The Chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William Weinig, EIA Committee Liaison, at the address or telephone number listed above.

Transcripts

Available for public review and copying at the Public Reading Room, (Room 1E–190), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on March 30, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–8671 Filed 4–1–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–284–000]

Northern Border Pipeline Company; Notice of Application for Abandonment

March 27, 1998.

Take notice that on March 17, 1998, Northern Border Pipeline Company (Northern Border) 1111 South 103rd Street, Omaha, Nebraska 68124 filed in Docket No. CP98–284–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain measurement facilities at the Ventura Measurement Station (Ventura Station) located near Ventura, Iowa, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Northern Border proposes to abandon nine 12-inch meter runs, the run pipe and valves for a tenth meter run, the inlet and outlet headers and appurtenances at the Ventura Station. Northern Border states that the existing measurement facilities are no longer required a Northern Border is installing a single 30-inch ultrasonic meter at the Ventura Station to accommodate the measurement of natural gas delivered at the Ventura Station. Northern Border asserts that the existing orifice meters are functioning near operational limits and the abandonment of these existing measurement facilities and the installation of the ultrasonic meter will result in reduced operation and maintenance expenses. Northern Border indicates that the estimated cost of removal of the facilities is $10,000 and the estimated salvage value of the facilities is $380,599.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 17, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 Northern Border to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8620 Filed 4–1–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–250–000]

Puget Sound Energy, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Jackson Prairie Storage Field Project and Request for Comments on Environmental Issues

March 27, 1998.

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 facilities proposed in the Jackson Prairie Storage Field Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Puget Sound Energy, Inc. (Puget), as project operator,[2] proposes to construct the following facilities at the Jackson Prairie Storage Field in Lewis County, Washington:

- Eight new Zone 2 withdrawal/injection wells installed at three new and four expanded existing well pads;
- About 1,093 feet of new 8-inch and 10-inch-diameter well lateral pipeline;
- A new 24-inch-diameter pipeline to be installed within the existing right-of-way, extending 9,235 feet between the Jackson Prairie Compressor Station and the Jackson Prairie valve/manifold tie-in station located adjacent to Northwest Pipeline Corporation's Chehalis Compressor Station;
- One new 6,960-horsepower compressor unit and associated facilities at the existing Jackson Prairie Compressor Station; and
- New metering equipment, filter separator, and piping modifications to be installed inside the existing fenced area at the Jackson Prairie Meter Station.

The location of the storage field is shown in appendix 1.[3]

Land Requirements for Construction

The new 24-inch-diameter pipeline would be constructed within an existing 50-foot-wide permanent right-of-way and would disturb about 10.6 acres of land. Additional work areas (each 50 feet by 100 feet) located outside the existing pipeline right-of-way would be required on both sides of the right-of-way at a road crossing at the intersection of Meier Road and Meier Road East.

The eight new withdrawal/injection wells would require a total of about 4.7 acres of land for construction. The well pads range in size from 75 feet by 200 feet to 150 feet by 250 feet. Each of the eight wells would require either 8-inch or 10-inch-diameter lateral pipelines to connect the new wells to the existing pipeline gathering and lateral system. At the four new well sites that are adjacent to existing wells, no new rights-of-way would be needed because all of the pipeline would be within the well pad area. At Well Nos. 74, 75, 78, and 79, new 50-foot-wide construction and permanent rights-of-way would be established for the lateral pipelines outside the proposed well pads totaling about 0.26 acres.

Well Nos. 73, 74, and 75 would require new access roads to connect the new well sites to existing project roads. Well No. 73 would require a 250-foot-long gravel road within an existing 16-inch pipeline right-of-way to access the new well pad. Well Nos. 74 and 75 would require a 25-foot road extension.

The additional comprehension facilities would occupy 1.4 acres directly adjacent to the existing Jackson Prairie Compressor Station. At the existing Jackson Prairie Meter Station construction would be within the existing fenced area.

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 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.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on page 4 of this Notice.

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 and wetlands
*vegetation and wildlife
*endangered and threatened species
*land use
*cultural resources
*air and noise

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 Puget. These issues may be changed based on your comments and our analysis.

- A total of about 5.3 acres of wetlands would be affected by construction.
- About 2.6 acres of young Douglas-fir trees within an existing tree farm would be permanently removed.
- There may be additional noise impact on nearby noise-sensitive areas resulting from the additional compressor unit.

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, and

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[1] Puget Sound Energy, Inc's. application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The storage field is owned in equal one-third undivided interests by Puget, Northwest Pipeline Corporation, and Washington Water Power Company.

[3] 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.

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: David P. Boergers, Acting 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–11.1;

*Reference Docket No. CP98–250–000; and

*Mail your comments so that they will be received in Washington, DC on or before April 24, 1998.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. 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 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. 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). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed having ended on March 26, 1998. 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 environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8619 Filed 4–1–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5989–9]

National Advisory Council for Environmental Policy and Technology: Full Council Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92463, EPA gives notice of a two-day meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. This meeting will begin with a plenary session and is being held to initiate the work of three standing committees: The Reinvention Criteria Committee, the Environmental Information and Public Access Committee, and the Environmental Capital Markets Committee.

The Reinvention Criteria Committee will provide advice and recommendations to EPA on criteria to measure the progress and success of improving public confidence, fostering flexibility and environmental innovation, and increasing accountability for environmental results. This committee will also provide advice on how EPA can promote an internal culture change that goes beyond specific reinvention programs and incorporates reinvention philosophies into general EPA practices, and identify a mechanism that EPA can use to ensure management accountability for reinvention programs.

The Environmental Information and Public Access Committee will focus on providing stakeholder input into key information management infrastructure issues, including: access to, and validation of environmental statistics; the long-term role of the Center for Environmental Information & Statistics and how it fits within the Agency's current information management model; updating of the Agency's information management strategic plan; implementation of legislation in EPA such as the Government Performance & Results and the Paperwork Reduction Act; the expanded role of the Chief Information Officer, and other key information management strategies.

The Environmental Capital Markets Committee will provide stakeholder inputs on the potential utility of using Environmental Management Systems as an investment service. The ultimate goal of the committee is to identify concrete actions EPA can take, on its own or in cooperation with other Federal and State agencies to help the financial services industry incorporate environmental information into its decision-making process.

DATES: The two-day public meeting will be held on Tuesday, April 21, 1998, from 8:45 a.m. to 5:00 p.m., and Wednesday, April 22, 1998, from 8:30 a.m. to 4:00 p.m. On both days, the meeting will be held at the Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia.

ADDRESSES: Material or written comments may be transmitted to the Council through Gwendolyn Whitt, Designated Federal Officer, NACEPT, U.S. EPA, Office of Cooperative Environmental Management (1601–F), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt at the address shown above and 202–260–9484.

Dated: March 24, 1998.

Gwendolyn Whitt,

Designated Federal Officer.

[FR Doc. 98–8655 Filed 4–1–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5990–1]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given that a proposed administrative cost recovery settlement concerning the Del Norte County Pesticide Storage Area Superfund Site (''Site'') in Crescent City, California was executed by the U.S. Environmental Protection Agency (''EPA'') on February 5, 1998. The State of California Department of Toxic Substances Control (''DTSC'') is also a party to the settlement. The settlement resolves EPA's and DTSC's claims under Section 107 of CERCLA, 42 U.S.C. 9607, against the following Respondents:

Arcata Corporation; Estate of Hilding Lovenborg; Theodore Lovenborg; Palmer Westbrook, Inc.; John Palmer Westbrook; Robert H. Stanhurst, Inc.; Robert H. Stanhurst; Smith River Farms, Inc.; Harry Harms; Robert K. Hastings; Stephen Hastings; Crockett United Lily Growers, Inc., formerly known as United Lily Growers, Inc.; Davy Crockett; E. Joyce Crockett; and the United States Department of Agriculture, Forest Service. The settlement was entered into under the authority granted EPA in Section 122(h) of CERCLA, 42 U.S.C. 9622(h), and requires the Respondents to pay a total of $675,000 ($405,000 to the U.S. EPA Hazardous Substances Superfund and $270,000 to the State of California Department of Toxic Substances Control) in settlement of past response costs incurred by EPA and DTSC in connection with the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the following location: U.S. EPA Region 9 Records Center, 95 Hawthorne St., San Francisco, California.

DATES: Comments must be submitted on or before May 4, 1998.

ADDRESSES: The proposed settlement as set forth in the Agreement for Recovery of Response Costs, CERCLA Docket No. 98–01, is available for public inspection at the U.S. Environmental Protection Agency at the address provided above. A copy of the Agreement may be obtained from Kim Muratore (SFD–7–B), U.S. EPA Region 9, 75 Hawthorne St., San Francisco, California, 94105. Comments regarding the proposed settlement should be addressed to Ms. Muratore at the address provided above, and should reference the Del Norte Superfund Site, EPA CERCLA Docket No. 98–01.

FOR FURTHER INFORMATION CONTACT: Kim Muratore (415) 744–2373 at the above listed address.

Dated: March 26, 1998.

Michael Feeley,

Acting Director, Superfund Division, EPA Region 9.

[FR Doc. 98–8656 Filed 4–1–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–40031; FRL–5782–2]

Conditional Exemptions from TSCA Section 4 Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is granting conditional exemptions from Toxic Substances Control Act (TSCA) section 4 test rule requirements to certain manufacturers of chemical substances subject to these rules.

DATES: These conditional exemptions are effective on April 2, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document grants conditional exemptions from TSCA section 4 test rule requirements to all manufacturers of the chemical substances identified below that submitted exemption applications in accordance with 40 CFR 790.80. In each case, EPA has received a letter of intent to conduct the testing from which exemption is sought. Accordingly, the Agency has conditionally approved these exemption applications because the conditions set out in 40 CFR 790.87 have been met. All conditional exemptions thus granted are contingent upon successful completion of testing and submission of data by the test sponsors according to the requirements of the applicable test rule.

If the test requirements are not met and EPA terminates a conditional exemption under 40 CFR 790.93, the Agency will notify each holder of an affected conditional exemption by certified mail or by a **Federal Register** document. This conditional approval applies to all manufacturers that submitted exemption applications for testing of the chemical substances named in the final test rules listed below from January 1, 1997, through December 31, 1997. Any application received after December 31, 1997, will be addressed separately.

Testing reimbursement periods have terminated (sunset) for certain chemicals and for these chemicals, exemption notices are no longer required. In accordance with 40 CFR 790.45, before the end of the reimbursement period, persons subject to a test rule and required to comply with the requirements of the test rule, must submit either a letter of intent to test or an exemption application. ''Reimbursement period,'' as defined in 40 CFR 791.3, refers to a period that begins when the data from the last non-duplicative test to be completed under a test rule is submitted to EPA, and ends after an amount of time equal to that which had been required to develop that data or after 5 years, whichever is later.

Exemption applications that were received by EPA for diethylene glycol butyl ether (CAS No. 112–34–5), diethylenetriamine (CAS No. 111–40–0), and 2-mercaptobenzothiazole (CAS No. 149–30–4) were not required at the time they were submitted because the chemicals have a completed testing program, the reimbursement periods have sunset, and the chemicals are no longer subject to TSCA section 4 reporting requirements. Exemption applications received by EPA after the chemical's sunset date do not appear in this document. Conditional exemptions granted in 1997 are listed below:

Chemicals	CAS No.	40 CFR citation	Company
Tributyl phosphate	126–73–8	799.4360	ICI Paints North America, Strongville, OH
Isopropanol	67–63–0	799.2325	The Dexter Corporation, Windsor Locks, CT
1,3,5-Trimethylbenzene	108–67–8	799.5075	3V Inc., Georgetown, SC

As provided in 40 CFR 790.80, processors are not required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special **Federal Register** document.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Authority: 15 U.S.C. 2601,2603.

Dated: March 25, 1998.

Charles M. Auer,

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

[FR Doc. 98–8658 Filed 4–1–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

March 26, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 4, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

ORB Control No.: 3060–0633.

Title: Sections 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.965, 74.1265, Station License.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 10,000.

Estimated Time Per Response: .083 hours.

Frequency of Response: Recordkeeping requirement.

Cost to Respondents: $14,000.

Total Annual Burden: 830 hours.

Needs and Uses: Section 73.1230 requires that the station license and any other instrument of station authorization for an AM, FM or TV station be posted in a conspicuous place at the place the licensee considers to be the principal control point of the transmitter. Section 74.165 requires that the instrument of authorization for an experimental broadcast station be available at the transmitter site.

Section 74.432(j) (remote pickup broadcast station) and 74.832(j) (low power auxiliary station) requires that the license of a remote pickup broadcast/low power auxiliary station shall be retained in the licensee's files, posted at the transmitter, or posted at the control point of the station. These sections also require the licensee to forward the station license to the FCC in the case of permanent discontinuance of the station.

Section 74.564 (aural broadcast auxiliary stations) require that the station license and any other instrument of authorization be posted in the room where the transmitter is located, or if operated by remote control, at the operating position.

Section 74.664 (television broadcast auxiliary stations) require that the station license and any other instrument of authorization be posted in the room where the transmitter is located. Section 74.765 (low power TV, TV translator and TV booster) and 74.1265 (FM translator stations and FM booster stations), require that the station license and any other instrument of authorization be retained in the station's files. In addition, the call sign of the station, together with the name, address and telephone number of the licensee or the local representative of the licensee, and the name and address of the person and place where the station records are maintained, shall be displayed at the transmitter site on the structure supporting the transmitting antenna.

Section 74.965 requires that the instrument of authorization for an Instructional Television Fixed Service (ITFS) station be available at each transmitter. If the station is operated unattended, the call sign and name of the licensee shall be displayed such that it may be read within the vicinity of the transmitter enclosure or antenna structure. The data is used by FCC staff in field investigations to ensure that a station is licensed and operating in the manner specified in the license. The information posted at the transmitter site in accordance with Section 74.765 and 74.1265 would be used by the public and FCC staff to know to whom the transmitter is licensed.

ORB Control No.: 3060–0789.

Title: Modified Alternative Plan, CC Docket No. 90–571, Order (''1997 Suspension Order'').

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 30 respondents; 35 responses.

Estimated Time Per Response: .25–15 hours (avg).

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Cost to Respondents: $0.

Total Annual Burden: 472 hours.

Needs and Uses: In the Order issued in CC Docket No. 90–571, the Commission suspended enforcement of the coin sent-paid requirement until August 26, 1998. The Commission required that payphones be made accessible to TRS (''Telecommunications Relay Services'') users during the suspension period pursuant to the Alternative Plan as set forth in the Telecommunications Relay Services, Memorandum Opinion and Order, CC Docket No. 90–571, 10 FCC Rcd 10927 (1995), and modified by this Order.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8571 Filed 4–1–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 97–199; FCC 98–31]

Westel Samoa, Inc.

AGENCY: Federal Communications Commission.

ACTION: Modification of Hearing Designation Order.

SUMMARY: The Commission modifies the hearing designation order in the *Westel Samoa, Inc.*, proceeding to clarify that Anthony T. Easton is entitled to a full evidentiary hearing regarding allegations that he made misrepresentations and lacked candor in connection with a Commission auction. The Commission action also reaffirms that an issue is properly designated against Easton in this proceeding despite the fact that he has no application pending before the Commission.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1760.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WT Docket No. 97–199, adopted March 4, 1998, and released March 10, 1998. The full text of the report and order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street NW., Washington, D.C. 20036, telephone (202) 857–3800.

Summary of Memorandum Opinion and Order

1. This Memorandum Opinion and Order grants in part a Petition for Reconsideration, filed October 6, 1997, by Anthony T. Easton, and modifies the hearing designation order in this proceeding. *Westel Samoa, Inc.*, 12 FCC Rcd 14057 (1997), 62 FR 53628 (October 15, 1997).

2. This proceeding arose from facts and circumstances surrounding a bid placed by PCS 2000 L.P. (PCS 2000) in the Commission's broadband Personal Communications Services (PCS) C Block auction on January 23, 1996. The Commission found evidence that Anthony T. Easton, a principal of PCS 2000, made misrepresentations and lacked candor before the Commission and that Quentin L. Breen, a second principal, may have been aware of Easton's misconduct and did not disclose it.

3. The Commission initiated the instant proceeding because Breen is the controlling principal of Westel Samoa, Inc. and Westel, L.P., which are the high bidders for seven PCS C Block and F block licenses in American Samoa. The Commission designated issues to determine whether Breen made misrepresentations or lacked candor before the Commission in connection with Easton's conduct concerning the PCS 2000 bid.

4. Although he did not have a pending application, the Commission also designated an issue against Easton:

> To determine, based on Anthony T. Easton's misrepresentations before and lack of candor exhibited towards the Commission, whether Mr. Easton should be barred from holding Commission authorizations and participating in future Commission auctions.

5. In this Memorandum Opinion and Order, the Commission rejects an argument by Easton that the Commission has no subject matter jurisdiction to designate an issue against him because he has no pending application and finds that he is properly the subject of the hearing. The Commission also finds that the scope of the issue against Easton should be modified to make clear that whether he engaged in misrepresentation or lack of candor is itself a subject of the hearing, with no weight being given to the Commission's findings in prior Commission orders.

6. The Commission finds that it has authority under the Communications Act to designate an issue against Easton under 47 CFR 1.2109(d). The Communications Act gives the Commission the flexibility to adopt special or additional forms of relief where the public interest so requires. In the area of auctions, the Commission finds it appropriate to institute exceptional safeguards to protect the integrity of the competitive bidding process. Thus, while in most circumstances the Commission does not adjudicate a persons's qualifications in advance of their filing an application, in the auctions context the Commission has done so where an individual has been implicated in especially egregious misconduct.

7. The Commission finds that it is appropriate to clarify the scope of the hearing designated in this proceeding as regards Easton. The pleadings before the Commission evidence some confusion over the intended scope of the hearing with respect to the issue of the alleged misrepresentations. The Commission clarifies that, as Easton argues, any findings made in prior Commission orders are not binding on him. Easton is entitled to a full hearing on the question of misrepresentation and lack of candor before any findings on this matter can be used as a binding determination as to his disqualification to hold a license or to participate in future auctions. The Commission modifies the wording of the issue to remove the ambiguity and clarify that Easton is entitled to a full evidentiary hearing on this issue and gives Easton an additional ten days after the release of this Memorandum Opinion and Order to file a notice of appearance for the purpose of participating in this evidentiary hearing.

8. Accordingly, it is ordered, that, good cause having been shown, the Consent Motion for Extension of Time, filed October 23, 1997, by Anthony T. Easton is granted.

9. It is further ordered, that the Motion to Strike [ClearComm, L.P.'s][1] Comments or for Leave to File Response, filed December 4, 1997, by Anthony T. Easton is granted in part and is denied in part and his responsive comments are accepted.

10. It is further ordered, that the Petition for Reconsideration, filed October 6, 1997, by Anthony T. Easton, is granted to the extent indicated herein and otherwise is denied.

11. It is further ordered, that the jurisdictional statement in paragraph 53 of the hearing designation order is amended to read:

> 53. It is further ordered that, pursuant to sections 4(i), 303(r), 309(e), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(e), 403 * * *.,

and Issue 1 is amended to read:

> 1. To determine whether Anthony T. Easton made misrepresentations and/or lacked candor before the Commission regarding the bid submitted by PCS 2000 for Basic Trading Area 324 for Norfolk, Virginia, in Round 11 of the Commission's Broadband C Block auction of January 23, 1996, and in view of the findings made, whether he should be barred from holding Commission authorizations and participating in future Commission auctions;

11. It is further ordered, that Anthony T. Easton may within ten (10) days of the release date of this order submit a notice of appearance to avoid a finding that he forfeited his hearing rights in this proceeding.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8570 Filed 4–1–98; 8:45 am]

BILLING CODE 6712–01–P

[1] Formerly known as PCS 2000.

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 92–257; DA 98–522]

Applications for VHF Public Coast Spectrum

1. By this *Order*, we impose a suspension of acceptance and processing of applications for very high frequency (VHF) public coast spectrum (156–162 MHz), effective March 17, 1998. As an initial matter, we note that the Commission imposed a suspension regarding VHF public coast spectrum applications in the *Second Further Notice of Proposed Rulemaking (Second Further Notice)* in PR Docket No. 92–257, 62 FR 37533 (July 14, 1997). The Commission-imposed suspension took effect on June 17, 1997, and was to be effective until March 17, 1998. For the reasons stated herein, we take action to continue suspension of acceptance and processing of VHF public coast applications during the pendency of the PR Docket No. 92–257 proceeding.

2. In the *Second Further Notice*, the Commission proposed service rules for the Maritime Services, including the introduction of geographic area licensing for VHF public correspondence channels. In order to permit the effective resolution of the issues raised in the *Second Further Notice*, the Commission suspended the acceptance of (1) public coast station applications to use VHF spectrum and private land mobile radio applications proposing to share that spectrum for new licenses, (2) amendments to such new license applications, and (3) applications to modify existing licenses, and amendments thereto, except for applications involving renewals, transfers, assignments, and modifications proposing neither to expand a station's service area nor obtain additional public coast VHF spectrum. The Commission also suspended the processing of pending applications for VHF public coast spectrum that either were mutually exclusive with other applications or as to which the period for filing competing applications had not expired. The Commission further expressly reserved the right to extend the suspension if it did not adopt final rules by the end of the suspension period.

3. To date, the Commission has not adopted final rules in PR Docket No. 92–257. As a result, the same reasons which prompted the Commission to impose the initial suspension remain today. We believe that a continued suspension of acceptance and processing of public coast VHF spectrum applications is warranted in order to facilitate the orderly and effective resolution of the matters pending in this proceeding. We are concerned that, absent such action, the goals underlying initiation of the PR Docket No. 92–257 proceeding might be compromised by the influx of applications for new licenses, as well as modifications to existing licenses, that are inconsistent with the decisions ultimately made by the Commission. Thus, we believe that there is good cause to continue suspension of the acceptance and processing of public coast VHF spectrum applications. This suspension shall remain in effect until sixty days after the final rules enacted in the *Third Report and Order* in Docket No. 92–257 are published in the **Federal Register**.

4. This decision is procedural in nature and therefore not subject to notice and comment and effective date requirements of the Administrative Procedure Act. Moreover, there is good cause for proceeding in this manner, for to do otherwise would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purposes of this action.

5. Accordingly, *It is ordered*, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), that there be a continued suspension of the acceptance and processing of applications to use VHF public coast spectrum, effective March 17, 1998. The suspension will continue until sixty days after the final rules enacted in the *Third Report and Order* in Docket No. 92–257 are published in the **Federal Register**. This action is taken under delegated authority pursuant to § 0.331 of the Commission's Rules, 47 CFR 0.331.

6. For further information concerning this *Order*, contact Scot Stone, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0680.

Federal Communications Commission.

Daniel B. Phythyon,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 98–8498 Filed 4–1–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. 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 April 27, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Premier Bancshares, Inc., Atlanta, Georgia; to merge with Button Gwinnett Financial Corporation, Snellville, Georgia, and thereby indirectly acquire The Bank of Gwinnett County, Lawrenceville, Georgia.

Board of Governors of the Federal Reserve System, March 27, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8563 Filed 4–1–98; 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, including the companies listed below, 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 April 16, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Bainum Bancorp, Glenwood, Arkansas; to engage *de novo* in extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 27, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8564 Filed 4–1–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–15]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Hemoglobin A1c HEDIS Measure Testing—New—Managed care organizations (MCOs) increasingly use HEDIS measures developed by the Committee on Performance Measurement of the National Committee for Quality Assurance (NCQA) as vehicles to document and track health care quality. NCQA recently formed the Diabetes Quality Improvement Project, whose purposes are to broaden the range and to improve the reliability of diabetes performance measures.

Because the Diabetes Control and Complications Trial (DCCT) has established that achieving glycemic control reduces the complications of diabetes, an important focus of the measures will be the association of glycemic control and diabetes-related morbidity. Since complications of diabetes develop over many years, however, use of this data to assess quality of care presents important problems. For example, the measures may reflect problems that developed before enrollment in a health plan rather than the quality of care provided by the health plan. To more accurately assess the quality of diabetes care in a health plan, we need to identify intermediate outcomes measures that are not subject to these problems.

Health status is an outcome of medical care that can be obtained readily through member survey and may provide an intermediate measure of quality of care for chronic diseases like diabetes. The purpose of this study is to evaluate perceived health status as a function of glycemic control in diabetic patients. We will investigate associations of changes in member perceptions of their health as a function of changes in their glycemic control. We also will look for variation in the association of health status with glycemic control across subsets of the population.

The general plan of analysis is a retrospective, longitudinal design. In January and February of 1997, 931 Kaiser Permanente enrollees with diabetes completed a telephone survey examining knowledge of diabetes and diabetes care, satisfaction with medical care in the health plan, and perceptions of health status. The participants' responses were linked with an existing dataset collected on diabetic members in conjunction with a project conducted by NCQA. The dataset contains enrollment history, outpatient visits, pharmacy dispensings, laboratory tests and results, and inpatient care. The cohort responding to the first survey will be contacted in mid-1998 for a follow-up survey comprised of 51 questions. The second survey will include two instruments used to examine health status. This will increase the data available for measuring health status and will permit a comparison of the two instruments as well. Questions related to blood pressure, foot care, weight, change in weight, and satisfaction with care will also be retained.

The general model for analysis will be change in member perceptions of health as a function of changes in HbA1c values. The hypothesis is that improved HbA1c will correlate with improved health status and worsening HbA1c will correlate with worsening health status. By examining this hypothesis, we can assess the utility of perceived health status as a valid intermediate measure of quality of diabetes care.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ responses (in hrs.)	Total burden (in hrs.)
Diabetic patient	600	1	0.5	300
Total				300

2. 1999 National Health Interview Survey, Basic Module (0920–0214)—Revision—The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2000.''

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were partially implemented in 1996 and fully implemented in 1997. This clearance is for the third full year of data collection using the Basic Module on CAPI, and for implementation of the first ''Periodic Module'', which include additional detail questions on conditions, access to care, and health care utilization. This data collection, planned for January–December 1999, will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. The 1999 Basic Module will include a few new questions on health insurance, and program participation. The Basic Module of the new data system is expected to be in the field at least until 2006. The total cost to respondents is estimated at $692,160 for the whole survey.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ responses (in hrs.)	Total burden (in hrs.)
Family	42,000	1	0.5	21,000
Sample adult	42,000	1	0.80	33,600
Sample child	18,000	1	0.116	2,088
Total				56,688

3. *A Longitudinal Study of Lead Poisoning from the Maternal Infant Relationship Through Early Childhood*—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. Lead exposure has been associated with negative pregnancy outcomes in humans, including low birth weight, spontaneous abortion, congenital malformation, and various neurological effects in newborns and young children. The level of lead considered to be toxic has been lowered over the years by major research groups, organizations, and agencies. While lead has been shown to affect all organs, the brain or nervous system seems to be the most sensitive to lead toxicity, especially in young children. Blood lead levels as low as 10 μg/dL have been shown to result in delayed cognitive development, reduced IQ scores, and impaired hearing.

This study, originally approved by OMB in 1995, examines the long-term effects of low and marginal toxic blood lead levels in neonates and preschool African-American children in the Atlanta area. This study is divided into two components, (i) prevalence of lead exposure in children of preschool age and (ii) longitudinal health effects of low and marginal lead exposure. These studies are conducted concurrently.

The primary focus of the prevalence study is the evaluation of the relationship between socio-economic status, elemental blood lead levels within the home environment, and blood lead levels of preschool aged children. The objective of the longitudinal study is the evaluation of the relationship between lead levels found in maternal and cord blood and adverse health effects in the infant, including deficits in behavioral, cognitive and physical development. To correlate cognitive and behavioral development with varying blood lead levels, each newborn is to undergo a series of psychometric testing at birth, then again at 6 months, 1, and 2 years of age. Evaluations of physician development will be conducted by reviewing the medical records of each newborn within the first year after birth.

This request is for a 3-year extension of the current OMB approval; however we are requesting a new OMB authority (and number) as the old number (0923–0015) will now apply only to the Substance Specific Applied Research Program (AMHPS) [King/Drew Lead Study in-Person Interview, Lead and Hypertension Screening Questionnaire/ Risk Factor Questionnaire]. The requests for OMB approval for the two studies has been separated, with the King/Drew investigation retaining the old OMB number (0923–0015).

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
Households	100	1	0.75	75
Daycare Centers	10	1	0.25	2.5
Pregnant Women	300	3.5	0.167	175.35

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
Infants	300	7	0.524	1,100.40
Total				1,353.25

4. *Antivirals Usage in Nursing Homes*—New—Outbreaks of influenza A in nursing homes (NH) may result in the hospitalization of up to 25% of ill residents and the death of up to 30% of those who are hospitalized. The rapid diagnosis of influenza A and the timely administration of currently available antiviral medications, amantadine and rimantadine, can lessen the impact of these outbreaks. However, it is unknown how often laboratory tests for the rapid diagnosis of influenza A are utilized and how frequently antivirals are used to control nursing home outbreaks of influenza A.

The purpose of this survey is to determine how often rapid testing and antivirals are used to control influenza A outbreaks in NH's. A sample of NH's will be selected randomly from one state within each of nine influenza surveillance regions. The survey will be mailed to infection control personnel in the randomly selected NH's. The results will be used to identify where educational efforts should be directed to lessen the impact of influenza A on elderly institutionalized persons.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ responses (in hrs.)	Total burden (in hrs.)
NH infection control	918	1	0.16	147
Total				147

Dated: March 27, 1998.

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–8613 Filed 4–1–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0174]

Ecolab, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 5B4462) proposing that the food additive regulations be amended to provide for the safe use of nonanoic acid, lactic acid, citric acid, sodium 1-octane sulfonate, tertiary butylhydroquinone, and the sodium salt of tetrapropylene-1,1-oxybis-benzenesulfonic acid as components of a sanitizing solution intended for general use on food-contact surfaces.

FOR FURTHER INFORMATION CONTACT: John R. Bryce, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3023.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 18, 1995 (60 FR 36811), FDA announced that a food additive petition (FAP 5B4462) had been filed by H. B. Fuller Co. The petition proposed to amend the food additive regulations in § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) to provide for the safe use of nonanoic acid, lactic acid, citric acid, sodium 1-octane sulfonate, tertiary butylhydroquinone, and the sodium salt of tetrapropylene-1,1-oxybis-benzenesulfonic acid as components of a sanitizing solution intended for general use on food-contact surfaces. Since publication of the filing notice, the division of H. B. Fuller Co. responsible for this petition has been purchased by Ecolab, Inc., 370 North Wabasha St., St. Paul, MN 55102. Ecolab, Inc. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 17, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–8569 Filed 4–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

The Health Resources and Services Administration is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

Subtitle 2 of Title XXI of the Public Health Service Act, as enacted by the National Childhood Vaccine Injury Act of 1986 and as amended, governs the VICP. The VICP, administered by the Secretary of Health and Human Services (the Secretary), provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition with the United States Court of Federal Claims. In some cases, the injured individual may receive compensation for future lost earnings, less appropriate taxes and the ''average cost of a health insurance policy, as determined by the Secretary.''

Section 100.2 of the VICP's implementing regulations (42 CFR part 100) provides that revised amounts of an average cost of a health insurance policy, as determined by the Secretary, are to be published from time to time in

a notice in the **Federal Register**. The previously published amount of an average cost of a health insurance policy was $220.41 per month (62 FR 2675, January 17, 1997); this amount was based on data from a survey by the Health Insurance Association of America, updated by a formula using changes in the medical care component of the Consumer Price Index (CPI) (All Urban Consumers, U.S. City average) for the period July 1, 1996, through December 31, 1997.

The Secretary announces that for the 6-month period, July 1, 1996, through December 31, 1996, the medical care component of the CPI increased 1.229 percent. According to the regulatory formula (§ 100.2), 2 percent is added to the actual CPI change for each year. For this 6-month period, one-half, or 1 percent is added. The adjusted CPI change results in an increase of 2.229 percent for this 6-month period. Applied to the baseline amount of $220.41, this results in the amount of $225.32.

The medical care component of the CPI change for the 12-month period, January 1, 1997, through December 31, 1997, was 2.819 percent. According to the regulatory formula, the annual adjustment of 2.0 percent, is added to the actual CPI change for this 12-month period. Therefore, according to the current regulatory formula, the adjusted CPI change results in an increase of 4.819 percent. Applied to the $225.32 amount, this results in a new amount of $236.18.

Therefore, the Secretary announces that the revised average cost of a health insurance policy under the VICP is $236.18 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the United States Court of Federal Claims (formerly known as the United States Claims Court). Such notice was delivered to the Court on February 20, 1998.

Dated: March 24, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–8684 Filed 4–1–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Nursing Recruitment Program for Indians

AGENCY: Indian Health Service (IHS), HHS.

ACTION: Notice of competitive grant applications for the nursing recruitment program for Indians.

SUMMARY: The IHS announces that competitive grant applications are now being accepted for the Nursing Education Program for Indians authorized by section 112 of the Indian Health Care Improvement Act, Pub. L. 94–437, as amended. There will be only one funding cycle during fiscal year (FY) 1998. This program is described at 93.970 in the Catalog of Federal Domestic Assistance. Cost will be determined in accordance with applicable OMB Circulars and 45 CFR part 74 or 45 CFR part 92 (as applicable). Executive Order 12372 requiring intergovernmental review does not apply to this program. This program is not subject to the Public Health System Reporting Requirements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000* a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Educational and Community-based programs. *Healthy People 2000,* the full report, is currently out of print. You may obtain the objectives from the latest *Healthy People 2000* Review. A copy may be obtained by calling the National Center for Health Statistics, telephone (301) 436–8500.

Smoke Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. Pub. L. 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.

DATES: An original and two copies of the completed grant application must be submitted, with all required documents to the Grants Management Branch, Division of Acquisitions and Grants Operations, Twinbrook Metro Plaza, Suite 100, 12300 Twinbrook Pkwy., Rockville, MD 20852, by close of business June 19, 1998. C.O.B. means 5:00 p.m. Eastern Daylight Time.

Applications shall be considered as meeting the deadline if they are either: (1) received on or before the deadline with hand carried applications received by close of business 5:00 p.m.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Applications received after the announced closing date will be returned to the applicant and will not be considered for funding.

Additional Dates

A. Application Deadline: June 19, 1998.

B. Application Review: July 7, 1998.

C. Applicants Notified of Results (approved, approved unfunded, or disapproved): July 21, 1998.

D. Anticipated Start Date: August 1, 1998.

FOR FURTHER INFORMATION CONTACT: For program information, contact Ms. Carol Gowett, Senior Nurse Consultant, Division, of Nursing, Office of Public Health, Indian Health Service, Parklawn Building, 5600 Fishers Lane, Room 6A–44, Rockville, MD 20857, (301) 443–1840. For grants information, contact Mrs. M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, Twinbrook Metro Plaza, Suite 100, 12300 Twinbrook, Pkwy., Rockville, MD 20852, (301) 443–5204. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose and objectives, programmatic priorities, eligibility requirements, funding availability, and application procedures for the Nursing Program for FY 1998.

A. General Program Purpose

To increase the number of nurses, nurse midwives, nurse anesthetists, and nurse practitioners who deliver health care service to Indians.

B. Eligibility and Preference

The following organizations are eligible: (1) public or private schools of nursing, (2) tribally controlled community colleges; and (3) nurse (ADN, BSN), nurse midwife, nurse anesthetist, and nurse practitioner (MSN) programs that are provided by any public or private institution.

Preference will be given to programs which (1) provide a preference to Indians; (2) train nurses (ADN, BSN), nurse midwives, nurse anesthetists or nurse practitioners (MSN); (3) are interdisciplinary, and (4) are conducted in cooperation with a center for gifted and talented Indian Students established under section 5324(a) of the Indian Education Act of 1988.

If an eligible organization claims preference in order to be given priority, the organization must submit verifying documentation.

C. Programmatic Priorities

To carry out the provisions of section 112 of Pub. L. 94–437, as amended, priority will be given to the following programs:

1. At least one project to a public or a private school of nursing, which provides BSN or MSN degrees, not to exceed $450,000 per year, up to a project period not to exceed 5 years.

2. At least one project to a tribally controlled community college, not to exceed $150,000 per year, up to a project period not to exceed 5 years.

3. At least one project to a School of Nursing which trains nurse midwives, not to exceed $150,000 per year, up to a project period not to exceed 5 years.

D. Program Objectives

A grant awarded under this announcement shall support a program to: (1) recruit individuals for programs which train individuals to be nurses (ADN, BSN), nurse midwives, nurse anesthetists, or nurse practitioners (MSN); (2) provide scholarships to individuals enrolled in such programs that may pay the tuition charged for such program and other expenses incurred in connection with such program, including books, fees, room and board, and stipends for living expenses; (3) provide a program that encourages nurses (ADN, BSN), nurse midwives, nurse anesthetists, and nurse practitioners (MSN) to provide, or continue to provide, health care services to Indians; (4) to provide a program that increases the skills of and provides continuing education to nurses (ADN, BSN), nurse midwives, nurse anesthetists, and nurse practitioners (MSN); and (5) to provide any program that is designed to achieve the purpose of increasing the number of nurses (ADN, BSN), nurse midwives, nurse anesthetists, and nurse practitioners (MSN) who deliver health care services to Indians.

Each proposal must respond to at least one of the above five objectives.

Although section 112 of the Indian Health Care Improvement Act, Pub. L. 94–437, as amended, provides that scholarships for individuals may be funded, only an organization that has been operating an IHS Nurse Recruitment Grant Program may apply for scholarship support in the first year of the project.

E. Program Activities Considered for Support

The grant program must be developed to locate and recruit students with potential for nursing; and to provide support services to students who are recruited. Support services may include providing career counseling and academic advice; assisting students to identify academic deficiencies and to develop plans to correct those deficiencies; assisting students to locate financial aid; monitoring students to identify possible problems; assisting with the determination of need for and location of tutorial services; and other related activities which will help to retain students in school.

F. Required Affiliation

The applicant must submit documentation showing that it is an accredited school of nursing, or a tribally controlled community college, or a nurse anesthetist program or nurse midwife program which has an affiliation with an accredited school of nursing, as defined at 42 CFR 36.302(o). The term ''accredited'' when applied to any program of nurse education means a program accredited or assured accreditation by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education and when applied to a school, college or university (or a unit thereof) which is accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education.

The applicant must submit written documentation showing affiliation with a health care facility that primarily serves Indians.

When the target population of a proposed project includes a particular Indian tribe or tribes, an official document, i.e., a letter of support or tribal resolution, must be submitted indicating that the tribe or tribes will cooperate with the applicant.

G. Fund Availability and Period of Support

Approximately $1,600,000 is available during this cycle. The anticipated start date for selected projects will be August 1, 1998. Projects will be awarded for a term of up to 5 years, with funding for succeeding years based on the FY 1998 level; satisfactory level of performance; the availability of appropriation in future years; and the continuing need of IHS for the project.

H. Application Process

1. In IHS Recruitment Grant Application Kit may be obtained from the Grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, Twinbrook Metro Plaza, Suite 100, 12300 Twinbrook Pkwy., Rockville, MD 20852, (301) 443–5204. This kit includes Standard Form PHS 5161–1 (Rev. 5/96) (OMB Approval No. 0937–0189 expires 07/31/98); Standard Forms 424, 424A, and 424B (Rev. 4/88); Application Receipt Card—PHS 3038–1 (Rev. 4/90); instructions for preparing the program narrative; and IHS Application Checklist.

2. The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award.

3. The available funding level is inclusive of both direct and indirect costs. Because this project is for a training grant, the Department of Health and Human Services' policy limiting reimbursement of indirect cost to the lesser of the applicant's actual indirect costs or 8 percent of total direct costs (exclusive of trainee costs and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education other than agencies of State and local government.

4. Each application will be reviewed at the Grants Management Branch for eligibility, compliance with the announcement, and completeness. All acceptable applications will be subject to a competitive objective review and evaluation. An unacceptable application will be returned to the applicant without further consideration.

5. Applicants will be notified by July 21, 1998, of their status as approved, approved unfunded, or disapproved.

6. The project period may not exceed 5 years. Applications must include Narrative and Budget information for the entire anticipated project period.

I. Criteria for Review and Evaluation

Conforming applications will be evaluated against the following criteria:

- The potential effectiveness of the proposed project in carrying out the purposes of section 112, with special emphasis on the objectives and methodology portion of the application. This includes relevance of project objectives to grant program objectives; appropriateness and soundness of the procedures for identifying recruiting, and retaining target population(s); and feasibility of project within proposed resources and time frames.
- The demonstrated capability of the applicant to successfully conduct the project, including organizational and scholarly commitment to the

recruitment, education, and retention of students.

- The submission of verifying documentation when an applicant claims preference in order to be given priority.

Preference is given for programs which (1) provide a preference to Indians; (2) train nurses (ADN, BSN), nurse midwives, nurse anesthetists, or nurse practitioners (MSN); (3) are interdisciplinary; and (4) are conducted in cooperation with a center for gifted and talented Indian students established under section 5324(a) of the Indian Education Act of 1988.

- The accessibility of the applicant to target Indian communities or tribes, including evidence of past or potential cooperation between the applicant and such communities or tribes. Evidence must be supported by official documentation from the tribe in the form of a letter of support or tribal resolution.
- The relationship of project objectives to Indian Health manpower's deficiencies, indicating the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.
- The soundness of the fiscal plan for assuring effective utilization of grant funds.
- The completeness and responsiveness of the application.

Dated: March 26, 1998.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 98–8567 Filed 4–1–98; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Statement of Mission, Organization, Functions and Delegation of Authority

Part G, of the Statement of Organization, Functions, and Delegation of Authority of the Department of Health and Human Services, as amended at 60 FR 56606, November 9, 1995, and most recently amended at 61 FR 67048, December 19, 1996, is amended to reflect the establishment of the Tucson Area Indian Health Service. The changes are as follows:

Section GFN–00, Tucson Area Indian Health Service—Mission. The Tucson Area IHS provides a comprehensive health services delivery system for American Indians and Alaska Natives (AI/AN) with opportunity for maximum tribal involvement in developing and managing programs to meet their health needs. The goal of the Tucson Area IHS is to raise the health level of the AI/AN people to the highest possible level.

Section GFN–10, Functions. Office of the Director (GFNA). (1) Plans, develops, and directs the Area program within the framework of the Indian Health Service (IHS) policy and in pursuit of the mission; (2) delivers and ensures the delivery of high quality health services, allowing for alternative methods and techniques of health services management and delivery with maximum Tribal participation; (3) coordinates and advocates for IHS activities and resources internally and externally with those of other Government and nongovernmental programs; (4) promotes optimum utilization of health care services through management and delivery of services to American Indians and Alaska Natives; (5) applies the principles of Indian Preference and Equal Employment Opportunity (EEO); (6) provides liaison, consultative and administrative service to officials of Tribes, inter-tribal and urban Indian organizations related to the provision of health and health related services, and supports the implementation of Self-Governance and Self-Determination; (7) assures the provision of access to the Internet and World Wide Web; as well as, basic automated information and telecommunications systems to facilitate effective program and health care administration; (8) supports the development of individual and Tribal capacities to participate in Indian health programs through means and modalities that they deem appropriate to their health needs and circumstances and (9) participates with Indian tribes and other Indian community groups in developing goals and objectives for the Tucson Area IHS.

Division of Administration and Management (GFNAB). (1) Plans, directs, coordinates and evaluates Area administrative and management services; (2) promotes, evaluates and monitors Area internal control activities; (3) provides for a sound financial management program including budget, general accounting, and accounts control; (4) provides overall management of supply program, office services and personal and real property, insuring proper documentation and reporting of all relative transactions; (3) plans, coordinates, administers, directs and evaluates the Area Civil Service and Commissioned Corps personnel management program; (4) provides human resource management support to Area office and service unit managers including recruitment, placement, position management, position classification, training, labor relations and employee relations, employee services, and public relations; (5) assures the full application of the Indian Preference policy in all personnel practices; (6) provides direction for acquisition management including monitoring of tribal/urban Indian, commercial and small purchase contracts.

Financial Management Branch (GFNAB1). (1) Interprets policies, guidelines, manual issuances, OMB Circulars, and other directives or instructions issued by IHS, PHS, DHHS, OMB, Treasury, GAO and Congress relating to the fiscal management of resources; (2) provides direction for the organization, coordination and execution of all budget and financial operations; (3) provides technical guidance to Service Unit administration staff; (4) provides technical assistance and guidance to tribal organizations; (5) monitors funds control for the operation of the Service Unit, program offices, and P.L. 93–638 contracted facilities; and (6) advises executive staff on status of funds and recommends action to maintain utilization of resources and to obtain maximum health care services.

Acquisition Management Branch (GFNAB2). (1) Plans, organizes, and manages the acquisition services for the Area and makes recommendations on acquisition policies and procedures; (2) provides guidance to field personnel on the interpretation of acquisition laws, regulations, procedures and policies; (3) plans, develops, and coordinates all Area tribal contracts and grant awards including negotiation, administration and close-outs; (4) executes and administers Buy Indian contracts; (5) executes and administers construction contracts; and (6) executes and administers purchase orders for small procurement.

Human Resources Branch (GFNAB3). (1) Provides overall human resource management support to Area office and service unit managers; (2) maintains position classification and wage administration programs for the Area; (3) provides a centralized employee development program that includes planning, administering, supervising, and evaluating; (4) directs employee relations/services programs for the entire Area; (5) maintains and processes all Area Integrated Management of Personnel Administration through Computer Technology (IMPACT), Terminal Data Control Systems; (6) provides overall recruitment and

employment information; (7) provides technical assistance in personnel management to American Indian organizations; (8) manages the IHS Indian Health Care Improvement Act (P.L. 94–437) Scholarship Program and Management Development Program coordination; (9) ensures that Indian Preference statues are adhered to and that all legal and regulatory requirements are properly applied and (10) provides liaison with Regional Personnel Office.

Division of Public Health Services (GFNAC). (1) Provides leadership and guidance to IHS direct, tribal, and urban public health programs on IHS goals, objectives, policies, standards, and priorities; (2) coordinates and evaluates professional standards and reporting requirements, e.g., HCFA, JCAHO, and GPRA, for service delivery in the direct care and contract health care programs; (3) assures the provision of technical assistance and consultation to service units and tribal governments concerning health service delivery, epidemiological investigation and surveillance, the interpretation and application of health and safety standards, as well as, third-party reimbursements, contract health, and other service agreements; (4) collaborates with Tribes, Departmental entities, other Federal and State agencies, and voluntary professional health organizations to identify, develop, and apply new approaches for prevention programs and for the delivery and financing of health care; and (5) provides health services and facilities planning, evaluation, and statistical functions for the Area; (6) plans, coordinates and manages automated information systems designed to facilitate effective program and health care management; (7) plans, procures, supports and evaluates telecommunications systems for program management and medical operation; (8) supports access to the Internet and World Wide Web.

Information Technology Support Branch (GFNAC1). (1) Is the principal advisor to the Area Director, CMO/Deputy Director, functional Area managers, and tribal and urban health program officials in Tucson, regarding the design and implementation of automated information systems; (2) provides advice on the installation and maintenance services to the Area managers and tribal and urban health programs on operational automated information systems used in the IHS, i.e., RPMS, CHSMIS, CDMIS, etc., for improved personal productivity and health services data collection; (3) provides reports and information on a priority basis and gathers, consolidates and transmits automated RPMS data to central processing centers and (4) serves as the focal point for clearance of requests to purchase information systems hardware and software for the Tucson Area IHS.

Division of Environmental Health and Engineering (GFNAD). (1) Provides a broad range of environmental health and engineering services directed at the prevention and reduction of diseases and injuries among the Indian population in the Tucson Area; (2) directs, plans, implements, monitors and evaluates environmental health service activities to eliminate or reduce health hazards in homes and communities; (3) directs, plans, and implements engineering activities to design and construct water, sewer and solid waste systems for Indian homes and communities, provides training and technical assistance for the operation and maintenance of sanitation facilities; (4) administers the management, maintenance and repair of IHS health care facilities; (5) provides biomedical engineering support to the IHS health care facilities; (6) manages the operation of the administrative activities that include the budget, personnel, acquisition and property within the office; and (7) serves as the principal advisor to the Area for all environmental health issues affecting the Tribes and IHS employees.

Tucson Area Service Units

Sells Service Unit (GFNE)
Pascua Yaqui Service Unit (GFNG)

(1) Plans, develops, and directs health programs within the framework of IHS policy and mission; (2) promotes activities to improve and maintain the health and welfare of the service population; (3) delivers quality health services within available resources; (4) coordinates service unit activities and resources with those of other governmental and non-governmental programs; (5) participates in the development and demonstration of alternative means and techniques of health services management and health care delivery, including the implementation and maintenance of automated information systems, telecommunication and business systems designed to facilitate effective program administration and health care management; (6) provides Indian tribes and other Indian community groups with optimal means of participating in service unit programs; and (7) encourages and supports the development of individual and tribal entities in the management of the service unit.

Section GFN–20, The Order of Succession to the Area Director.

Deputy Director
Director, Division of Administration and Management
Director, Division of Public Health Services
Director, Division of Environmental Health and Engineering

Section GFN–30, Tucson Area IHS—Delegations of Authority. All delegations and redelegations of authority made to officials in the Office of Health Programs Research & Development—Tucson that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further redelegation.

This reorganization shall be effective on the date of signature.

Dated: March 18, 1998.

Michael H. Trujillo,

Director.

[FR Doc. 98–8566 Filed 4–1–98; 8:45 am]
BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Individual National Research Service Award Application and Related Forms

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Extramural Research, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Individual National Research Service Award Application and Related Forms. *Type of Information Collection Request:* Revision, OMB 0925–0002, Expiration Date 6/30/98. *Form Numbers:* PHS 416–1, 416–5, 416–7, 6031, 6031–1. *Need and Use of Information Collection:* The PHS 416–1 and PHS 416–9 are used by individuals to apply for direct research training support. Awards are made to individual applicants for specified training proposals in biomedical and behavioral research, selected as a result of a national competition. The other related forms (PHS 416–5, 416–7, 6031, 6031–1) are used by these individuals to activate, terminate, and provide for

payback of a National Research Service Award. *Frequency of Response:* Applicants may submit applications for published receipt dates. If awarded, annual progress is reported. Related forms are used at activation, termination, and to provide for payback of a National Research Service Award. *Affected Public:* Individuals or Households: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government. *Type of Respondents:* Adult scientific trainees and professionals. The annual reporting burden is as follows: *Estimated Number of Respondents:* 29,748; *Estimated Number of Responses per Respondent:* 1.0834; *Average Burden Hours Per Response:* 2.658 hours; and *Estimated Total Annual Burden Hours Requested:* 85,679. The estimated annualized cost to respondents is $1,985,472 (Using a $35 physician/professor average hourly wage rate, and a $12 trainee average hourly wage rate.) There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Charles MacKay, NIH Project Clearance Officer, Division of Grants Policy, Office of Policy for Extramural Research Administration, OER, NIH, Rockledge II, Rm. 2196, 6701 Rockledge Dr., Bethesda, MD 20892–7730, or call non-toll free at (301) 435–0978 or E-mail your request, including your address to: *mackayc@odrockm1.od.nih.gov*.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before June 1, 1998.

Dated: March 24, 1998.

Geoffrey E. Grant,

Director, Office of Policy for Extramural Research Administration, NIH.

[FR Doc. 98–8595 Filed 4–1–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Proposed Project

Survey of Single State Authorities for Substance Abuse Regarding Availability of HIV/AIDS Services—New. With the converging twin epidemics of HIV and substance abuse, and the rising number of injecting drug users and other substance abusers who are at high risk of becoming HIV infected, the Division of State and Community Assistance (DSCA), Center for Substance Abuse Treatment (CSAT), intends to survey all Single State Authorities (SSAs) for Substance Abuse and other designated entities to receive Substance Abuse Prevention and Treatment (SAPT) Block Grant awards concerning the availability of HIV/AIDS services and their efforts to provide comprehensive substance abuse treatment to HIV+ and individuals at high risk of contacting HIV.

The SAPT Block Grant requires that all entities receiving grants, who have an AIDS case rate equal to or greater than 10 per 100,000, expend between 2–5% of the award on HIV Early Intervention Services (EIS) projects. All SSAs who are or have been required to set aside funds for HIV EIS projects will be surveyed as to their ability to monitor the set aside expenditure, to collect meaningful data concerning these projects, and, in consultation with other entities concerned with the welfare of HIV+ substance abusers, provide direction to these projects.

The data collected from this survey will primarily be used to evaluate what changes are necessary in the annual SAPT Block Grant application. Secondary uses for this data will be for CSAT to better target technical assistance activities to/for the SSAs to more appropriately and more efficiently offer comprehensive treatment systems for HIV+ clients in substance abuse treatment. Results will be shared with CDC-funded HIV prevention grantees and HRSA-funded Ryan White CARE Act grantees so as to better coordinate and collaborate between substance abuse treatment programs and HIV prevention and treatment programs. The estimated annualized burden for this project is summarized below.

	Number of respondents	Number of responses/respondent	Hours/response	Total burden hours	Total annualized burden hours
SSAs and other designated entities to receive SAPT block grant funds	60	1	.50	30	30

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 27, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–8608 Filed 4–1–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051, (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984, (formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802 800–876–3652 / 417–269–3093, (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171

Diagnostic Services Inc., dba DSI 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672, (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784 / 915–563–3300, (formerly: Harrison & Associates Forensic Laboratories)

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 / 800–728–4064, (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400, (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 / 908–526–2400, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/ 800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835 / 309–671–5199
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512, 800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361 / 801–268–2431
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310–312–0056, (formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200 / 800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272
Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063, (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106, (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 / 972–916–3376, (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733, (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311, (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200, (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788 / 254–771–8379
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800 / 800–999-LABS
SmithKline Beecham Clinical Laboratories 3175 Presidential Dr., Atlanta, GA 30340 770–452–1590, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247 214–637–7236, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748 352–787–9006, (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories 400 Egypt Rd. Norristown, PA 19403, 800–877–7484/610–631–4600, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy. Schaumburg, IL 60173, 847–447–4379/800–447–4379, (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 / 800–966–2211, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300, (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the

Department of Transportation. The SCC has accredited the following Canadian laboratories for the conduct of forensic urine drug testing required by Department of Transportation regulations:

Dynacare Kasper Medical Laboratories, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876 / 403–451–3702

Gamma-Dynacare Medical Laboratories, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (formerly: NOVAMANN (Ontario) Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–8486 Filed 4–1–98; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–067–5440–00]

Intent To Amend the California Desert Conservation Area; El Centro Resource Area, CDD, CA

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management proposes to change the boundaries of the West Mesa Area of Environmental Concern and the East Mesa Area of Environmental Concern. The area includes public lands in the San Bernardino Meridian.

East Mesa ACEC is proposed to be expanded north to Highway 78; along old Coachella Canal, and, west one mile to the East Mesa Geothermal Fields; and then along the eastern edge of the geothermal field.

West Mesa ACEC is proposed to be expanded south to include Target 102 of the U.S. Navy, and east (outside the Superstition Open Area) to the edge of private lands; then north to the San Sebastian ACEC and west to the San Felipe Route Corridor; this would expand the western boundary of the ACEC an average of three miles.

FOR FURTHER INFORMATION CONTACT: Field Manager, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243 760–337–4400. (Atten: Nancy Nicolai).

SUPPLEMENTARY INFORMATION: East Mesa ACEC was designated in 1980 by the CDCA Plan. West Mesa ACEC was designated in 1987 by the 1987 CDCA Plan Amendment.

In 1997 the Flat-tailed Horned Lizard Rangewide Strategy (Strategy) and Conservation Agreement was signed by BLM. The purpose of the Strategy is to conserve viable populations of flat-tailed horned lizard. The strategy outlines Management Areas building on protection supported by existing ACECs. The West Mesa and East Mesa Management Areas are larger than existing ACECs. The proposed amendment to the CDCA Plan will expand the ACEC boundaries to match the Management Area boundaries.

The proposed amendment to the CDCA Plan is being analyzed as part of the proposed action in an environment assessment. It is anticipated that the Draft EA will be printed and made available to the public for comment in April 1998.

Dated: March 23, 1998.

Terry A. Reed,

Field Manager.

[FR Doc. 98–8591 Filed 4–1–98; 8:45 am]

BILLING CODE 4310–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–08–1020–00]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on May 7, 8 and 9, 1998. The meeting on May 7 and 8, 1998 will be at San Juan College, 4601 College Avenue, Farmington, NM. The meeting on Saturday May 9, 1998 is a field trip to the Bisti Wilderness Area and is optional for RAC members attendance. The agenda for the RAC meeting will include agreement on the meeting agenda, any RAC comments on the draft summary minutes of the last RAC meeting of March 5 & 6, 1998 in Alamogordo, NM., a briefings and discussions on the status of the NEPA process for the RAC Standards for Public Land and Health and Guidelines for Livestock Grazing Management and other NEPA concerns. Also included on the agenda are continued discussion on establishment of RAC Subgroups, discussion on the future direction of the RAC-roles and focus, additional presentation on the Lesser Prairie Chicken, Holloman Air Force bombing range proposal, BLM Field Office Manager presentations, a Watershed presentation, establish location and date for next RAC meeting and develop draft agenda items, RAC discussion on assessment of the meeting and other items as appropriate.

An optional field tour will be available for RAC members to the Bisti Wilderness Area on the morning and early afternoon of Saturday, May 9, 1998. The tour will take approximately six hours. Time and location to meet for the tour will be established during the RAC meeting. The meeting will begin on May 7, 1998 at 8:30 a.m. The meeting is open to the public. The time for the public to address the RAC is on Thursday, May 7, 1998, from 3:00 p.m. to 5:00 p.m. The RAC may reduce or extend the end time of 5:00 p.m. depending on the number of people wishing to address the RAC. The length of time available for each person to address the RAC . The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its Agenda items. The meeting on May 8, 1998, will be from 8:00 a.m. to 4:00 p.m. The end time of 4:00 p.m. for the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: March 26, 1998.

Richard E. Wymer,

Acting Deputy State Director.

[FR Doc. 98–8573 Filed 4–1–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

TITLE: Coal Washing and Transportation Allowance, OMB Control Number 1010–0074.

COMMENTS: This collection of information has been submitted to the Office of Management and Budget for approval. In compliance with the Paperwork Reduction Act of 1995, Section 3506(c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the public's burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

Comments should be made directly to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado, 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e:Mail address is RMP.comments@mms.gov. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Copies of the proposed information collection and related explanatory material may be obtained by contacting Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis__C__Jones@mms.gov.

DATES: Written comments should be received on or before May 4, 1998.

SUMMARY: The Secretary of the U.S. Department of the Interior (Secretary) is responsible for the collection of royalties from lessees who produce minerals from leased Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands, to collect the royalties due, and to distribute the funds in accordance with those laws. The product valuation process is essential to assure that the public and/or the Indians receive payment on the full value of the minerals being removed.

In some circumstances, lessees are authorized to deduct certain costs in the calculation of royalties due. An allowance may be granted from royalties to compensate lessees for the reasonable actual cost of washing the royalty portion of coal. Also, when the sales point is not in the immediate vicinity of a lease or mine area, an allowance may be granted to compensate lessees for the reasonable actual cost of transporting the royalty portion of coal to a sales point not on the lease or mine area.

Before any deductions are taken, the lessee with an arm's-length contract must submit page one of the Coal Washing Allowance Report, Form MMS–4292, or the Coal Transportation Allowance Report, MMS–4293. The allowances will be based on reasonable actual costs reported by the lessees and are subject to later audit.

Lessees with a non-arm's-length contract must also submit Form MMS–4292 or Form MMS–4293. All applicable pages of the allowance application forms should be submitted. The allowances will be based on reasonable actual costs reported by the lessees and are subject to later audit.

Description of Respondents: Lessees of Indian leases.

Frequency of Response: Annually.

Forms: Forms MMS–4292 and MMS–4293.

Estimated Reporting Burden: 0.5 hour.

Estimated Recordkeeping Burden: 9 hours.

Annual Responses: 5 responses (including 1 response for Form MMS–4293 and 4 responses for contract submission).

Annual Burden Hours: 9.5 hours (rounded to 10 hours).

Bureau Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: March 5, 1998.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 98–8646 Filed 4–1–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

TITLE: Oil Transportation Allowances, OMB Control Number 1010–0061.

COMMENTS: This collection of information has been submitted to the Office of Management and Budget for approval. In compliance with the Paperwork Reduction Act of 1995, Section 3506(c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the public's burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

Comments should be made directly to the Attention: Desk Officer for the Interior Department (OMB Control Number 1010–0061), Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado, 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e:Mail address is RMP.comments@mms.gov. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Copies of the proposed information collection and related explanatory material may be obtained by contacting Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX

(303) 231–3385, e-Mail Dennis__C__Jones@mms.gov.

DATES: Written comments should be received on or before May 4, 1998.

SUMMARY: The Secretary of the Interior (Secretary) is responsible for the collection of royalties from lessees who produce minerals from leased Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Federal and Indian lands, to collect the royalties due, and to distribute the funds in accordance with those laws. The product valuation and allowance determination process is essential to assure that the Indians receive payment on the proper value of the minerals being removed.

In some circumstances, lessees are authorized to deduct from royalty payments the reasonable actual cost of transporting the royalty portion of the oil from the lease to a delivery point remote from the lease. Transportation allowances are a part of the product valuation process which MMS uses to determine if the lessee is reporting and paying the proper royalty amount. Before any deduction may be taken, the lessee must submit page one of the Oil Transportation Allowance Report, Form MMS–4110, declaring the amount of reasonable actual transportation costs to be deducted from royalty. We estimate the annual burden for filing each Form MMS–4110 is 1.75 hours.

Description of Respondents: Lessees of Indian leases.

Frequency of Response: Annually.

Form: Form MMS–4110.

Estimated Reporting Burden: 5.25 hours.

Estimated Recordkeeping Burden: 1.5 hours.

Annual Responses: 3 responses.

Annual Burden Hours: 6.75 hours (rounded to 7 hours).

Bureau Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: March 26, 1998.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98–8664 Filed 4–1–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Agency Information Collection Activities: Proposed Collection; Comment Request; Office of Community Oriented Policing Services

ACTION: Notice of information collection under review; COPS small community supplemental grant program application.

The proposed information collection is published to obtain comments from the public and affected agencies. The COPS Office has submitted the following information request utilizing emergency review procedures, to OMB for review and clearance accordance with sections 1320.13 (a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The COPS Office has determined that it cannot reasonably comply with the normal clearance procedures under this Part of the Act because normal clearance procedures are reasonably likely to prevent or disrupt the collection of the information.

Therefore, OMB emergency approval has been requested by March 27, 1998. 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, D.C. 20530. 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 suggestion, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions should be directed to: Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530. 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarify of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 100 Vermont Avenue, NW, Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS Small Community Supplemental Grant Program Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State and Local governments, private non-profit organizations, individuals, education institutions, hospitals, and private commercial organizations (if legislation allows). *Other:* None.

The information collected will be used by the COPS Office to determine whether current COPS grantees from are eligible for one time, one year grants specifically targeted for the retention of police officer positions under the following conditions: (a) the policy officer was funded by a COPS Phase I, FAST or UHP grant program; AND, (b) the police officer was hired by a jurisdiction with a population under 50,000; AND, (c) the police officer was hired by the jurisdiction between October 1, 1994 and September 30, 1995; AND, (d) the police officer's activities have supported public safety and crime prevention projects in those jurisdictions serving populations under 50,000.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4000 respondents at 2 hours per response. The information will be collected once from each respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 27, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–8597 Filed 4–1–98; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF JUSTICE

Agency Information Collection Activities: Proposed Collection; Comment Request; Legal Division, Office of Community Oriented Policing Services

ACTION: Notice of information collection under review; assessment of indian country law enforcement agencies.

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by April 4, 1998. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Mr. Dennis Marwich, (202) 395–3122, Department of Justice Desk Officer, Washington, DC 20530.

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 Charlotte Gzebien, (202) 514–3750, Assistant General Counsel, Office of Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. 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;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Brenda Dyer, U.S. Department of Justice, Deputy Clearance Officer (phone number and address listed below). If you have any additional comments, suggestions, or need a copy of the proposed information collection, instrument, or additional information, please contact Kristen Mahoney, (202) 616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Overview of this information:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Assessment of Indian Country Law Enforcement Agencies

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Indian Country Law Enforcement Agencies. Other: None. The information will be used by the U.S. Department of Justice and Interior to develop a comprehensive plan to improve and expand law enforcement services in Indian country.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Assessment of Indian Country Law Enforcement Agencies: Approximately 300 respondents, at 1 hour per response. Total annual burden hours requested: 300.

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 300 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, (202) 616–1167, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: March 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–8660 Filed 4–1–98; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Sunshine Act Meeting

[F.C.S.C. Meeting Notice No. 7–98]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Thursday, April 16, 1998, 10:30 a.m.

Subject Matter: A. Hearings on the Record on Objections to Proposed Decisions on claims against Albania, as follows:

1. Claim No. ALB–064—Fejzi Domni
2. Claim No. ALB–078—Llazaraq Cifligu
3. Claim No. ALB–080—Ethel Constas
4. Claim Nos. ALB–099, ALB–130, ALB–131, ALB–132, ALB–167—Peter Panajoti, et al.
5. Claim No. ALB–268—Philip Stephens, et al.

Status: Open.

B. Issuance of Individual Final Decisions on Claims of Holocaust Survivors Against Germany.

Status: Closed.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, March 30, 1998.

Judith H. Lock,

Administrative Officer.

[FR Doc. 98–8731 Filed 3–30–98; 5:02 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; Sponsor's notice of change of address.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

The proposed information collection is now published to obtain comments from the public and affected agencies. OMB approval has been requested by April 10, 1998. If granted, the emergency approval is only valid for 180 days. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Immigration and Naturalization Service, Director, Policy Directives and Instructions Branch, Richard Sloan (202–616–7600).

Comments and questions about the emergency information collection request listed below should be forwarded to OMB, Office of Information and Regulatory Affairs, (202) 395–7316, Attention: Department of Justice Desk Officer, Room 10235, Office of Management and Budget, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until June 1, 1998. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Sponsor's Notice of Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–865. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form will be used by every sponsor who has filed an affidavit of support under section 213A of the INA to notify the Service of a change of address. The data will be used to locate a sponsor if there is a request for reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 respondents at .233 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 23,300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, (202) 514–3291, Director, Policy and Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Comments may also be submitted to INS via facsimile to (202) 305–0143.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 27, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–8599 Filed 4–1–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; NACARA Supplement to Form I–485.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Additionally, this notice will also serve as the 60-day public notification for comments as required by the Paperwork Reduction Act of 1995.

There is an emergent need for this notice to be published and implemented immediately so that the INS may publish an interim regulation implementing section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) to establish procedures for certain nationals of Nicaragua and Cuba who have been residing in the United States to become lawful permanent residents of this country. The interim rule allows them to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad and waives many of the usual requirements for this benefit.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by March 23, 1998. If granted, the emergency approval is only valid for 180 days.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, 202–395–7316, Department of Justice Desk Officer, Room 10235, Office of Management and Budget, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* NACARA Supplement to Form I–485.

(3) *Agency form number,* if any, and the applicable component of the Department of Justice sponsoring the collection: Office of Programs, Adjudications Division, Immigration and Naturalization Service. Form I–485, Supplement B.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The collection of this information is necessary for the INS to determine whether an applicant for adjustment of status under the provisions of section 202 of Public Law 105–100 is eligible to become a permanent resident of the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at .25 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, N.W., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 27, 1998.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–8600 Filed 4–1–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; Affidavit of support under section 213A of the Act and notification of reimbursement of means-tested benefits.

The Department of Justice, Immigration and Naturalization Service (Service) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with 5 CFR 1320.13 of the Paperwork Reduction Act of 1995.

The proposed information collection is now published to obtain comments from the public and affected agencies. OMB approval has been requested by April 10, 1998. If granted, the emergency approval is only valid for 180 days. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Immigration and Naturalization Service, Director, Policy Directives and Instructions Branch, Richard Sloan (202) 514–3291.

Comments and questions about the emergency information collection request listed below should be forwarded to OMB, Office Information and Regulatory Affairs, (202) 395–7316, Attention: Department of Justice Desk Officer, Room 10235, Office of Management and Budget Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until June 1, 1998. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Affidavit of Support Under Section 213A of the Act and Notification of Reimbursement of Means-Tested Benefits.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–864 and I–864A. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form is mandated by law for a petitioning relative to submit an affidavit on their relative's behalf. The executed form creates a contract between the sponsor and any entity that provides means-tested public benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 590,000 respondents at 1.15 hours per response for Form I–864 and 15 minutes (.25) per response for Form I–864A.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 558,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the

proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, (202) 514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Comments may also be submitted to INS via facsimile to (202) 305–0143.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to (202) 514–1534.

Dated: March 27, 1998.

Robert B. Briggs

Department Clearance Officer, United States Department of Justice

[FR Doc. 98–8601 Filed 4–1–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OJP (NIJ)–1168]

RIN 1121–ZB06

National Institute of Justice Announcement of the Availability of the Solicitation ''National Evaluation of the Rural Domestic Violence and Child Victimization Enforcement Grant Program''

AGENCY: Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice solicitation ''National Evaluation of the Rural Domestic Violence and Child Victimization Enforcement Grant Program.''

DATES: Due date for reciept of proposals is close of business June 8, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201B03, as amended, 42 U.S.C. 3721–23 (1994).

Background

Proposals are solicited for a national evaluation of the Rural Domestic Violence and Child Victimization Enforcement Grant Program, a discretionary program administered by the Office of Justice Programs, Violence Against Women Grants Office. One national evaluation grant of up to $375,000 will be awarded in FY98, with supplemental funding of up to $325,000 for subsequent years, for a total project funding level of up to $700,000. The duration of the national evaluation is up to 36 months with reports of evaluation results to be submitted annually.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''National Evaluation of the Rural Domestic Violence and Child Victimization Enforcement Grant Program'' (refer to document no. SL000270). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–8674 Filed 4–1–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ)–1166]

RIN 1121–ZB05

National Institute of Justice Solicitation for Research on Violence Against Women: Syntheses for Practitioners

AGENCY: Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice solicitation ''Research on Violence Against Women: Syntheses for Practitioners.''

DATES: Due date for receipt of proposals is close of business June 1, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

Proposals are solicited for the development of critical reviews and syntheses of the violence against women research and evaluation literature to be prepared for justice system and public health audiences. Violence against women includes domestic violence or intimate partner violence, sexual assault, other assaultive behaviors against women and stalking. Applicants should assemble a team of expert authors from both the criminal justice and public health fields, and practitioner insight must be incorporated into the proposed approach. One grant of up to $350,000 will be awarded for a period of up to 15 months.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Research on Violence Against Women: Syntheses for Practitioners'' (refer to document no. SL000271). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–8675 Filed 4–1–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: April 9, 1998. 10:00 a.m., U.S. Department of Labor, S–1011, 200 Constitution Ave., NW, Washington, DC 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential

U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives of bargaining positions. Accordingly, the meeting will be closed to the public.

For further information contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs Phone: (202) 219–7597.

Signed at Washington, D.C. this 27 day of March 1998.

Jorge Perez-Lopez,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 98–8665 Filed 4–1–98; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–90]

Communication Certification Laboratory, Renewal of Recognition

AGENCY: Occupational Safety and Health Administration; Labor.

ACTIONS: Notice of renewal of recognition as a Nationally Recognized Testing Laboratory (NRTL).

SUMMARY: This notice announces the Agency's final decision on Communication Certification Laboratory's renewal of its recognition as a NRTL under 29 CFR 1910.7.

EFFECTIVE DATE: This renewal of recognition will become effective on April 2, 1998 and will be valid until April 2, 2003, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the Occupational Safety and Health Administration (OSHA) has renewed the recognition of Communication Certification Laboratory (CCL) as a Nationally Recognized Testing Laboratory (NRTL). CCL previously received its recognition as a NRTL on June 21, 1991 (see 56 FR 28579), for a period of five years ending June 21, 1996. Appendix A to 29 CFR 1910.7 stipulates that the initial period of recognition of a NRTL is five years and that a NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. CCL applied for a renewal of its recognition, pursuant to 29 CFR 1910.7, on June 21, 1995 (see Exhibit 7), within the time allotted, and retained its recognition pending OSHA's final decision in this renewal process. The notice of the application for renewal of recognition was published in the **Federal Register** (see 62 FR 63561, 12/1/97). The notice included a preliminary finding that CCL could meet the requirements in 29 CFR 1910.7 for renewal of its recognition, and invited public comment on the application by January 30, 1998. No comments were received concerning this request for renewal. During the preparation of this final notice for the renewal, CCL informed OSHA that it no longer uses the test standard ANSI/UL 478 Information-Processing and Business Equipment. This standard has been superseded and is not listed below, but was included in the notice of the preliminary finding.

Copies of all application documents (Docket No. NRTL–1–90) are available for inspection and duplication at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N2634, Washington, D.C. 20210.

The address of the laboratory covered by this application is: Communication Certification Laboratory, 1940 West Alexander Street, Salt Lake City, Utah 84119.

Final Decision and Order

Based upon a preponderance of the evidence, and the OSHA staff findings and recommendations, including the recommendation and on-site review (''assessment'') report, dated August 28, 1997 (see Exhibit 8), OSHA finds that CCL has met the requirements of 29 CFR 1910.7 for renewal of its recognition to test and certify certain equipment or materials, for which CCL has previously been recognized by OSHA. Pursuant to the authority in 29 CFR 1910.7, CCL's recognition is hereby renewed, subject to the limitations and conditions listed below.

Limitations

This renewal of recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This renewal is further limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

CCL asserts by its application that these standards pertain to equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/UL 1012 Power Supplies
ANSI/UL 1459 Telephone Equipment
ANSI/UL1950 Information Technology Equipment Including Electrical Business Equipment

Conditions

Communication Certification Laboratory must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA shall be allowed access to CCL's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CCL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CCL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CCL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

CCL shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

CCL will continue to meet the requirements for recognition in all areas where it has been recognized; and

CCL will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C. this 27th day of March, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–8666 Filed 4–1–98; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–3–92]

TUV Rheinland of North America, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL).

SUMMARY: This notice announces the Agency's final decision on the application of TUV Rheinland of North America, Inc. for expansion of its recognition as a NRTL under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on April 2, 1998 and will be valid until April 2, 2003, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653 Washington, D.C. 20210, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the Occupational Safety and Health Administration (OSHA) has expanded the recognition of TUV Rheinland of North America, Inc. (TUV) as a Nationally Recognized Testing Laboratory (NRTL) to include the 4 test standards (equipment and materials), and the 5 additional programs and procedures listed below. TUV applied for expansion of its current recognition as a NRTL, pursuant to 29 CFR 1910.7, for equipment or materials and separately for programs and procedures. A notice for each application was published in the **Federal Register** on December 12, 1997 (62 FR 65446), and on January 8, 1998 (93 FR 1127), respectively. Both notices included a preliminary finding that TUV could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by February 10, 1998, and by March 9, 1998, respectively. No comments were received concerning these requests for expansion. The December 12 notice included a condition on the recognition of the additional standards. However, this condition is no longer necessary since it was to be eliminated once OSHA granted, and OSHA is granting, TUV recognition for the additional programs and procedures.

Copies of all documents (Docket No. NRTL–3–92) are available for inspection and duplication at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N2634, Washington, D.C. 20210.

The address of the TUV laboratory covered by this application is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newton, Connecticut 06470.

Background

TUV submitted a request, dated January 13, 1997 (see Exhibit 13C), to expand its recognition as a Nationally Recognized Testing Laboratory for additional test standards. TUV's request also included a request for recognition of an additional site. TUV reiterated its request in a letter dated May 12, 1997 (see Exhibit 13A). However, in a letter to OSHA dated September 15, 1997 (see Exhibit 13B), TUV requested that the expansion for the standards be processed first since the recognition of the additional site required additional processing time on OSHA's part. In a request dated September 15, 1997 (see Exhibit 13D), TUV amended its application to include recognition for additional programs and procedures, and submitted materials in support of this request.

In connection with the request for expansion, the NRTL Program staff performed an on-site survey (review) of TUV's Newton, CT facility on June 23–24, 1997. In the cover memo for the on-site review report, dated October 10, 1997 (see Exhibit 14), the NRTL Program staff recommended that TUV's recognition be expanded to include the additional test standards. In a recommendation dated November 25, 1997 (see Exhibit 16), the NRTL Program staff recommended that TUV's recognition be expanded to include the additional programs and procedures.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site review report, dated October 10, 1997(see Exhibit 14), and recommendation, dated November 25, 1997 (see Exhibit 16), OSHA finds that TUV has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify certain additional equipment or materials, and to use certain additional programs and procedures. Pursuant to the authority in 29 CFR 1910.7, TUV's recognition is hereby expanded to include the 4 test standards, and the 5 programs and procedures listed below, subject to the following limitations and condition.

Limitations

Additional Test Standards

This recognition is limited to equipment or materials that, under Title 29, require or permit testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is further limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

TUV asserts by its application that the following standards pertain to equipment or materials that will be used in environments under OSHA's jurisdiction, and OSHA has determined they are appropriate within the meaning of 29 CFR 1910.7(c):

UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements

UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements

UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

Additional Programs and Procedures

This recognition is also limited to the use of each of the following programs and procedures in compliance with their specific requirements, as described in the March 9, 1995 **Federal Register** notice (60 FR 12980 entitled, ''Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures'').

1. Acceptance of testing data from independent organizations, other than NRTLs.

2. Acceptance of product evaluations from independent organizations, other than NRTLs.

3. Acceptance of witnessed testing data.

4. Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

5. Acceptance of services (other than testing or evaluation) performed by subcontractors or agents.

Conditions

TUV Rheinland of North America, Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA shall be allowed access to TUV's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If TUV has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

TUV shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUV agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

TUV shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

TUV will continue to meet the requirements for recognition in all areas where it has been recognized; and

TUV will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C., this 27 day of March, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–8667 Filed 4–1–98; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

U.S. Participation in International Library and Information Policy Forums

The purpose of the collection is to obtain information from private individuals and organizations who regularly participate in international forums and other kinds of activities where library and information policy issues and concerns that are of major importance to the U.S. are previewed, discussed, debated, resolved and acted upon, including the promulgation of laws, rules, regulations, policies, standards, guidelines and other policy implementation instruments.

The most likely respondents to this collection include university faculty, researchers, public and private librarians, other kinds of information professionals, corporate representatives in the library and information field, experts and consultants, and government agencies whose missions embrace this field such as NTIA, NTIS, the Library of Congress, CRS, and so forth.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 500 hours.

The data collected will be used by NCLIS, major U.S. library and information associations, universities, library and information science schools, government agencies with international missions and programs, and selected private individuals to better plan their participation in such international activities so as to minimize duplication and overlap in these forums, and to sharpen U.S. policy focus.

The data collection is planned for the June–August 1998 timeframe.

Written comments and recommendations regarding this information collection should be sent within 30 days from the date of this publication directly to the U.S. National Commission on Libraries and Information Science, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005–3522, Attn: F.W. Horton, Jr., or by fax to (202) 606–9203, or electronically to wh__nclis@inet.ed.gov. For further information, call (202) 606–9200.

Public comments may also be directed to the Office of Management and Budget, Office of Regulatory and Information Affairs (OMB/OIRA), Room 10236 NEOB, Executive Office of the President, 17th & Pennsylvania Avenue, NW., Washington, DC 20503, Attn: Peter Weiss.

Dated: March 27, 1998

Robert S. Willard,

Acting Executive Director, U.S. National Commission on Libraries and Information Science.

[FR Doc. 98–8663 Filed 4–1–98; 8:45 am]

BILLING CODE 7527–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

March 27, 1998.

TIME AND DATE: 9:00 a.m., Monday, March 30, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will meet to consider whether further briefing should be ordered in *Secretary of Labor* v. *Harlan Cumberland Coal Co.*, Docket Nos. KENT 96–254, KENT 96–320 through 96–322, and KENT 96–333.

No earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Allen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sandra G. Farrow,

Acting Chief Docket Clerk.

[FR Doc. 98–8744 Filed 3–31–98; 11:56 am]

BILLING CODE 6735–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

March 25, 1998.

TIME AND DATE: 10:00 a.m., Thursday, April 2, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor* v. *Akzo Nobel Salt Co.*, Docket No. LAKE 96–66–RM (Issues include whether the judge erred in vacating the citation charging that the operator had less than two escapeways available in violation of 30 C.F.R. § 57.11050(a)).

TIME AND DATE: 2:00 p.m. Thursday, April 2, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor* v. *Akzo Nobel Salt Co.*, Docket No. LAKE 96–66–RM (*See* oral argument listing, *supra*, for issues).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sandra G. Farrow,

Acting Chief Docket Clerk.

[FR Doc. 98–8745 Filed 3–31–98; 11:56 am]

BILLING CODE 6735–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting: Notice of Previously Held Meeting

TIME AND DATE: 10:40 a.m., Tuesday, March 31, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428,

STATUS: Closed.

MATTER CONSIDERED:

1. OPM Report Related to Personnel Matters. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice, that it be closed to the public, and that earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. Deputy General Counsel James Engel certified that the meeting could be closed under those exemptions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–8857 Filed 3–31–98; 3:55 p.m.]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Title of Collection: Outcomes and Impacts of the State/Industry-University Cooperative Research Centers (S/IUCRC) Program

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

SEND COMMENTS TO: Gail A. McHenry, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 245, Arlington, Virginia 22230 or send e-mail to gmchenry@nsf.gov. Written comments should be received within 60 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: You may also obtain a copy of the data collection instrument and instructions from Mrs. McHenry, see address above.

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 on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Outcomes and Impacts of the State/Industry-University Cooperative Research Centers (S/IUCRC) Program. NSF's Directorate for Engineering established the S/IUCRC Program in 1990. The S/IUCRC Program was built on the model established by NSF's Industry/University Cooperative Research Centers (I/UCRC) Program. The NSF's Engineering Education and Centers Division (EEC) is seeking to identify (1) the extent to which the program has accomplished its goals; (2) lessons learned for continuous improvement of program performance; and (3) lessons learned that can inform planning for future NSF-state partnership. To achieve these objectives, data will be collected from representatives in organizations that are members of the nine active oldest centers (award cohorts 1991 and 1992) about the results in their organization from involvement with the center. Data will not be used to evaluate individual centers, but, rather, to study the program as a whole. Since the S/IUCRC Program shares some common program elements with the older I/UCRC Program, the project will also include collection of similar data from organizational representatives to 20 of the I/UCRCs as well.

Use of the Information: The I/UCRC data will be compared with the S/IUCRC data to enable identification of results from the S/IUCRC program that emanate from the program's distinctive elements.

Burden on the Public: The Foundation estimates about 560 one-time responses at 30 minutes per response; this computes to approximately 280 hours.

Dated: March 25, 1998.

Gail A. McHenry

Reports Clearance Officer.

[FR Doc. 98–8592 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date and time: April 21 & 22, 1998, 8:00 am–5:00 pm each day.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 630, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. Scott Collins, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate POWRE (Professional Opportunities for Women in Research and Education) research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8637 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting:

Name: Advisory Panel for Biomolecular Structure and Function − (1134) (Panel A).

Date and time: Wednesday, Thursday, and Friday 22–24, 1998, 8:30 a.m. to 6:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 340, Arlington, VA 22230.

Type of meeting: Closed.

Contact persons: Drs. Marcia Steinberg and P.C. Huang, Program Directors for Molecular Biochemistry, Room 655 National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1443).

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biochemistry Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8635 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cell Biology; 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: Advisor Panel for Cell Biology (1136) (Panel B).

Date and time: Wednesday, Thursday, and Friday, April 22, 23, and 24, 1998; 8:30 a.m. to 6:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Drs. Eve Barak & Richard Rodewald, Program Directors for Cell Biology, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1442).

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Cell Biology Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8636 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the month of April 1998, the Special Emphasis Panel will be holding a Nanotechnology Panel Meeting to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Name: Special Emphasis Panel in Chemical and Transport Systems.

Date and time: April 20–21, 1998, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1371.

Type of meeting: Closed.

Contact: Dr. M.C. Roco, Program Director, Fluid, Particulate, & Hydraulic Systems, Division of Chemical and Transport Systems (CTS), Room 525 (703) 306–1371.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Fluid, Particulate, & Hydraulic Systems as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8640 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cognitive, Psychological & Language Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following two meetings of the Advisory Panel for Cognitive, Psychological and Language Sciences (#1758):

1. *Date and time:* April 20–22, 1998; 8:30 a.m.–5 p.m.

Room: 370.

Contact person: Dr. Michael McCloskey, Program Director for Human Cognition and Perception, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

Agenda: Closed Session: April 20, 8:30 a.m.–5 p.m.; April 21, 8:30 a.m.–3 p.m. and 4 p.m.–5 p.m.; and April 22, 8:30 a.m.–5 p.m.—To review and evaluate human cognition and perception proposals as part of the selection process for awards.

Agenda: Open Session: April 21, 1998, 3 p.m.–4 p.m.—General discussion of the current status and future plans of Human Cognition and Perception.

2. *Date and time:* May 11–13, 1998; 9 a.m.–5 p.m.

Room: 365.

Contact person: Dr. Steven J. Breckler, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: Closed Session: May 11, 9 a.m.–5 p.m.; May 12, 9 a.m.–12 p.m. and 3 p.m.–5 p.m. and May 13, 9 a.m.–5 p.m.—To review and evaluate social psychology proposals as part of the selection process for awards.

Agenda: Open Session: May 12, 1998, 1 p.m.–2 p.m.—General discussion of current status and future plans of Social Psychology.

Type of meetings: Part-open.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Arlington, VA.

Purpose of meeting: To provide advice and recommendations concerning support for research proposals submitted to the National Science Foundation for financial support.

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: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8625 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer-Communication Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Computer-Computation Research (1192).

Date: April 20, 1998.
Time: 8:00 a.m.–5:00 p.m.
Place: Room 1120, National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230.
Type of meeting: Closed.
Contact person: Dr. Robert Grafton, Program Director, C–CR, room 1155, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703–306–1910.
Purpose of meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.
Agenda: To review and evaluate Computer Systems Architecture proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552bc, (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8627 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer and Computation Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Computer and Computation Research (1192).
Date: April 20 and 21, 1998.
Time: 8:00 a.m.–5:00 p.m.
Place: National Science Foundation, 4201 Wilson Boulevard, Room 770, Arlington, VA., 22230.
Type of meeting: Closed.
Contact person(s): Thomas Fuja, Program Director, Communications Program, CISE/CCR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA., 22230.
Telephone: (703) 306–1912.
Purpose of meeting: To provide advice and recommendations for the Communications Program by providing review of proposals.
Agenda: To review and evaluate Communications proposals as a part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8630 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross-Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities (1193).
Date and time: April 21, 1998; 8:30 am–5:00 pm.
Place: National Science Foundation, 4201 Wilson Boulevard, Room 1120, Arlington, VA 22230.
Type of meeting: Closed.
Contact person(s): Harry G. Hedges, Program Director CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.
Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate CISE Educational Innovation proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8638 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194).
Date and time: April 20, 1998, 8:00 a.m.–5:30 p.m.
Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of meeting: Closed.
Contact person: Dr. George A. Hazelrigg, Program Director, Design and Integration Engineering Program, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Purpose of meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.
Agenda: To review and evaluate Major Research Instrumentation (MRI) proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8631 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Developmental Mechanisms; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Developmental Mechanisms (1141).
Date and time: April 22–24, 1998, 8:30 a.m. to 5:00 p.m.
Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of meeting: Part-Open.
Contact person: Dr. Judith Plesset and Dr. James W. Mahaffey, Program Directors, Developmental Mechanisms, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 Telephone: (703) 306–1471.
Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Minutes: May be obtained from the contact persons listed above.
Agenda: Open Session: April 23, 1998; 10:00 a.m. to 10:30 a.m., to discuss goals and assessment procedures. Closed Session: April 22, 1998; 9:00 a.m. to 5:00 p.m.; April 23, 1998; 8:30 a.m. to 10:00 a.m. and 10:30 a.m. to 12:30 p.m. and 1:30 p.m. to 5:00 p.m., April 24, 1998; 8:30 a.m. to 12:00 p.m.; to review and evaluate Developmental Mechanisms proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5

U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8634 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59)

Date and time: Sunday, April 26, 1998, 4 p.m. to 8 p.m., Monday, April 27, 1998, 8 p.m. to 5 p.m., Tuesday, April 28, 1998, 8 p.m. to 5 p.m.

Place: National Science Foundation, Exhibit Center, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. James R. Oglesby, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1616.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Public Understanding and Engagement Mathematics Initiative proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8622 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).

Date and time: April 16–17, 1998; 8:30 AM–5:00 PM.

Place: Quissett Campus, Woods Hole Oceanographic Institution, McLean Conference Room, McLean Building, Woods Hole, MA.

Type of meeting: Closed.

Contact person: Dr. Heinrichs, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1576.

Purpose of meeting: To provide advice and recommendations concerning WHOI NOSAMS Operations Cooperative Agreement proposal.

Agenda: To review and evaluate WHOI NOSAMS Operations Cooperative Agreement proposal for continuation of center operations.

Reason for closing: The proposal being reviewed includes 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: March 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8594 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for Geosciences (1756).

Date: April 23, 1998.

Time: 8:00 a.m. to 6:00 p.m. each day.

Place: Room 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact person: Ms. Robin Reichlin, Program Director, Geophysics Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1556.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate cooperative studies of he earth's deep interior proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8623 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date and time: April 20 & 21, 1998; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 730.

Type of meeting: Closed.

Contact person: Dr. Michael A. Mayhew, Program Director, Education and Human Resources, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1557.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate POWRE proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8641 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (66).

Date and time: April 23, 1998—8:00 AM–5:30 PM; April 24, 1998—8:00 AM–4:00 PM.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

Type of meeting: Open.

Contact person: Adriaan de Graaf, Executive Officer, MPS, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1800.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise on methods of achieving overall program excellence in MPS.

Agenda: April 23, 1998.

AM—
Introductory Remarks
Discussion of New Scientific Initiatives

PM—
Review and Approval of Mathematics Committee of Visitors Report
Review and Approval of Chemistry Committee of Visitors Report
Report on Multidisciplinary Research

April 24, 1998

AM—
Report on Facilities
Review of Education Issues
Continued Discussion of New Scientific Initiatives

PM—
Assessment of Committee of Visitors Process
Meeting Wrap-up/Future Business

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8628 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting;

Name: Advisory Panel for Neuroscience (1158).

Date and time: April 23 & April 24, 1998; 9:00 a.m. to 6:00 p.m.

Place: Room 370, 4201 Wilson Boulevard, Arlington, VA.

Type of meeting: Part-Open.

Contact persons: Dr. Randy Nelson, Program Director; Division of Integrative Biology and Neuroscience; room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1423.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: April 24, 1998; 9:00 a.m. to 10:00 a.m., to discuss research trends and opportunities in Neuroendocrinology.

Closed session: April 23, 1998; 9:00 a.m. to 6:00 p.m.; April 24, 1998, 10:00 a.m. to 6:00 p.m. To review and evaluate Neuroendocrinology proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8632 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following three meetings.

Name: Special Emphasis Panel in Physics (1208).

Dates and times: Tuesday, April 21, 1998 9–5 pm; Wednesday, April 22, 1998 9–2 p.m.

Place: Room 311, Newman Laboratory, Cornell University, Ithaca, NY 14835–5001.

Type of meetings: Closed.

Contact person: Dr. Patricia Rankin, Program Director for Elementary Particle Physics, Division of Physics, Room 1015, Telephone: (703) 306–1898; National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the CESR five year operating funding request, the requirements for effective utilization of the facility as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8624 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and time: April 23–24, 1998 from 8:30 AM to 5:00 PM.

Place: Room 330, NSF 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. C. Denise Caldwell, Program Officer for Atomic, Molecular and Optical Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1807.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support of proposals submitted to the MPS Directorate in response to solicitation NSF 97–91.

Agenda: To review and evaluate POWRE proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8629 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Integrative Plant Biology Panel for Physiology and Ethology (1160).

Date and time: April 20–22, 1998, 8:30 a.m.–6:00 p.m.

Place: NSF, Room 330, 4201 Wilson Blvd., Arlington, VA.

Type of meeting: Part-Open.

Contact persons: Dr. Roger P. Hangarter, Program Director, Integrative Plant Biology, Division of Integrative Biology and Neuroscience, Room 685N, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1422.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: April 22, 1998, 10:30 a.m. to 11:30 a.m.—discussion on research trends, opportunities and assessment procedures in Integrative Plant Biology.

Closed session: April 20, 1998, 8:30 a.m.–6:00 p.m., April 21, 1998, 8:30 a.m.–6:00 p.m., April 22, 1998, 8:30 a.m. to 10:30 a.m. and 11:30 a.m. to 5:00 p.m. To review and evaluate Integrative Plant Biology proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8626 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Polar Programs, (1130).

Date and time: April 23, 1998, 9:00 am–5:30 pm; April 24, 1998, 9:00 am–4:00 pm.

Place: Room 1295.

Type of meeting: Open.

Contact person: Mr. Darren Dutterer, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1030. For easier building access, individuals planning to attend should contact Dr. Dutterer by April 20 so that your name can be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: Serves to provide expert advice to the Office of Polar Programs, including advise on science programs, polar operations support, budgetary planning and polar coordination and information.

Agenda: The OPP Advisory Committee will meet to discuss the following agenda topics—External Panel Recommendations and Responses, GPRA Performance Evaluation, Foundation-wide Arctic Activities and Plans, Long Range Planning, Future Science Directions, and Education and Outreach.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8633 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Social and Political Science; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, and amended), the National Science Foundation announces the following meetings:

Name: Advisory Panel for Social and Political Science (#1761).

Date and time: April 20–21, 1998; 9 a.m. to 5 p.m.

Place: National Science Foundation; 4201 Wilson Boulevard, Room 970; Arlington, VA 22230.

Contact person: Dr. Frank Scioli and Dr. Rick Wilson, Program Directors for Political Science, National Science Foundation. 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1761.

Agenda: To review and evaluate the political science proposals as part of the selection process for awards.

Date and time: April 30–May 1, 1998; 9 a.m. to 5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 920, Arlington, VA 22230.

Contact person: Dr. Harmon Hosch, Program Director, Law and Social Science, National Science Foundation. Telephone (703) 306–1762.

Agenda: To review and evaluate the Law and Social Science Proposals as a part of the selection process for awards.

Date and time: May 7–8, 1998, 9 a.m. to 5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Contact person: Dr. Barry Markovsky and Dr. William S. Bainbridge, National Science Foundation, Telephone (703) 306–1756.

Agenda: To review and evaluate the Sociology proposals as a part of the selection process for awards.

Type of meeting: Closed.

Purpose of meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

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) of the Government in the Sunshine Act.

Dated: March 30, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–8639 Filed 4–1–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 AND 50–446]

Texas Utilities Electric; Correction to Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

On March 27, 1998, the **Federal Register** published a Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing. On page 14975, under Texas Utilities Electric Company, Docket Nos. 50–445 and 50–446, first column, second paragraph, ''By April 13, 1998, the licensee may file a request for hearing * * *'' correct to read ''By April 27, 1998, the licensee may file a request for hearing * * *''.

Dated at Rockville, Maryland, this 27th day of March 1998.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Project III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8676 Filed 4–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89, issued to Texas Utilities Electric Company, (TU Electric, the licensee), for operation of the Comanche Peak Steam Electric Station, Units 1 and 2, located in Somervell County, Texas.

The proposed amendment would allow on a one time basis, crediting performance of Surveillance Requirements (SR) 4.8.1.1.2f.4(a) and 4.8.1.1.2f.6(a), during POWER OPERATIONS as opposed to ''during shutdown''. Note that the bus tie breaker for MCC XEB4–3 for Unit 2 was not tested during the last surveillance test and was the subject of previous enforcement discretion dated February 24, 1998, and License Amendment

Request 98–002. The failure to perform the surveillance was promptly reported to the NRC at the time of discovery and prompt action to remedy the situation was taken.

The licensee requested a Notice of Enforcement Discretion (NOED) by letter dated March 13, 1998. The NRC orally issued the NOED at 3:10 pm EST on March 13, 1998. Pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.c, of the ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600, the letter documenting the issuance of the NOED was dated March 17, 1998. The NOED was to be effective for the period of time it takes the NRC staff to process the proposed change to the TSs on an exigent bases.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Crediting the at power performance of the portions of surveillance testing necessary to demonstrate the OPERABILITY of the undervoltage relays, will not increase the probability or consequences of an accident previously evaluated. The conclusion has been reached that the probability of initiating an abnormal perturbation in the A.C. electrical distribution system is not created via the crediting of the tests. As the testing was conducted on only one train per unit at a given time, no increase in consequences, other than those previously postulated, are considered credible.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Perturbations in the A.C. electrical distribution system have been fully considered within the Final Safety Analysis Report. No new or different kind of perturbation or accident is deemed credible from crediting the performance of the testing.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Crediting the required testing at power does not create any new failure scenarios or abnormal A.C. electrical distribution perturbations. As such, there is no reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 4, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first

prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 18, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the University of Texas at Arlington Library, Government Publications/ Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Dated at Rockville, Maryland, this 30th day of March, 1998.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8677 Filed 4–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

In the Matter of Washington Public Power Supply System; Nuclear Project No. 2; Confirmatory Order Modifying License

Effective date: March 25, 1998.

I

Washington Public Power Supply System, WPPSS, (WPPSS or the Licensee) is the holder of Facility Operating License No. NPF–21, which authorizes operation of Nuclear Project No. 2 (WNP–2) located in Richland, Washington, at steady state reactor core power levels not in excess of 3485 megawatts thermal (rated power).

II

The staff of the U.S. Nuclear Regulatory Commission (NRC) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees that use Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the 1992 to 1994 time frame, the NRC staff issued Generic Letter (GL) 92–08, ''Thermo-Lag 330–1 Fire Barriers'' and subsequent requests for additional information that requested licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed all licensees' corrective plans and schedules. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For example, several licensees informed the NRC staff that their completion dates had slipped by 6 months to as much as 3 years. For plants that have completion action scheduled beyond 1997, the NRC staff has met with these licensees to discuss the progress of the licensees' corrective actions and the extent of licensee management attention regarding completion of Thermo-Lag corrective actions. In addition, the NRC staff discussed with licensees the possibility of accelerating their completion schedules.

WPPSS was one of the licensees with which the NRC staff held meetings. At these meetings, the NRC staff reviewed with WPPSS the schedule of Thermo-Lag corrective actions described in the WPPSS submittals to the NRC dated April 13, 1993, February 11, 1994, November 9, 1994, April 27, 1995, and September 26, 1997. Based on the information submitted by WPPSS and provided during the meetings, the NRC staff has concluded that the schedules presented by WPPSS are reasonable. This conclusion is based on the (1) amount of installed Thermo-Lag; (2) the complexity of the plant-specific fire barrier configurations and issues; (3) the need to perform certain plant modifications during outages as opposed to those that can be performed while the plant is at power; and (4) integration with other significant, but unrelated issues that WPPSS is addressing at its plant. In order to remove compensatory measures such as

fire watches, it has been determined that resolution of the Thermo-Lag corrective actions by WPPSS must be completed in accordance with current WPPSS schedules. By letter dated February 27, 1998, the NRC staff notified WPPSS of its plan to incorporate WPPSS's schedular commitment into a requirement by issuance of an order and requested consent from the Licensee. By letter dated March 12, 1998, the Licensee provided its consent to issuance of a Confirmatory Order.

III

The Licensee's commitment as set forth in its letter of March 12, 1998, is acceptable and is necessary for the NRC to conclude that the public health and safety are reasonably assured. To preclude any schedule slippage and to assure public health and safety, the NRC staff has determined that the Licensee's commitment in its March 12, 1998, letter be confirmed by this Order. The Licensee has agreed to this action. Based on the above, and the Licensee's consent, this Order is effective March 25, 1998.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, It is hereby ordered, effective March 25, 1998 that:

WPPSS shall complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at Washington Public Power Supply System, Nuclear Project No. 2, described in the WPPSS submittals to the NRC dated April 13, 1993, February 11, 1994, November 9, 1994, April 27, 1995, and September 26, 1997, during the R–14 Maintenance and Refueling Outage (Spring 1999). Overall work package close-out will be completed by December 1999.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington,
D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Docketing and Services Section, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV at 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the effectiveness of this Order.

Dated at Rockville, Maryland this 25th day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8546 Filed 4–1–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 16, 1998 [62 FR 2715].

DATES: Comments must be submitted on or before May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Research and Standards, (202) 366–4009, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Emergency Relief Funding Applications.

OMB Number: 2125–0526.

Type of Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: Motor carriers.

Abstract: Title 49 of the Code of Federal Regulations, Section 390.15 of the Federal Motor Carrier Safety Regulations (FMCSRs), requires motor carriers to make all records and information pertaining to crashes (accidents) available to an authorized representative or special agent of the Federal Highway Administration (FHWA) upon request or as part of an inquiry. For the purposes of Sec. 390.15, ''accident'' is defined as an occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in (1) A fatality; (2) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident; or (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle (49 CFR 390.5). Occurrences involving only boarding and alighting from a stationary motor vehicle or involving only the loading or unloading of cargo are not included in the definition.

Motor carriers are required to maintain an accident register for one year after the date of the accident. The register must include a list of each accident. The information for each accident must include, at a minimum, the following elements: date of accident;

city or town in which or most near where the accident occurred and the State in which the accident occurred; driver name; number of injuries; number of fatalities; and whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released. In addition, the register must contain copies of all accident reports required by State or other governmental entities or insurers.

There are no prescribed forms. The records are used by the FHWA and its representatives as a source of information for investigations or special studies, and to assess the effectiveness of motor carriers' safety management controls.

Estimated Annual Burden Hours: 3,305.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FHWA Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and 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.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on March 26, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–8662 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 98–NHTSA–98–3651; Notice 1]

Long Range Strategic Planning

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and Request for Comment.

SUMMARY: NHTSA has published a draft Strategic Plan that supports Secretary Slater's recently published Department of Transportation Strategic Plan. The agency invites comments and suggestions that will be used in development of the final plan.

FOR FURTHER INFORMATION CONTACT: Eleanor A. Hunter, Strategic Planning Division, NPP–11, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington D.C. 20590, telephone 202/366–2573, facsimile 202/366–2559. Copies of the draft Strategic Plan are available on the NHTSA Home Page (http://www.nhtsa.dot.gov) or by written request to NHTSA. Copies of all public comments will be available on the DOT Home Page 24 hours after receipt in the docket.

DATES: Comments are due no later than May 18, 1998.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 10:00 a.m.-5:00 p.m. EST, Monday–Friday.)

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration's mission is to prevent motor vehicle crashes, save lives, prevent injuries, and reduce resulting health care and other economic costs. The agency develops and promotes educational, engineering, and enforcement strategies to end preventable tragedies and reduce economic costs of vehicle use and highway travel.

Traffic safety in the United States has experienced a dramatic improvement in the past twenty years. Fewer people are killed and injured in crashes, and travel on U.S. roadways is the safest on record. These gains result from: improved vehicle crashworthiness and crash avoidance; positive change in driver and passenger safety behavior; heightened public interest in safety; a national commitment to healthier lifestyles; and advances in medical care. Programs promoted by the agency are credited with saving over a quarter million lives and $700 billion in societal cost.

Traffic safety nonetheless remains a major public health issue. Traffic crashes result in 94 percent of the deaths and 99 percent of the injuries in U.S. transportation. Traffic crashes are the leading cause of death for ages 6 to 27, the major cause of occupational injury, and the leading source of health care costs. The yearly economic cost to society exceeds $150 billion.

Since publishing its first strategic plan in November 1994, NHTSA has expanded safety partnerships, focused attention on injury prevention, given a human face to the tragedy of crashes, and provided tools to empower safety advocates to take responsibility and work with us. Safety trends demonstrated that strategies guiding agency programs have been successful, but recently, indicators of traffic safety have stagnated, showing little if any improvement.

The agency's programs are closely aligned with the DOT strategic goals, and the linkage with our program areas is indicated in the plan. In September 1997, DOT published its new strategic plan containing five goals: safety; mobility; economic growth and trade; human and natural environment; and national security. NHTSA's primary role in the Department is to improve U.S. traffic safety and provide leadership for improving vehicle safety worldwide. Our programs make secondary contributions to DOT's mobility, economic growth and trade, and human and natural environment goals.

As the country approaches the new millennium, the agency views this as an important opportunity to reassess traffic safety issues facing this country and determine effective strategies for continuing historic improvements in traffic safety. The so-called ''easy program fixes'' have been made; achieving safety gains in the future will become more difficult, thus new strategies will be needed. The approaches traditionally promoted by NHTSA need to be reassessed jointly with the traffic safety community. New ideas and strategies must be defined and then added to the safety agenda of traditional programs that have demonstrated effectiveness in benefitting vehicle and behavioral safety.

NHTSA's goal (developed jointly with the Federal Highway Administration) is to reduce traffic fatalities and injuries 20 percent by the year 2008. Reaching this goal means deaths will decline from 41,900 (1996) to 33,500 (2008) and injuries will decline from 3.5 million to 2.8 million. Achieving these goals would reduce the traffic fatality rate by 35 percent, and save $2.3 billion annually in health care costs. The agency looks forward to working with its partners and the general public to design a final plan that will help NHTSA achieve its goal.

The ideas and expertise of agency partners, other groups and the public are essential ingredients in the agency's strategic planning process. Therefore, the purpose of this notice is to

announce availability of the agency's proposed strategic plan for formal review and comment by all individuals and organizations interested in highway safety, vehicle safety, injury prevention, customer service, program delivery and non-safety activities of NHTSA. Comments should address specific information presented in the strategic plan and if warranted, be accompanied by supporting information. It is requested (but not required) that ten copies of the comments be submitted. Comments, exclusive of attachments, should not exceed fifteen pages (49 CFR 553.21).

Comments received by closing date (listed below) will be considered, and can be examined in the docket room (address below) and on the Internet (DOT Home Page) before and after that date. Comments filed after the closing date will be considered to the extent possible. Relevant information will continue to be filed as it becomes available, thus it is recommended that interested persons continue to examine the docket for new material. People/organizations desiring to be notified of receipt of their comments should include a self-addressed, stamped postcard, and upon official receipt of your comments, the docket supervisor will mail your postcard to you.

Issued on March 23, 1998.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 98–8562 Filed 4–1–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33572]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over two segments of BNSF's line: (1) between Council Bluffs, IA, at milepost 483.6 on BNSF's Bayard Subdivision (at a point which is equal to milepost 12.8 on BNSF's Omaha Subdivision) and Hastings, NE, at milepost 156.5 on BNSF's Hastings Subdivision, a distance of approximately 214.6 miles over a segment which extends from Council Bluffs through Omaha, NE, Ashland, NE, Lincoln, NE, Crete, NE, and Fairmont, NE, to Hastings, for the period March 30, 1998, through July 15, 1998; and (2) between Hastings, NE, at milepost 156.5 on BNSF's Hastings Subdivison and Northport, NE, at milepost 34.4 on BNSF's Angora Subdivision, a distance of approximately 387.7 miles over a segment which extends from Hastings though Holdredge, NE, Oxford, NE, Culbertson, NE, Wray, CO, East Brush, CO, Sterling, CO, and Sidney, NE, to Northport, for the period March 30, 1998, through September 30, 1998.[1]

The transaction is scheduled to be consummated on or after March 30, 1998.

The purpose of the trackage rights is to permit UP to use the BNSF trackage when UP's trackage is out of service for scheduled programmed track, roadbed and structural maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33572, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Decided: March 25, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–8526 Filed 4–1–98; 8:45 am]

BILLING CODE 4915–00–P

[1] On March 23, 1998, UP filed a petition for exemption in STB Finance Docket No. 33572 (Sub-No. 1), *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP requests that the Board permit the overhead trackage rights arrangement described in the present proceeding to expire for the portion of track between Council Bluffs and Hastings effective July 16, 1998, and to expire for the portion of track between Hastings and Northport effective October 1, 1998. That petition will be addressed by the Board in a separate decision.

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors.

TIME AND DATE: 9 a.m., Friday, April 3, 1998.

PLACE: Telephone Meeting.

STATUS: The Board meeting will be closed to the public. This meeting has been rescheduled from Thursday, April 2, 1998.

MATTER TO BE CONSIDERED: Issues related to the privatization of the Corporation and other commercial, financial and operational issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Joseph Tomkowicz 301/564–3345.

Dated: March 31, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–8833 Filed 3–31–98; 3:05 pm]

BILLING CODE 8720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, gives notice that a meeting of the Advisory Committee on Minority Veterans will be held from Monday, April 27, through Wednesday, April 29, 1998, in Washington, DC. The purpose of the Advisory Committee on Minority Veterans is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services for minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The meeting will convene in room 230, VA Central Office (VACO) Building, 810 Vermont Avenue, NW, Washington, DC, from 8:30 A.M. to 5:00 P.M. On Monday, April 27, the Committee will focus on VA health care delivery to minority veterans and receive reports from Veterans Health Administration officials on implementation of the Advisory Committee's recommendations contained in its two previous annual reports. The Committee will also receive testimony from several Veterans Service Organizations. On Tuesday, April 28,

the Committee will review the reports of subcommittee activities since the January meeting. The Committee will also finalize budgets for each subcommittee and schedule field visits for the coming year. On Wednesday, April 29, the Committee will begin outlining and drafting its fourth annual report to the Secretary of Veterans Affairs. These sessions will be open to the public. It will be necessary for those wishing to attend to contact Mr. Anthony T. Hawkins, Department of Veterans Affairs phone (202) 273–6708 prior to April 20, 1998. No time will be allocated for the purpose of receiving oral presentations from the public. However, the Committee will accept appropriate written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (OOM), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: March 19, 1998.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–8603 Filed 4–1–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 that the annual meeting of the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee will be held at the Park Plaza International Hotel, 1177 Airport Boulevard, Burlingame, CA, May 1–2, 1998. Participant registration begins 8:00 a.m. to 5:00 p.m., in the Burlingame Foyer, Thursday, April 30, through Saturday, May 2, 1998. The meeting is open to the pubic.

The committee, comprised of sixty-two national voluntary organizations, advises the Under Secretary for Health and other members of the Department of Veterans Affairs Central Office staff on how to coordinate and promote volunteer activities within VA facilities. The primary purposes of this meeting are: to provide for committee review of volunteer policies and procedures; to accommodate full and open communications between the organizations, representatives and the Voluntary Service Office and field staff; to provide educational opportunities geared towards improving volunteer programs with special emphasis on methods to recruit, retain, motivate and recognize volunteers; and to approve committee recommendations.

On Friday, May 1, from 8:00 a.m. until 9:00 a.m. there will be meetings of the following Subcommittees: Finance, Salon A; Recommendations, Salon B; and Positive Projects, Salon F. From 9:00 a.m. until 12:30 p.m. there will be a meeting of the Executive Committee in the Burlingame Rooms 1–3. There will be a luncheon from 12:30 p.m. until 2:00 p.m. in the Peninsula Room. A new member orientation will be provided from 2:00 p.m. until 3:00 p.m., and from 3‘00 p.m. until 5:00 p.m. there will be an open forum for all participants in the Burlingame Rooms 1–3.

On Saturday, May 2, 1998, there will be a Business Session from 8:00 a.m. until 5:00 p.m. The morning business session will include: a report from the Chairperson of the Executive Committee; Subcommittee reports; voting on recommendations; VA Voluntary Service annual report; an address by VA’s Deputy Assistant Secretary for Public Affairs; a report from VA’s Office of General Counsel concerning community volunteer assignments; and an address from VA’s Veterans Canteen Service program. The remainder of the business sessions will be devoted to interactive training sessions on: Respite Care; the Adopt a Veteran Program; Career Exploration Volunteers; Positive Projects; and Creative Job Assignments for Volunteers.

FOR FURTHER INFORMATION, CONTACT: The Director, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420, (202) 273–8952.

Dated: March 19, 1998.

By Direction of the Acting Secretary.

Heyward Bannister.

Committee Management Officer.

[FR Doc. 98–8602 Filed 4–1–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 63, No. 63
Thursday, April 2, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018--AE83

Endangered and Threatened Wildlife and Plants; Proposed Reclassification From Endangered to Threatened Status for the Mariana Friut Bat From Guam, and Proposed Threatened Status for the Mariana Fruit Bat From the Commonwealth of the Northern Mariana Islands

Proposed rule document 98-7836 was inadvertently published in the Rules and Regulations section of the issue of Thursday, March 26, 1998, beginning on page 14641. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

Federal Register

Thursday
April 2, 1998

Part II

Department of Health and Human Services

42 CFR Part 121

Organ Procurement and Transplantation Network; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR PART 121

[Docket Number: 98–HRSA–01]

RIN 0906–AA32

Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule with comment period.

SUMMARY: This document sets forth the final rule governing the operation of the Organ Procurement and Transplantation Network (OPTN), which performs a variety of functions related to organ transplantation under contract with HHS. The document also offers a 60 day period for additional public comment. The rule will become effective 30 days following the close of the comment period. If the Department believes that additional time is required to review the comments, we will consider delaying the effective date. In combination with a new National Organ and Tissue Donation Initiative, this rule is intended to improve the effectiveness and equity of the Nation's transplantation system and to further the purposes of the National Organ Transplant Act of 1984, as amended. These purposes include: encouraging organ donation; developing an organ allocation system that functions as much as technologically feasible on a nationwide basis; providing the bases for effective Federal oversight of the OPTN (as well as for implementing related provisions in the Social Security Act); and, providing better information about transplantation to patients, families and health care providers.

DATES: These regulations are effective July 1, 1998.

Comments on this final rule are invited. To ensure consideration, comments must be received by June 1, 1998.

ADDRESSES: Written comments should be addressed to Jon L. Nelson, Associate Director, Office of Special Programs, Room 123, Park Building, 12420 Parklawn Drive, Rockville, MD 20857. All comments received will be available for public inspection and copying at the above address, weekdays (Federal holidays excepted) between the hours of 9:00 a.m. and 4:00 p.m. A copy of this rule, and selected background materials, will be posted on the Division of Transplantation Internet site at http://www.hrsa.dhhs.gov/bhrd/dot/dotmain.htm.

FOR FURTHER INFORMATION CONTACT: Jon L. Nelson, Associate Director, Office of Special Programs, Room 7–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–7577.

SUPPLEMENTARY INFORMATION: Over the past two decades, the safety and survival rates for transplantation of human organs have improved markedly, and the number of transplants has increased. In 1996, about 20,000 transplants were performed in the United States. At the same time, the rapid development of transplant techniques and the growth of the Nation's transplant system present new challenges:

1. *The demand for organs for transplantation exceeds the supply, and this gap is growing.* About 4,000 persons died in 1996 while awaiting transplantation.

2. *The Nation's organ allocation system remains heavily weighted to the local use of organs instead of making organs available on a broader regional or national basis for patients with the greatest medical need consistent with sound medical judgment.* Technological advances have made it possible to preserve organs longer and share them more widely, but the allocation system does not yet take full advantage of this capacity. Instead, some patients with less urgent medical need receive transplants before other patients with greater medical need whether listed locally or away from home.

3. *The criteria used in listing those who need transplantation vary from one transplant center to another, as do the criteria used to determine the medical status of a patient.* This lack of uniform, medically objective criteria make it difficult to compare the medical need of patients in different centers.

4. *As a result of both the local preference in allocation and the lack of standard medical criteria, waiting times for organs are much longer in some geographic areas than in others.* The statute envisions a national allocation system, based on medial criteria, which results in the equitable treatment of transplant patients. But equitable treatment cannot be assured if medical criteria vary from one transplant center to another and if allocation policies prevent suitable organs from being offered first to those with the greatest medical need.

5. *Useful, current, transplant-center specific data for patients and health care providers are not available, despite information technology advances that make more current reporting feasible.*

Efforts are needed to address these challenges in the areas of both donation and allocation:

In order to bring about substantial increases in the number of organ donors and the number of transplants performed each year, a new National Organ and Tissue Donation Initiative has been launched. Working in partnership with national and local organizations, the Department of Health and Human Services (HHS) seeks to increase donation through encouraging more individuals to chose to be organ donors and that share that decision with their families; through improved performance by hospitals and organ procurement organizations toward ensuring that the families of potential donors are given the opportunity to allow donation; through higher consent rates by families, especially by encouraging those who elect to be organ donors to inform their families of their decision; and through new research on enhancing donation. Proposed regulations affecting hospitals and organ procurement organizations were published December 19, 1997 (62 FR 66725). The Department expects that the supply of organs may be raised by about 20 percent through this initiative, which would greatly alleviate organ shortages.

In order to improve allocation of organs for transplantation, this final rule establishes performance goals to be achieved by the OPTN. Actions already underway in the OPTN are consistent with several of these goals. The rule does not establish specific allocation policies, but instead looks to the organ transplant community to take action to meet the performance goals. The goals include:

- Minimum Listing Criteria—The OPTN is required to define objective and measurable medical criteria to be used by all transplant centers in determining whether a patient is appropriate to be listed for a transplant. In this way, patients with essentially the same medical need will be listed in the same way at all transplant centers.
- Status Categories—The OPTN is required to determine objective medical criteria to be used nationwide in determining the medical status of those awaiting transplantation. This will provide a common measurement for use by all transplant centers in determining the urgency of an individual's medical condition, and it will facilitate OPTN efforts to direct organs to those with greatest medical need, in accordance with sound medical judgment.
- Equitable Allocation—The OPTN is required to develop equitable allocation policies that provide organs to those with the greatest medical urgency, in accordance with sound medical judgment. This increases the likelihood of patients obtaining matching organs,

and gives all patients equal chances to obtain organs compared to other patients of equal medical status, wherever they live or list.

By requiring common criteria for listing eligibility and medical status, and by requiring that organs be directed so as to equalize waiting times, especially for those with greatest medical need, this rule is designed to provide patients awaiting transplants with equal access to organs and to provide organs to sickest patients first, consistent with sound medical judgment. While present OPTN policies give weight to medical need, the ''local first'' practice thwarts organ allocation over a broad area and thus prevents medical need from being the dominant factor in allocation decisions.

Under the provisions of this rule, it is intended that the area where a person lives or the transplant center where he or she is listed will not be primary factors in how quickly he or she receives a transplant. Instead, organs will be allocated according to objective standards of medical status and need. In this way, suitable organs will reach patients with the greatest medical need, both when they are procured locally and when they are procured outside the listed patients' areas. This objective reflects the views of many commenters on the proposed regulations, as well as the finding of the American Medical Association in its *Code of Medical Ethics:* ''Organs should be considered a national, rather than a local or regional resource. Geographical priorities in the allocation of organs should be prohibited except when transportation of organs would threaten their suitability for transplantation.''

The OPTN is required to develop proposals for the new allocation policies (except for livers) within a year of the effective date of the final rule. In the case of liver allocation policies, where policy development work has been underway for several years, the OPTN is required to develop a new proposed allocation policy within 60 days of the effective date.

Other provisions of this rule include requirements that the OPTN make more current data available for the public, including measures of performance of individually identified transplant centers. This information is needed by patients, families, physicians, and payers in choosing a course of action and is needed as a quality measurement instrument.

In addition, the rule defines the governing structure of the OPTN and outlines procedures for the establishment of policies by the OPTN that include appropriate participation by transplant professionals and families, with oversight by HHS. The rule also includes a requirement that the OPTN develop a ''grandfathering'' proposal for patients currently awaiting liver transplantation so that these patients are treated no less favorably under the new allocation policies than they would have been under current allocation policies. The OPTN also is required to develop proposed transition policies for the initial changes required by this rule to its allocation policies for other organs.

The National Organ and Tissue Donation Initiative and this final rule build on more than a decade of experience, including improving medical technology, to create a national community of organ sharing and to save and improve more lives through transplantation. The rule defines Federal expectations, based on the role given to the Secretary under the statute, but looks to the OPTN to propose policy choices that meet those expectations.

The remainder of this preamble is arranged under the following headings.

I. Background

A. Overview

The National Organ Transplant Act of 1984 (NOTA) created the Organ Procurement and Transplantation Network (OPTN). The Act has been the subject of two major sets of amendments. In each instance, the Congress acted to encourage the development of a fair, national system of organ allocation. The original statute (Pub. L. 98–507, title II, § 201, formerly codified at 42 U.S.C. 274(b)(2)(C)) required the OPTN to ''assist organ procurement organizations in the distribution of organs *which cannot be placed within the service areas of the organizations.*'' (Emphasis supplied.) However, the underscored language was removed in a 1988 amendment to the NOTA (Pub .L. 100–607, title IV, § 403, formerly codified at 42 U.S.C. 274(b)(2)(D)), according to the Senate ''so as to remove any statutory bias respecting the important question of criteria for the proper distribution of organs among patients.'' S. Rep. No. 100–310 at 14–15 (1988). In 1990, this language was again rewritten, this time to require that the OPTN ''assist organ procurement organizations in the *nationwide* distribution of organs *equitably among transplant patients.*'' (Emphasis supplied.) Pub. L. 101–616, title II, § 202, now codified at 42 U.S.C. 274(b)(2)(D). The Senate explained that ''[b]ecause the demand for transplantable organs is expected to continue to be considerably greater than the supply, a fair and equitable organ sharing system is critical to the future of a national transplant program that the public will support.'' S. Rep. No. 101–530 at 7 (1990) (The 1990 amendments also required that the OPTN report on comparative costs and patient outcomes at all transplant centers). As discussed in more detail below, in 1986 the Congress also amended the Social Security Act to make OPTN membership, and compliance with allocation policies approved by the Secretary, mandatory rather than voluntary for Medicare-participating hospitals and all organ procurement organizations.

Thus, the Congress envisioned an equitable national system that would be

operated by the transplant community—including physicians and officials of transplant facilities as well as other specialists and individuals representing transplant patients, their families, and the general public—with oversight by HHS.

Human organs that are donated for transplantation are a public trust. These regulations are intended to ensure that donated organs are equitably allocated among all patients, with priority to those most in need in accordance with sound medical judgment. These regulations also complement the recently announced National Organ and Tissue Donation Initiative. The initiative addresses the fact that organ donation has not kept pace with the need. Only about a third of potential cadaveric donations are made; and, when families are asked, only about half give consent. The initiative seeks to improve the number of potential donors identified and asked to donate organs. This improvement would be accomplished through proposed rules, published in the **Federal Register** on December 19, 1997, which would require Medicare-participating hospitals to work more closely with local organ procurement organizations. A similar approach was adopted by the Commonwealth of Pennsylvania, effective March 1995. By 1997, a 40 percent increase in organ donors and a 49 percent increase in organ transplants had taken place in southeastern Pennsylvania.

The initiative also seeks to improve the percentage of donations when requests are made to donate. The initiative will accomplish this goal by working with a number of partners to eliminate barriers to donation, such as the failure of individuals wishing to donate organs to discuss their wishes with their families. The initiative also seeks to learn more about what works to increase organ donation and to disseminate that knowledge broadly.

Advances in medical science and technology have made organ transplantation an increasingly successful and common medical procedure. Experience performing transplants and the development of better immunosuppressive regimens have increased the survival rates for transplant recipients. Comparing data for transplants performed in 1988 with data for transplants performed in 1995, one year patient survival rates increased as follows: livers, from 81 percent to 87 percent; hearts, from 83 percent to 85 percent; and lungs from 50 percent to 77 percent.

In addition, technological advances have made broader geographic sharing possible. For example, the use of the Belzer UW solution, developed in the 1980s, has dramatically increased both graft survival rates and the time in which the organ survives out of the body. This ''cold ischemic time'' is used to transport an organ to a potential recipient.

This rule is intended to ensure that organ allocation policies are continuously reevaluated and revised to meet the statutory goal of equitable national allocation of organs in accordance with medical criteria.

This rule provides the framework for OPTN activity by clarifying how the essential functions of the OPTN should be conducted in order to better achieve an equitable national system.

Several evaluations of organ allocation have recommended a truly national waiting system for organ allocation. A 1990 evaluation of the OPTN conducted by Abt Associates recommended that the OPTN develop a national patient-focused system:

> Unless there is a clear disadvantage to patients or procurement in having a single national list for each organ, the OPTN should move towards a single national list and develop point schemes that minimize cold ischemic and transplant times.

Evaluation of the Organ Procurement and Transplantation Network, at 85 (Abt Associates, August 21, 1990)

The HHS Office of Inspector General reached similar conclusions, finding that ''current organ distribution practices fall short of congressional and professional expectations,'' and that ''[t]here has been substantial progress in developing a national organ distribution system grounded in uniform policies and standards. However, organ distribution remains * * * confined primarily within the individual service areas of the * * * Organ Procurement Organizations.'' *The Distribution of Organs for Transplantation: Expectations and Practices* at 8, 13 (Office of Inspector General, March 1991).

Current OPTN organ allocations policies still do not create the truly national system intended by the statute. Current OPTN allocation policies do not reflect the more equitable, broader sharing possible under current views of appropriate cold ischemic time. These policies nominally give priority to the life or death needs of the sickest patients, but the resulting allocation schemes fall short of that objective. By allocating organs primarily at the local level, OPTN policies give the sickest patients a substantially lower chance at being promptly matched to a suitable organ (and thereby receiving a potentially life-saving transplant) than would be the case with broader geographic sharing.

At the national level, these policies treat patients inequitably because they create enormous geographic disparities in the time patients must wait to receive transplants. This approach is inconsistent with the views of transplant candidates and the general public who, according to a 1994 OPTN-initiated survey, were likely to give top priority to the policy that ''makes waiting time about the same for all patients nationally.'' Page 8 of the United Network for Organ Sharing (UNOS) comments on the NPRM, December 6, 1994. In effect, these policies treat the sickest patients differently depending on where they live or which transplant hospital's waiting list they are on. This result also is inconsistent with the views of at least half of transplant recipients and candidates, who, according to the same survey, ''would give top priority to a patient who is the most critically ill and has the least time to live.'' Page 7 of UNOS comments. Finally, this approach is inconsistent with the views of a blue ribbon panel that examined a broad range of issues pertaining to organ transplantation, including the technical, practical, and ethical limitations on sharing organs. The panel noted:

> The principle that donated cadaveric organs are a national resource implies that,
>
> In principle, and to the extent technically and practically achievable, any citizen or resident of the United States in need of a transplant should be considered as a potential recipient of each retrieved organ on a basis equal to that of a patient who lives in the area where the organs or tissues are retrieved. Organs and tissues ought to be distributed on the basis of objective priority criteria, and not on the basis of accidents of geography.

Report of the Task Force on Organ Transplantation, April 1986 at 91 (quoting Hunsicker, LG)

Another flaw in current OPTN policies pertains to disclosure of information. The statute requires the Secretary to provide information to patients, their families, and physicians about transplantation. Current policies in this area do not give patients, their families, and physicians the timely information they need to help in selecting a transplant hospital. For example, one-year survival rates of patients and organ grafts are valuable information in comparing the relative effectiveness of transplant programs. However, today a patient seeking this information would have to rely on four year old OPTN data released in 1997. Moreover, these data are contained in

nine volumes with 3,200 pages. A patient seeking to compare centers would find these data difficult to use. In addition, access to accurate, timely data will enable the Department to monitor the effectiveness of organ transplantation and provide the general public with information on how well the transplantation network is performing.

The National Organ Transplant Act vested in the Secretary oversight of the OPTN and responsibility for ensuring public benefit. Amendments to the Social Security Act in 1986 underscored the Secretary's role. Working in partnership with the transplant community, the Secretary has final authority over OPTN policies and procedures. In particular, the Secretary has a statutory mandate not only to ensure that the OPTN distributes organs ''equitably'' and fulfills other statutory requirements but also to obtain and act upon ''critical comments relating to the manner in which (the OPTN) is carrying out the duties of the Network.'' The Secretary has chosen to issue regulations for the purpose of ensuring that the system evolves to keep pace with improvements in technology and medical science (such as improvements in organ preservation technology and reductions in the disparities in survival rates among more sick and less sick patients) and is operating effectively and efficiently to meet its statutory goals.

Six principles underlie this regulation:

- Transplant patients are best served by an organ allocation system that functions equitably on a nationwide basis;
- The Secretary of Health and Human Services should represent the public interest by setting broad goals for the OPTN and by overseeing OPTN policy development and operations with a view toward ensuring that the goals are being addressed in a reasonable manner;
- The OPTN must exercise leadership in performing its responsibilities under the National Organ Transplant Act, in particular by devising the specific policies assigned under these regulations, and by adapting its policies and procedures to changes in medical science and technology;
- Organs should be equitably allocated to all patients, giving priority to those patients in most urgent medical need of transplantation, in accordance with sound medical judgment;
- Thorough, timely, and easy to use information about transplant centers, including center-specific performance data, is essential for measuring quality of care and should be readily available to help patients and physicians in choosing among transplant centers;
- Potential conflicts of interest should be minimized for those who are responsible for operation of the OPTN.

B. Legislative and Regulatory History

The OPTN was established under section 372 of the PHS Act, as enacted by the National Organ Transplant Act of 1984 (Pub. L. 98–507), and amended by Pub. L. 100–607 and Pub. L. 101–616. Section 372 requires the Secretary to provide by contract for the establishment and operation of the OPTN to manage the organ allocation system, to increase the supply of donated organs, and to perform related and other activities.

Until the enactment of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), membership in the OPTN was voluntary. Section 9318 of Public Law 99–509 added a new section 1138 to the Social Security Act. Section 1138(a)(1)(B) requires hospitals that perform organ transplants to be members of and abide by the rules and requirements of the OPTN as a condition for participation in the Medicare and Medicaid programs. This requirement places at risk the transplant hospitals' participation in these programs, not just payments for transplantation, and as a practical matter makes the hospitals' survival dependent on following such rules and requirements. Section 1138(b)(1)(D) requires that to be eligible for reimbursement of organ procurement costs by Medicare or Medicaid an OPO must be a member of and abide by the rules and requirements of the OPTN.

Section 102(c) of the Balanced Budget and Emergency Deficit Control and Reaffirmation Act of 1987 (Pub. L. 100–119) delayed the effective date of § 1138(a) of the Social Security Act concerning hospitals from October 1, 1987, to November 21, 1987, and § 4009(g) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) further delayed the effective date of § 1138(b) of the Act concerning OPOs to April 1, 1988.

The Organ Transplant Amendments of 1988 (Title IV of Pub. L. 100–607) amended § 372 of the Public Health Service Act to require that the OPTN establish membership criteria and subject its policies to public review and comment.

On March 1, 1988 (53 FR 6526), the Department published final rules that included the requirement that Medicare/Medicaid participating hospitals that perform transplants, and designated OPOs, be members of and abide by the rules and requirements of the OPTN (42 CFR 485.305 (now 42 CFR 486.308) and 482.12(c)(5)(ii)) in order to qualify for Medicare or Medicaid payments.

On December 18, 1989, the Department published a **Federal Register** Notice (54 FR 51802) addressing the oversight of the OPTN. In that Notice, the Secretary stated that no OPTN policies would become legally binding ''rules or requirements'' of the OPTN for purposes of section 1138 until or unless they were approved by the Secretary.

The 1994 proposed regulations (59 FR 46482) were intended to implement that decision, as is this final rule with comment period. In those proposed regulations, the Secretary raised a wide range of issues, including procedures for joining the OPTN, the Federal review processes, procedures and standards for information collection and dissemination; membership requirements and compliance procedures; and the criteria for allocation of each of the solid organs. On November 13, 1996, the Secretary issued a **Federal Register** notice reopening the comment period and announcing a public hearing to be held in December 1996, to address issues raised by those proposed regulations, and to hear ideas regarding increasing organ donation and the controversial and difficult problems surrounding organ allocation generally and liver allocation policies in particular. From December 10 to 12, 1996, that hearing was held. As under the proposed regulations, the final rule provides for Federal oversight of the processes by which the OPTN allocates organs for transplantation. It focuses the Federal role on ensuring that those processes and resulting policies are equitable, provides for broader public participation and Secretarial review, and includes access to information for patients and their families and physicians.

Under the final regulations, the OPTN has responsibility for developing medical criteria for patient listing, medical urgency criteria (''status'' definitions), organ allocation policies, other policies governing organ transplantation, and policies for the day-to-day operation of the OPTN. The Secretary has responsibility for oversight of the OPTN, for establishing performance goals and indicators to guide the national system for distribution of organs, and for final approval of those OPTN policies that are to be enforceable. Both the OPTN and the Secretary have responsibility for dissemination of information to the

public, including patients, physicians, payers, and researchers.

This final rule was developed after consideration of comments from all elements of the transplant community on the entire range of issues. Comments were received not only during the original comment period but also during the last two years and attendant to the public hearing held in December 1996. Although the Secretary believes that this rule addresses all of the major issues and questions that had been identified, the Department remains open to suggestions for further improvements. The Department has provided for additional public comments on these regulations to be submitted during the next 60 days. The Department will also provide for public input on OPTN proposals for policies to implement these regulations.

C. DHHS and OPTN Relationships

The public comments indicate that many persons misunderstand the role of the OPTN. The OPTN is sometimes characterized as a voluntary system through which consensus decisions are reached as to how to allocate organs among patients (who may live or die based on these decisions). The underlying statutes, absent Secretarial oversight, give the OPTN authority from which individual patients, physicians, and hospitals have little recourse. If the OPTN changes organ allocation criteria, it may advantage some patients and disadvantage others because there are not enough organs donated to meet the need and no alternative organ allocation entity exists. The unique role of the OPTN thus gives rise to a fundamental question. To what process or remedy can patients, their families, physicians, or members of the general public turn if they wish to question policies, decisions, procedures, or practices of the OPTN? By providing a framework for OPTN policy development and describing the role of the Secretary therein, this rule addresses that question.

The United Network for Organ Sharing (UNOS), a private corporation, operates the OPTN under contract with the Department. The contract is subject to the competitive bidding process. Under recent Requests for Proposals, there have been no effective competitors to the current contractor. The current contract expires September 30, 1999.

As a private organization, UNOS has by-laws, operating procedures, and membership requirements. They apply only to UNOS members and not to OPTN members. Membership in UNOS is not a requirement for membership in the OPTN. Therefore, such procedures are not OPTN procedures, and because they do not bind OPTN members, they are not the subject of this regulation. Because OPTN members are not required to become UNOS members, UNOS procedures are subject to these regulations only if they conflict with OPTN requirements, or if they conflict with the terms of the contract for the operation of the OPTN, or these regulations. For example, UNOS may impose conditions for membership in UNOS, but those conditions may not be substituted for, or used to augment, the regulatory requirements for the UNOS-administered OPTN. In contrast, matters relating to the OPTN are encompassed by these regulations; and UNOS, as the OPTN contractor, is required to comply with these regulations and to issue policies consistent with the requirements of these regulations.

The Department believes that the transplantation network must be operated by professionals in the transplant community, and that both allocation and other policies of the OPTN should be developed by transplant professionals, in an open environment that includes the public, particularly transplant patients and donor families. It is not the desire or intention of the Department to interfere in the practice of medicine. This rule does not alter the role of the OPTN to use its judgment regarding appropriate medical criteria for organ allocation nor is it intended to circumscribe the discretion afforded to doctors who must make the difficult judgments that affect individual patients. At the same time, the Department has an important and constructive role to play, particularly on behalf of patients. Human organs that are given to save lives are a public resource and a public trust.

The process adopted in this rule strikes a balance among these important principles. When the OPTN develops policies, or when complaints are raised concerning OPTN policies, the regulation allows a number of options. The Secretary may approve an OPTN-proposed policy or find that the complaint has no merit. The Secretary also may take another approach depending on the issues presented. For example, the Secretary: may seek broader public input on the issue; may determine whether violations of OPTN-proposed policies should carry any one of a range of consequences—no consequence, loss of membership in the OPTN, or loss of a hospital's ability to participate in Medicare and Medicaid; may provide comments for the OPTN's consideration; may direct the OPTN to adopt a policy; or, may develop a policy that the OPTN must follow. An example of this last option is this regulation's provisions prescribing who the OPTN must admit as members. Instead of an exhaustive listing of these and other options, the regulation, at sections 121.4 (b)(2) and (d) simply provides that the Secretary may ''take such other action as the Secretary determines appropriate.''

Questions have also arisen about the relationship of OPTN policies to other standards and requirements. A number of Federal statutes, including those relating to Medicare and Medicaid, civil rights, fraud and abuse, clinical laboratories, organ procurement, control of infectious disease, and regulation of blood and blood products, have provisions that may affect, or be affected by, the policies of the OPTN. For example, several years ago the Department made decisions as to the required qualifications for clinical laboratory directors, after an extended public comment process. Those decisions did not impose the most stringent possible academic qualifications because the available evidence did not show that those levels were necessary for high performance. Any OPTN policy that directly or indirectly would require member hospitals to do business only with laboratories with directors meeting a higher qualification would conflict with the HHS regulation, and thus not be binding upon OPTN members unless the Secretary approved that policy as an OPTN requirement.

In order to prevent such problems, this regulation creates a system in which the OPTN has three options whenever it identifies a policy that it believes will contribute to high performance: the OPTN can recommend its use by members; the OPTN can request that HHS make it enforceable, or the OPTN can petition HHS to modify other regulations (such as clinical laboratory or blood regulations) to adopt that policy. What the OPTN cannot do is unilaterally impose a policy that has the effect of, or changes the terms of, a national policy already subject to the oversight of a cognizant Federal agency.

The Secretary will review the OPTN policies that may interact with other statutes or with rules promulgated through other Federal programs. To clarify the policy development and review process, we have added a new § 121.4, Policies: Secretarial Review, and Appeals, which consolidates regulatory requirements from proposed §§ 121.3, 121.7, and 121.10. The addition of new § 121.4 results in renumbering §§ 121.4–121.12. See the discussion at section II(C6), under **SUPPLEMENTARY INFORMATION**, below.

D. Enforcement

Some of the comments received in response to the Notice of Proposed Rulemaking or delivered at the public hearings indicate that there may be misunderstandings about the relationship between section 1138 of the Social Security Act and the OPTN regulations, and their respective enforcement provisions.

1. Section 1138 of the Social Security Act

As discussed above, section 1138 requires Medicare and Medicaid participating hospitals that perform transplants to be members of the OPTN and abide by its rules and requirements. Section 1138 also contains similar requirements for OPOs in order for organ procurement costs attributable to payments to an OPO to be paid by Medicare and Medicaid. These requirements are also found in final rules (42 CFR 485.305 (now 42 CFR 486.308) and 482.12(c)(5)(ii)) published on March 1, 1988 (53 FR 6526). Further, on December 18, 1989, the Department published a general notice in the **Federal Register** (54 FR 51802) announcing that, in order to be a rule or requirement of the OPTN and therefore mandatory or binding on OPOs and hospitals participating in Medicare or Medicaid, the Secretary must have given formal approval to the rule or requirement. Violations of section 1138 could result in withholding of reimbursement under Medicare or Medicaid.

Section 1138 and the final rules and general notice that followed pertain only to OPOs and hospitals participating in Medicare or Medicaid. In its general notice, the Department intended to define what is meant by a ''rule or requirement of the OPTN'' for the purposes of implementing section 1138. In applying the policy in the general notice, the Department considers a ''rule or requirement of the OPTN'' to be those rules developed as provided for in these regulations.

Two examples illustrate the significance of this provision. First, an OPO or transplant hospital participating in Medicare or Medicaid could be considered in violation of section 1138 if the Secretary found that it did not provide information to the OPTN as required specifically by § 121.11(b)(2) or that it procured for transplantation organs known to be infected with the human immunodeficiency virus, prohibited specifically by § 121.6(b). Conversely, these institutions would not be considered in violation of section 1138 if they were found by the Secretary to be acting contrary to a policy implemented by the OPTN but not formally approved by the Secretary as enforceable. Second, if an OPTN member procured and arranged for allocation of donor kidneys in a manner inconsistent with the OPTN's kidney allocation policy as in effect in 1996, it would not be considered in violation of section 1138, because that allocation policy is not approved by the Secretary as enforceable policy. Therefore, policies of the OPTN that are not articulated in these or subsequent OPTN regulations or elsewhere approved by the Secretary are not enforceable under § 121.10.

2. OPTN Policies

There has been discussion about whether all OPTN policies should be enforceable. The Secretary believes that compliance with existing voluntary policies has been excellent. Furthermore, some commenters at the public hearings expressed support for the current role of the OPTN in devising and issuing such policies. Finally, the field of organ transplantation is dynamic, yielding technological advances that the OPTN must accommodate as quickly as possible if patients are to receive their full benefits. It can do so efficiently under this tested approach. Therefore, the Secretary has decided to continue this approach.

The Secretary recognizes, however, that compliance with certain policies, such as those relating to organ allocation, are crucial to the success of the OPTN and expects the OPTN to monitor compliance with these policies closely under § 121.10. If violations are widespread, or if uniform compliance is essential, the Secretary will consider making such policies enforceable. The Secretary also recognizes the need for additional public participation in the development of some OPTN policies, such as fundamental revisions to organ allocation policies, and has included in this rule provisions that (1) require the OPTN Board to provide opportunity for the OPTN membership and other interested parties to comment on all of its proposed policies, (2) enable the Secretary to seek comment from the public and to direct the OPTN to revise policies if necessary, and (3) provide timely access to information for patients, the public, and payers. These provisions are discussed further in section II.

The requirements that are explicit in this final rule are subject to its enforcement provisions. For example, if a transplant program did not establish organ acceptance criteria and provide such criteria to the OPOs with which they are affiliated and to the OPTN, as required specifically by § 121.6(c), it could be found to be out of compliance with the OPTN regulations and subject to suspension of its designated status under § 121.9, as discussed further in section II.

II. Summary of Public Comments and Policies of the Final Rule

In addition to public comments directed specifically to the NPRM document, the Department has received other comments and recommendations directed at issues covered by this final rule, as well as additional documents described below. Much of this additional information was received during 1996 and 1997, subsequent to the original rulemaking dates. In particular, the Secretary determined in 1996 that there were sufficient controversies to justify reopening the comment period and scheduled a three-day public hearing, subsequently held on December 10–12, 1996.

The information received since the close of the original comment period falls into several broad categories. First, the OPTN itself has considered or adopted a substantial number of policy changes, each accompanied by supporting information presented to the OPTN Board of Directors and to the public. Second, the transplant community, including the OPTN, has created additional materials. Both the OPTN and the University of Pittsburgh sponsored the development of simulation modeling to estimate the likely effects of alternative liver allocation policies (the ''Pritsker'' and ''CONSAD'' models discussed later in this preamble). Third, approximately 110 persons individually or representing the OPTN, patients and patient organizations, transplant institutions, and professional associations testified at the December 1996 public hearing; and hundreds of others sent written comments. Finally, the Secretary considered other materials including, for example, correspondence from Members of Congress and a number of recent newspaper articles which focused on organ transplantation issues and controversies.

The testimony and comments received in connection with the public hearing contain a total of 541 documents, with 667 signatures. Of these, 180 signatories are identifiable as transplant recipients or candidates or their families and friends, 327 as physicians, and 43 as other health personnel such as nurses, hospital administrators, and directors of organ procurement organizations. National organizations submitted 30 documents.

Twenty-two petition letters contain a total of 5,462 signatures. No attempt has been made to identify the signatories of the petition by type.

Among the documents in the docket room at 12420 Parklawn Drive, Room 123, Rockville, MD and available for review or copying are the actual comments as well as a summary and analysis of all of the comments received in response to the NPRM and the December 1996 public hearing, the 1996 Annual Report of the OPTN and Scientific Registry, the 1996 Code of Medical Ethics of the Council on Ethical and Judicial Affairs of the American Medical Association, the 1993 white paper ''The Principles of Equitable Organ Allocation'' of the OPTN Ad Hoc Committee on Organ Allocation, the materials prepared for the OPTN Board of Directors before each Board Meeting over the last several years, the 1991 report of the HHS Inspector General entitled ''The Distribution of Organs for Transplantation: Expectations and Practices,'' the 1993 report of the General Accounting Office entitled ''Organ Transplants: Increased Effort Needed to Boost Supply and Ensure Equitable Distribution of Organs,'' the OPTN's multi-volume ''Report of Center Specific Graft and Patient Survival Rates'' for both 1994 and 1997, a 1995 report from the CONSAD Research Corporation providing ''An Analysis of Alternative National Policies for Allocating Donor Livers for Transplantation,'' a number of computer simulations on liver allocation policy prepared by the Pritsker Corporation in 1996 and 1997 (most included in the OPTN Board materials listed above), a number of computer simulations on liver allocation policy prepared by CONSAD in 1996 and 1997, a series of investigative articles on organ transplantation and allocation issues that appeared in the Cleveland Plain Dealer in early 1997, other newspaper articles, and a GAO report, *''Organ Procurement Organizations, Alternatives Being Developed to More Accurately Assess Performance''*, published in November, 1997.

In addition, this rule and some of the documents listed above—such as the transcript of the public hearings—are available on the HRSA Web site at http://www.hrsa.dhhs.gov/bhrd/dot/dotmain.htm.

A. Summary of Original Public Comments

The preamble to the Notice of Proposed Rulemaking (NPRM) asked the public to comment separately on the specific provisions of the proposed rule and on the individual policies then in effect voluntarily under which organs were being allocated to potential transplant recipients. Of the 121 letters received, 59 contained comments on specific sections of the NPRM, 60 on the allocation policies, and two commented on both. About half of the original comments are addressed in the discussion of public comments on allocation policies, below.

All but two of the 61 letters commenting on specific sections of the NPRM other than allocation policy were from individuals identified with organizations. National groups included the Ad Hoc Coalition on Organ Transplantation, the American Association of Kidney Patients, the American Center for Transplant Resources, the American Society of Histocompatibility and Immunogenetics, the American Society of Transplant Physicians, the American Society of Transplant Surgeons, the Association of Organ Procurement Organizations, the National Kidney Foundation, the North American Transplant Coordinators Organization, and the United Network for Organ Sharing. Thirty-two letters were from individuals affiliated with hospitals, ten from organ procurement organizations, one from a law firm representing a hospital, two from members of the U.S. House of Representatives, one from a former member of Congress, and two from individuals who identified themselves as organ transplant recipients.

The 61 letters presented a total of 210 comments on specific sections of the NPRM as follows: § 121.2—Definitions (17); § 121.3—Composition of the OPTN (41); § 121.4—Listing Requirements (18); § 121.5—Organ Procurement (6); § 121.6—Identification of Organ Recipient (24); § 121.7—Allocation of Organs (40); § 121.8—Designated Transplant Program Requirements (34); § 121.9—Review and Evaluation (2); § 121.10—Appeals of OPTN Policies and Procedures (2); § 121.11—Record Maintenance and Reporting Requirements (26). These comments are discussed below in the context of those specific sections.

B. Summary of Public Hearing

The public hearings demonstrated that there is considerable controversy over many aspects of organ allocation policy, along with many areas of agreement. A number of fundamental questions were addressed by multiple witnesses, and their comments on these and the Secretary's decisions are summarized below. The Department's **Federal Register** Notice establishing the agenda for the hearing focused on two issues: Increasing organ donation and liver allocation policy—but those who testified raised many additional issues.

1. What Role Should the Federal Government Have in Organ Allocation Policy?

Partly as a result of the controversy surrounding the new OPTN liver allocation policies proposed in 1996, some individuals questioned whether the private sector can or should set policy for a system that has such a profound effect on life and death decisions. The recurring view expressed in testimony, however, was to preserve the current contractual arrangements for the operation of the OPTN, but for HHS to exercise closer oversight, particularly in organ allocation policy. Others testified to the contrary, arguing that the OPTN was dominated by the self-interest of transplant physicians and surgeons (see discussion below) and that only the government could take an impartial role in a field so dominated by conflicting interests.

Despite support for the OPTN contract and the structure of the OPTN, a number of individuals and organizations argued that the approval of a flawed liver allocation policy in November 1996 (see below), and the failure to improve current policy in more fundamental ways illustrated systemic flaws in the current governance structure. One line of comments focused upon the structure of the OPTN Board of Directors, which was characterized (incorrectly) as giving each transplant hospital one vote, without regard to the number of patients on the waiting list or the number of individuals transplanted. Some patients, patient groups, and directors of the larger programs advocated models where patients' interests would have greater representation. Others argued that the OPTN is dominated by hospitals—large and small—and transplant surgeons and physicians and that the larger public interest, the altruistic interests of donors and donor families, and interests of potential recipients are neglected.

As discussed elsewhere in this preamble, the Secretary believes that the Department has an important and constructive role to play, particularly on behalf of patients.

2. Are the Liver Allocation Policies That the OPTN Adopted in November 1996 Fair?

The OPTN Board had approved a new liver allocation policy shortly before the public hearing. At the public hearing and in the comments received, many patients with chronic liver disease

opposed the new policy; most physicians supported it. Table 1 presents the pertinent data.

TABLE 1.—OPINIONS BY TYPE OF RESPONDENT (EXCLUDING PETITIONS)

Category	Pro new policy	Con new policy
Physicians	136	5
Other health personnel	13	3
Recipients/candidates and families	31	128
Totals	180	136

Patients and their advocates asserted that their chance to receive an organ had been decreased significantly by the new policy of transplanting patients with acute hepatic failure and primary non-function before chronic patients who were also in intensive care units and had equally short life expectancies. Moreover, patients and their advocates asserted that there was no significant medical argument favoring preference for the ''acute'' group. (OPTN data tend to confirm this assertion and show that the acute patients do not have an appreciably better post-transplant survival rate than the chronic patients, as discussed later in this preamble). They pointed out that, despite the prospect of imminent death, they were newly downgraded into a lower priority group of patients and that all chronic patients were being grouped together rather than differentiating among chronic patients and their varying medical conditions. Strong pleas were made by some medical personnel, patients, and patient advocacy groups for a system of classification based on objective and relevant medical criteria and for broader sharing of organs.

Most OPTN officials defended the new policies but based these arguments on the extensive and prolonged committee processes involved rather than medical data. However, the Chairman of the OPTN Patient Affairs Committee indicated that the needs of the chronic disease patients had not been considered carefully enough when the new policy was evaluated by his committee. He stated that the OPTN, while attempting to accomplish good purpose for one group of patients, had apparently disadvantaged another group with equally high medical urgency. He also promised to have his committee reconsider its position.

Some commenters urged that a moratorium be placed on the implementation of the new policy until the needs of the chronic patients could be properly considered. As a result of the airing of these issues at the hearing, the OPTN established this moratorium shortly after the hearing. In further response, in June 1997, the Board of Directors voted to implement a new policy that would reform the controversial policy to some degree. The newer policy places very sick chronic patients in a separate status subgroup and also assigns them a second priority—i.e., after the acute patients. However, as explained in greater detail below, it reduces, but does not eliminate, the disadvantage that had been imposed on chronic patients in 1996.

This rule requires the OPTN to promptly take a fresh look at its current policies in light of the rule's performance goals.

3. Should Transplantation Be Centralized in a Few Centers That Meet More Stringent Criteria, or Are There Advantages to the Present Geographic Distribution of Programs?

Although the Department had not identified establishing volume or performance criteria for individual hospitals as a hearing topic, some commenters raised this issue. This issue arises because, although patients are free (subject to insurance coverage) to select from among most transplant hospitals in the United States, under current OPTN policies, the number of organs available to a hospital in a particular area does not rise or fall as the number of patients increases or decreases but is largely dependent on the number of donors in that local area. As a consequence of a ''local first'' allocation policy, most organs leave the local area only if there are no local patients who could use the organ. (An exception is ''no mismatch'' kidneys, which are shared nationally.) As a result of hospitals drawing primarily from the local pool of donated organs, no hospital can expand its program beyond the local supply of organs without disadvantaging the patients who choose it. Representatives of some small-volume transplant programs argued that broader geographic sharing might result in local, smaller hospitals being forced to close their transplant programs.

The argument for wider sharing of organs was made vigorously by representatives of some large-volume transplant programs. They also argued that the quality of performance and outcome was related to the number of procedures performed. The contrary argument—to recognize the importance of the small-volume programs—was made vigorously on the basis of local and regional access to transplants and with testimony and data suggesting that many small programs have outcomes equal to or better than the larger hospitals. In addition, some patients expressed concern about losing their system of support (family and neighbors) if they had to leave their homes or communities to receive a transplant. Another concern was the extra expense incurred by patients having to move outside the home community for a transplant.

After the hearing, the Department determined, however, that this concern over local access and increased travel only affects a small number of patients. About half of liver patients must travel outside their local area to obtain a transplant simply because almost all rural areas, most cities, and about a dozen States have no liver transplant programs. Also, the great majority of small-volume programs are located in the same metropolitan area as large-volume programs. Thus, very few patients might have to face this potential problem.

Some argued that the more remote the large hospital may be from a needy patient, the greater the travel costs and the more likely those without insurance or those with lower income will be effectively excluded from the opportunity to receive an organ. On the other side, some argued that larger programs have been more willing to list the sicker patients and those with less ability to pay. The Department finds these arguments speculative. About half of all patients have to travel anyway, and nothing other than anecdotal evidence was presented regarding how many patients are taken as charity cases at hospitals, large or small.

It was argued that the Health Care Financing Administration and some other large payers such as managed care organizations refer their patients to higher volume programs and, thus, strain a system already under stress because of the shortage of organs. Others argued that the organ shortage is the same regardless of where payers direct their patients.

The Secretary concludes that there is no persuasive evidence that the provisions of this rule—equitable sharing of organs, based on objective criteria of medical urgency and free patient choice among transplant programs—will damage transplant institutions of any size. However, in this regard, the Department also will consider whether any demonstrable institutional impact will result from the policies to be developed by the OPTN.

4. Should Organs Be Shared Across Geographic Lines—Regionally or Nationally?

Many patients and patient advocates, and some hospital representatives, argued that organs should ''follow'' the patient. That is, regardless of where a patient lives or lists, he or she should have the same chance of receiving an organ as if living or listing elsewhere. Local preference prevents this result, and proponents of this view opposed local preference. Why should some patients who list in areas that, for whatever reason, obtain more organs in relation to local demand benefit over patients from other areas who have equal or greater medical need? Why should other patients in those same areas who are sicker nevertheless not receive a matching organ from another area? Another argument against local preference is that it limits the ability of patients to select the medical program and physician they prefer. The patients of large payers are also disadvantaged if organs are not allocated where the patient will get her or his care, unless the payer is willing to make special arrangements to move patients where waiting lists are shortest or to ''multiple list'' patients at more than one transplant hospital because of long local waiting times. Patients or payers who consider ''multiple listing'' are also, in effect, forced to choose between using local providers and, potentially, cross-continental travel simply to have a good chance of getting a organ.

Some argued that the feasibility of national organ sharing is limited by the cold ischemic time (the time after procurement that an organ remains viable for successful transplantation). Witnesses said that this time ranges from 12 to 18 hours for livers and that, for livers transplanted in less than this time, there is little difference in graft survival attributed to cold ischemic time. (Compared to livers, the cold ischemic time is much shorter for hearts and much longer for kidneys.) Some commenters argued that travel times to and from large cities, where most transplant hospitals are located, readily permits a national allocation scheme for livers. However, others argued, travel times from small communities (the locale of many donors) to large cities or to other small communities are not always predictable and that estimates of travel time are not always reliable.

Proponents of national sharing of livers pointed out that other organs—including hearts and kidneys—are successfully shared outside of the local area and that many livers were nationally shared for the sickest patients until 1991. These witnesses argued that the transportation argument was irrelevant since any sensible policy would be designed to ensure that organs would not be transported in cases where this would result in waste.

Some witnesses argued that sharing of organs across geographic lines would just ''switch the zip codes'' of those who died. This reflects the stark reality that, so long as the number of organs is insufficient to transplant all those in need, some persons are likely to die while awaiting a transplant. Proponents of broader sharing countered that the OPTN's own modeling showed that lives could be saved if organs went to the sickest patients first within broad geographic areas rather than giving preference to local patients who, though ill, were not in imminent danger of death.

Among the arguments made against broader sharing was that this could harm local procurement. Those taking this view emphasized the value of the relationships between the transplant hospitals and their local organ procurement organization and asserted that local allocation tends to promote organ donation and retrieval by local transplant surgeons. A related argument was advanced against broader sharing suggesting that, if referring physicians perceive organs are always ''shipped out'', they will be dissuaded from referring donors. However, those in favor of broader sharing argued that there was no evidence to support the local preference argument. They stated that donor families have no preference where the organ is used, believing that donor families want only that their loved one's organs help individuals most in need.

In this regard, a 1994 OPTN survey (reported in the *UNOS Update* of July 1994) shows that the overwhelming majority of donor families state as their preference that organs go to the neediest patients, regardless of geography, so long as organs are not wasted. That same survey showed very high support for equalizing waiting times. Many commenters noted that, even under the current system of local priority, some organs are shared regionally or nationally. HHS has seen no credible evidence that local preference encourages donation or that sharing organs regionally or nationally for the sickest patients will impact organ donation. Nor is there any evidence that transplant professionals perform differently when the retrieval is for a distant patient rather than a local patient.

5. Which Is Preferred, Transplanting the Sickest First or Transplanting Patients Who Are Most Likely To Survive the Greatest Number of Years?

Many witnesses at the public hearing agreed on two broad points: first, from the perspective of an individual patient who is at risk of imminent death, the ''sickest first'' policy is the only choice; and second, there are patients who are so likely to die that it would be futile to transplant them and waste an organ that could have saved someone else. Some argued that transplantation before a patient becomes ''sickest'' provides better outcomes and longer graft and patient survival, and increases the supply of organs by reducing the number of second transplants. However, to adopt a policy favoring transplantation of the least sick patients would mean that more hospitalized patients might die. Moreover, the chronic liver patients asserted that their expected survival rates were not only high, but also essentially equal to those of acute patients, who were gaining preference. They questioned how reducing their chance of living, when both urgency and outcome were essentially equal, could meet any reasonable ethical standard.

The available evidence shows that, for most patients, higher medical urgency does not reduce the likelihood of post-transplant survival to the extent that less ill patients should receive higher priority. Although current OPTN policies vary by organ, the predominant thrust of the OPTN policies is to give priority to greater medical need. (These regulations are not intended to preclude considerations underlying current allocation policies such as the judgment afforded surgeons in individual cases, the needs of children and sensitized patients, and the priority given to no antigen mismatches for kidney patients.) The Secretary therefore concludes that ethical considerations require that the most medically urgent patients—those who are very ill but who, in the judgment of their physicians, have a reasonable likelihood of post-transplant survival—receive preference in organ allocation over those who are less medically urgent.

6. How Much ''Game Playing'' Exists in the Present System?

A number of witnesses asserted that the current system of organ allocation and listing can be manipulated by hospitals, physicians, and payers. Practices discussed included excluding high risk patients from the list, listing patients early to gain waiting time points, listing patients at more than one

transplant hospital to increase the chance of getting an organ, and referring high risk patients to other hospitals to avoid adverse performance outcomes. No data were presented in support of these assertions, but they came from a cross-section of witnesses. Some commented that the present debate evinces distrust among transplant professionals—local hospitals work together and with the local OPO, whereas non-local hospitals may be ''gaming'' the system to advantage their patients. Presenters suggested modifications to the system to minimize these tactics. Most supported the development of objective medical criteria for listing and classifying candidates as a specific reform that would increase fairness.

7. How Can HHS Promote and Facilitate an Increase in Organ Donation?

A plea for vigorous involvement of and leadership by HHS in organ donation was almost unanimously supported. The diversity of experiences and effectiveness among OPOs and hospitals, and variation among State laws and practices, suggest a need for shared communication, education, and Federal action. Many suggestions were offered to minimize disincentives and maximize appropriate incentives for organ donation. Emerging research data provide information about factors that influence a donor family's decision to consent to offer a loved one's organs. Many specific ideas were suggested for how government could invigorate organ donation.

Toward that end, HHS is conducting a broad organ and tissue donation initiative that implements many of the suggestions made at the hearing, and others. Included as part of this initiative is a Notice of Proposed Rulemaking published in the **Federal Register** on December 19, 1997 (62 FR 66725), which would require that hospitals refer all appropriate deaths to OPOs, and that OPOs determine the criteria for these mandatory referrals. In cooperation with other Federal agencies, we are undertaking a major campaign to encourage Federal employees and their families to volunteer to become potential organ donors. We also encourage the transplant community to strengthen its various efforts to increase organ and tissue donation, and to review whether transplant hospitals are taking all reasonable steps to procure organs (a recent review of OPTN data showed that about one-fourth of transplant hospitals produced no donors in 1995). Finally, the Department will host a conference to exchange information on identifying best practices and promising innovations.

A number of surveys and studies have shown broad support for organ donation generally. The Secretary believes the policies that are contained in this rule will complement the initiative and build on this public support for organ donation. Allocating organs nationally to those most in need also will build on a broad base of public support. As noted above, according to a 1994 OPTN-initiated survey, at least half of transplant recipients and candidates ''would give top priority to the patient who is the most critically ill and has the least time to live.'' Page 7 of UNOS comments on NPRM, December 6, 1994. While some commenters suggested that locally based allocation increases donation, they did not offer any studies to support this suggestion. A 1991 HHS Inspector General report rejects the notion of local use increasing local donation. *The Distribution of Organs for Transplantation: Expectations and Practices* at 15–16 (Office of Inspector General, March 1991). The same OPTN-initiated survey also discounts this approach, concluding that ''Americans do not think that keeping an [donated] organ in a specific locality is an important goal in and of itself. * * *'' Page 8 of UNOS comments.

8. What Is the Responsibility To Provide Access to Transplantation Services to All Americans, Regardless of Economic Status?

Access to transplantation services was described as being dependent on a person's ability to pay, which virtually always requires health insurance. A few State-supported hospitals testified that they accept all patients regardless of ability to pay, but the preponderance of the testimony was that most transplant hospitals require that the patient demonstrate an ability to pay. As a result, commenters argued, the promise to honor the altruistic gift of an organ to whoever needs it most is being violated.

The Department cannot solve this problem under existing law or through this rule. Nor are problems with the ability to pay unique to transplantation. What is unique is the interest of the donor family in fair allocation. The Secretary concludes that the Department and the OPTN should give more emphasis to socio-economic equity in transplantation. Steps toward this end are described later in this preamble.

C. The Department's Response and Policies of the Final Rule

Because most of the original commenters referenced specific sections of the NPRM, these comments are generally identified in numerical terms, e.g., two commenters had suggestions regarding the definition of ''national list.'' Most subsequent comments, particularly those made in connection with the public hearing, did not reference the NPRM. However, most of the latter comments focused on specific issues (organ donation, organ allocation, liver allocation, and oversight procedures) and are addressed in the corresponding sections below.

1. Section 121.2—Definitions

''National list'': Two commenters said that the proposed definition is misleading in that it implies a single, nationwide list for allocating organs whereas the OPTN policies for allocating organs give considerable weight to local and regional geographical considerations. The Department agrees that the term ''national list'' has been used in conjunction with allocation criteria that involve geographic factors. However, all recipients of organs are selected from a set of national databases; and even the current allocation criteria have important national elements for some organs. Therefore, the Department has retained the term ''national list.''

''OPTN computer match program'': The Department received two comments on this definition and has modified it to provide a better description of the matching process. The new definition states that the ''OPTN computer match program'' means a set of computer-based instructions that compares data on a cadaveric organ donor with data on transplant candidates on the national list and ranks the candidates according to OPTN policies to determine the priority for allocating the donor organ(s).

''Organ'': The proposed rule defines ''organ'' as a human kidney, liver, heart, lung, or pancreas. Four commenters suggested that the definition be broadened to include parts of organs and other organs. The inclusion of other organs, such as the stomach and intestines, not only would have an impact on other requirements in these regulations such as the development of allocation policies, certification of designated transplant programs, and establishment of training requirements but also would affect OPO requirements to procure these organs in accordance with rules of the Health Care Financing Administration (HCFA). Thus, the Department believes it would be premature for this rule to specify other organs in addition to those already named. Instead, the Department will direct the OPTN contractor to consider

which organs or parts of organs, if any, should be subject to OPTN policies, and to submit recommendations to the Secretary. The Department has added a reference to bone marrow to the definition, because section 374(d)(1) of the Act provides that the term includes bone marrow for purposes of the Scientific Registry.

''Organ donor'': One commenter suggested the addition of a definition for this term. The Department has accepted the suggestion and has defined ''Organ donor'' as a human being who is the source of an organ for transplantation into another human being.

''Potential transplant recipient'': The Department has edited this definition in accordance with the two comments it received. The new definition more accurately describes the relationship of the individual to the OPTN computer match program.

''Transplant candidate'': One commenter suggested a broader definition that the Department has accepted. It now defines ''transplant candidate'' as an individual who has been identified as medically suited to benefit from an organ transplant and has been placed on the national list by the individual's transplant program.

''Transplant physician'' and ''transplant surgeon'': The Department has added definitions for these terms in response to a commenter's suggestion that they be included. The final rule defines ''transplant physician'' as a physician who provides non-surgical care and treatment to transplant patients before and after transplant, and ''transplant surgeon'' as a physician who actually does transplants and provides surgical care and treatment to transplant recipients.

''Transplant program'': As suggested by one commenter, the Department has made an editorial change in this definition.

2. Section 121.3—The OPTN

This section of the proposed rule (originally titled ''composition'') elicited the most written comments, the majority of which discussed representation on the OPTN Board of Directors and committees. In addition, the public hearing identified the governance of the OPTN, including the composition of the OPTN Board of Directors and committees, as a significant area of concern. OPTN membership is summarized in Table 2 below.

Table 2—OPTN Membership, 1996

Transplant Centers	281
Consortium Members	4
Organ Procurement Organizations	*54
Histocompatibility Laboratories	55
Voluntary Health Organizations	12
Medical/Scientific Organizations	29
General Public Members	8
TOTAL	443

*This only includes independent OPOs; the other 9 OPOs are represented through their hospitals.

Source: 1996 Annual Report of the OPTN, page C–2 Table C–2.

Both in the written comments and at the public hearings, numerous witnesses who disagreed on particular organ allocation issues nonetheless agreed that there is a potential conflict of interest if transplant professionals, representing particular programs that provide them employment, vote on matters that may substantially affect the financial viability of those programs. Others argued that disagreements among transplant professionals overwhelmingly reflect honest differences of opinion and the natural desire of physicians and others to ensure the best possible outcomes for their own patients. Additionally, the Department received comments regarding the independence of the process for selecting members of the OPTN Board of Directors. Some members are currently elected from lists of persons selected by the nominating committee of the Board of Directors, not through independent nomination or election by sponsoring organizations. Regardless of the precise procedures and categories, many people believe that the OPTN Board of Directors would be more effective and have enhanced credibility if a greater percentage of its members were persons who broadly represent the public interest and persons who directly represent patient interests, without direct employment or similar ties to the field of transplantation.

The Secretary believes none of the changes being made in the regulatory provisions describing the composition of the Board of Directors will jeopardize either the expertise or the continuity of leadership important to the functioning of the OPTN. Transplant professionals will continue to be strongly represented on the Board. However, the rule will foster a broader range of diverse and independent views.

Accordingly, the Secretary is requiring the following changes in the composition of the Board of Directors (all in the context of a Board membership of 30 or more persons, as determined by the OPTN itself): First, at least eight of the Board members are to be transplant candidates, transplant recipients, organ donors, or family members and none of these members or general public members may have an employment or similar relationship with the OPTN or with the categories of members listed in § 121.3(a)(1)(I) or (iii)—OPOs, transplant hospitals, etc. Second, at least six members of the Board of Directors are to represent the general public; these members must be free of an employment or similar relationship to the OPTN or institutions or individuals involved in transplantation. Third, not more than 50 percent of the Board members, and of the Executive Committee, may be transplant physicians and transplant surgeons. Fourth, at least 25 percent of the Board members must be transplant candidates, transplant recipients, organ donors, and family members of any of these categories.

To give the OPTN some flexibility in meeting this new requirement, the Secretary is eliminating the originally proposed requirement that every OPTN region be represented on the Board. The Department does not require even that the OPTN use a regional structure. Thus, no reason exists to impose regulatory requirements for regional membership on the Board even if the OPTN continues to use a regional structure on its own volition.

This will also give the OPTN more flexibility in determining Board size. Depending on the OPTN's decisions as to size of the Board and whether the OPTN wishes to have any other members serve in a dual capacity and represent regions, this could free up as many as 11 seats on the Board of Directors. For the same reason, the rule gives the OPTN flexibility in the size of the Board of Directors—making clear that the contracting organization is free to have its own governing board structure that is separate and distinct from the structure of the OPTN itself. The rule gives the OPTN six months from its effective date to make these changes.

Turning to the original written comments on specific regulatory language, two comments indicated that the regulatory language in proposed § 121.3(a)(1) was confusing with respect to the number of individuals comprising the Board of Directors. The Department agrees and has not set any requirements as to maximum board size (although the minimum numbers specified for required members add up to 30 persons). At present, the Board has 39 members.

Several commenters suggested that patient groups should be permitted to select their own representatives to the Board and that the interests of patients and families of patients should be better represented on the Board and on its

Executive Committee. The Department agrees with the comments on the need to ensure that the interests of patients and their families are represented; however, the Department believes the OPTN should have flexibility as to its nomination and selection process. Thus, § 121.3 now provides that eight transplant candidates, transplant recipients, organ donors, or family members shall be included on the Board.

In addition, the Department has added to § 121.3 a requirement that the Board include at least 25 percent transplant candidates, transplant recipients, organ donors, and family members. Over the last few years, these individuals have represented 20 to 33 percent of the Board; and the Secretary expects that a comparable representation will be maintained. Section 121.3(b)(1) now requires the Executive Committee to include at least one member who is a transplant candidate, transplant recipient, organ donor, or family member, one general public member, and one OPO representative. Section 121.3(b)(3) requires transplant candidate, transplant recipient, organ donor, or family member representation on all committees established by the OPTN and also requires representation by transplant coordinators, OPOs, and transplant hospitals, as suggested by several commenters. The Department expects the OPTN to determine the appropriate number of such representatives on each committee, based on the types of issues that the committee will address.

The American Society of Transplant Physicians (ASTP) commented that it should select its own Board representative. The Department disagrees that it would be useful to add such a requirement, because transplant physicians are otherwise well represented on the Board and those members are members of the ASTP.

Another individual commented that the Board should include more minority representation. Proposed § 121.3(a)(2)(i) requires that the Board of Directors include individuals representing the diversity of the population of organ donors and recipients served by the OPTN, including minority and gender representation reflecting that diversity. A similar requirement with respect to committees is proposed at § 121.3(b). The Department has reviewed these proposed requirements, considered the commenter's suggestion, and decided to clarify these requirements in the final rule. The Department believes that including individuals from groups under-represented in the transplant patient population would enhance the ability of the OPTN Board and its committees to address the critical health needs of these populations. However, because the Board is elected, its composition is not guaranteed to reflect minority and gender diversity. Moreover, the Department intended that the Board requirement parallel the requirement for committees, that is, that the OPTN should attempt to reflect such diversity ''to the extent practicable.'' In neither case, however, does the Department intend to impose requirements that it would enforce, although, the Department strongly urges the OPTN to consider appropriate and practicable ways to encourage participation by minorities and women on its Board and on its committees.

One commenter asked that the general public category be broadened to include ''pre-transplant'' patients. As proposed, § 121.3(a)(1)(ii)(F) lists examples of individuals who could be elected from the general public. Because the section also says that the general public category is not limited to the examples given, ''pre-transplant'' patients could be chosen. However, the Department has modified § 121.3(a)(1), as discussed above, by adding the category transplant candidates, transplant recipients, organ donors, and family members to § 121.3(a)(1)(ii). This addresses the interests of transplant patients and candidates (pre-transplant patients), and transplant recipients, as well as family members of individuals who have donated or received an organ. Also, transplant candidates now are included within the diversity requirements of §§ 121.3(a)(3)(i) and 121.3(b)(3)(ii).

Another commenter suggested that regional representatives to the Board be elected from OPOs rather than transplant hospitals. The NPRM does not identify an organizational affiliation for regional representatives, nor does the final rule. Thus, regional representatives, if the OPTN elects to continue this approach, may be individuals affiliated with OPOs. They could also include other individuals who are affiliated neither with OPOs nor with transplant hospitals.

Two other commenters recommended staggered terms for Board members. One commenter recommended that the Executive Committee be elected annually rather than every two years as proposed; and three commenters said that proposed § 121.3(a)(5), requiring the appointment of an Executive Director to serve a four-year term, was unnecessary. We agree and have deleted that requirement. The existing OPTN practice is to stagger the terms of Board members, and the Department believes that the OPTN will continue to manage this aspect of its operation without the need for Federal regulation. With respect to annual election of the Executive Committee, the Department sees no reason to impose this requirement. In sum, we have tried to specify only the most essential features of the OPTN governance structure and to give the OPTN maximum flexibility in making decisions on other aspects of governance.

Two commenters said that all of the policy development duties of the Board of Directors in proposed § 121.3(a)(6) should be subject to the public participation process in proposed § 121.7(b), requiring public comment on proposed organ allocation policies. As mentioned above, we have added a new § 121.4 to clarify the intent of the policy development processes in the proposed rule. New § 121.4 incorporates the regulatory language in proposed § 121.3(a)(6) concerning the development of policies by the OPTN Board of Directors, the regulatory language of proposed § 121.7(b) regarding the public participation and appeals processes required for policies, and the regulatory language of proposed § 121.10 on review and appeal of policies.

Proposed § 121.3(a)(6)(ii) requires that the OPTN provide to the Secretary copies of all policies as they are adopted and make them available to the public upon request. It also states that the Secretary will periodically publish lists of these documents in the **Federal Register**. The Department has retained these requirements in new § 121.4(c) and has added a requirement that the Board of Directors provide the OPTN membership with copies of the policies (as well as notification of upcoming Board meetings). In addition, the Secretary will publish a statement indicating which OPTN policies trigger the special compliance requirements and potential sanctions under section 1138 of the Social Security Act.

The Secretary also has added a requirement that copies of all OPTN policies be continuously maintained on the Internet, to provide access to OPTN members, patients, donor families, transplant professionals, and other persons interested in organ transplantation. (The OPTN already operates an extensive and valuable Web site that substantially meets this requirement, at http://www.unos.org.) All policies of the OPTN are subject to review by the Secretary at any time under § 121.4(b)(2) and policies may be appealed under § 121.4(d). The Secretary will determine which policies should be subject to the notice and

comment process of the Administrative Procedure Act.

An editorial change was suggested to delete from proposed § 121.3(a)(6)(i)(B) the words ''fair and'' from the phrase ''fair and equitable allocation of human donor organs.'' The Department agrees that the proposed language is redundant and has accepted the recommendation. See § 121.4(a)(1).

With respect to the proposed requirements for OPTN membership, several commenters suggested that the rules establish voting and non-voting membership categories or otherwise set out membership voting privileges. The Department believes this is appropriate for the OPTN's policy development process and expects the OPTN to submit to the Secretary for review policies it has already developed in this regard. Two commenters pointed out what they perceived to be a drafting error in proposed § 121.3(c), which states that the OPTN *shall* admit and retain as members organizations, institutions, or individuals that have an interest in organ transplantation. The commenters said that the word ''shall'' should be changed to ''may'' to give the OPTN discretion in granting membership under § 121.3(c)(3). The Department has retained the mandatory term ''shall'' because we believe that anyone with a documented interest in organ procurement and transplantation must be granted membership. Should the OPTN deny membership under § 121.3(c)(3), applicants may appeal to the Secretary under § 121.3(c)(4). In addition, we have added to § 121.3(c)(3) a requirement that the OPTN process membership applications within 90 days to establish in principle that the Secretary expects the process to be carried out as expeditiously as possible given the OPTN's operational constraints.

The Secretary has added a new subsection 121.3(d) on corporate status of the OPTN. That section recognizes that requirements as to composition of the Board of Directors and membership admission requirements could create some problems for the OPTN contractor. The current contractor, a Virginia corporation, has chosen to recognize OPTN membership as automatically creating a right to corporate membership. At some future time, this or some other contractor might wish to create different arrangements. The language in this rule allows for this and clarifies that OPTN members do not have to become (nor the contracting corporation to accept them as) members of the corporation. The Secretary has also added a provision at § 121.3(e) that allows current and future contractors six months to come into full compliance with regulatory requirements in this section.

3. Section 121.5—Listing Requirements (Formerly § 121.4)

Most of the original comments received on this section of the proposed rule were on the subject of multiple listing, either supporting or opposing it. The proposed rule, in keeping with existing policy, did not prohibit transplant candidates from being listed with more than one transplant hospital. The final rule adopts this policy despite the commenters' concerns that it may disadvantage individuals who lack the insurance coverage or resources to seek listing with more than one institution or may raise ethical issues.

The Department believes that multiple listing is one of the few avenues open to patients who wish to choose their own medical care providers or try to overcome the waiting time inequities produced by the current ''local first'' allocation policies. Moreover, under current allocation policies, multiple listing helps patients who prefer to use a nearby transplant hospital that falls outside the so-called ''local area'' instead of a distant hospital that falls within that boundary. In addition, very few patients select this option. Steps to reduce waiting time inequities are described later in this preamble. When waiting times have become substantially equivalent among programs, the Secretary may ask the OPTN contractor to revisit the issue through its policy development process and submit its recommendations to the Secretary.

Several commenters suggested replacing the term ''OPTN member'' in proposed § 121.4(a)(1) and (3) with ''transplant hospital.'' The Department has accepted the suggestion with respect to proposed § 121.4(a)(1). See, § 121.5(a). However, because registration fees may be paid by OPTN members other than transplant hospitals, we have not made the suggested change in proposed § 121.4(a)(3). See, § 121.5(c).

Several commenters said that a time limit should apply when the OPTN submits to the Secretary a request for approval of the registration (listing) fee. The Department agrees in principle that such requests should be handled promptly and has added a requirement that the Secretary will approve or disapprove the amount of the fee within ''a reasonable time'' of receiving a request for approval and such supporting information as will provide the Secretary an informed basis for that decision. See, § 121.5(c). This language allows for the Secretary's discretion to publish a notice requesting public comments on any change in the registration fee. If the necessary supporting information is provided, a ''reasonable time'' should not exceed 30 days, and the Department will make every effort to meet that deadline. We welcome suggestions as to whether additional steps are needed to ensure that OPTN revenues are properly used for OPTN purposes.

One commenter suggested adding a new section requiring transplant hospitals to provide patient acceptance criteria to all patients. The Department agrees that patients should have access to as much information as possible. However, such a requirement would be very difficult to craft and enforce and would involve providing detailed medical information, because acceptance criteria are based on the varying medical conditions associated with end stage organ failure. Instead of creating a specific provision, we are greatly strengthening various requirements (see below) related to disclosure of information of benefit to patients.

4. § 121.6—Organ Procurement (Formerly § 121.5)

All but one of the comments received on this section concerned the criteria for acceptance of donor organs. Proposed § 121.5(c) permits transplant programs to establish such criteria but does not require it. Suggestions ranged from requiring minimum acceptance criteria to establishing standardized or universal criteria. The Department agrees that criteria are necessary and has added a requirement for the establishment of criteria for organ acceptance. See, § 121.6(c). However, we defer to the OPTN on whether to establish standardized criteria. Should the OPTN decide that such criteria are desirable, we expect such a decision, as well as the criteria themselves, to be developed through § 121.4, discussed above.

5. Section 121.7—Identification of Organ Recipient (Formerly § 121.6)

This section of the proposed regulations (formerly § 121.6) prompted a number of editorial suggestions, as well as concerns about financial responsibility for the transport of donated organs and protecting the confidentiality of organ donor records. The Department has accepted the editorial suggestions. One commenter said that proposed § 121.6(a)(4) should include a requirement that the OPTN be advised of the reasons for a transplant hospital's refusal of an offered organ. The Department agrees with this

suggestion, which is consistent with current practice, and has included it. This notice is to go to the hospital's affiliated OPO as well. See, § 121.7(b)(4).

Several commenters expressed concern about protection of confidentiality of donor records required by proposed § 121.6(c)(2). The Department agrees that such records must be protected and is confident that adequate safeguards exist in Federal and State legislation. No specific provisions are required in this regulation.

According to two commenters, proposed § 121.6(c)(1) should be amended to indicate that either a transplant hospital or an OPO is responsible for transporting a donated organ. Another suggested setting limits on, or otherwise accounting for, the financial implications of ''unreasonable'' transport requests. The Department intended that proposed § 121.6(c)(1) be broad enough to allow for a variety of situations that could arise in the transport of a donated organ. Moreover, proposed § 121.6(c) does not assign financial responsibility for such arrangements, which, with respect to transplants reimbursed by Medicare and Medicaid, are within the purview of HCFA and its regulations related to organ acquisition costs.

Three commenters said that OPOs cannot ensure the viability of transported organs, as indicated in proposed § 121.6(c)(3). The Department agrees and has modified this paragraph to require that the OPTN members transporting an organ ensure that it is packaged to enhance the probability that the organs will remain viable. See, § 121.7(c)(3).

Proposed § 121.6(d) elicited several comments pointing out that, in practice, OPOs make the offer of donor organs, not transplant hospitals. The Department agrees and has modified the language to delete the reference to transplant hospitals. See, § 121.7(b). We have also changed the term ''OPTN member'' in proposed § 121.6(e) to ''transplant hospital'', as suggested by one commenter. See, § 121.7(e).

6. Section 121.4—Policies: Secretarial Review (Formerly § 121.7(b) Public Participation)

Based primarily on the issues raised at the public hearing, this section has been expanded to include a new requirement (§ 121.4(a)(3)) that the OPTN modify or issue policies to reduce inequities resulting from socioeconomic status to help patients in need of a transplant be listed and obtain transplants without regard to ability to pay or source of payment. While such access is not guaranteed for other medical procedures, transplantation presents a special case. Donation is a valuable gift that is not conditioned on ability of recipients to pay nor do donors pass a ''means'' test. For these reasons, further efforts to facilitate access to the ''gift of life'' are necessary.

The Secretary does not prescribe specific steps, but requires the OPTN to consider possible policies to reduce inequities. For example, the Secretary expects the OPTN to consider methods of waiving or financing listing fees for patients unable to pay, through some form of cross-subsidy or by requiring that member hospitals absorb such fees.

The problem of paying for the transplant itself is much more complex, given the cost of these procedures, but a number of possibilities exist. Many member hospitals, for example, are obligated to provide uncompensated care under their charters or through the Hill-Burton requirements imposed as a condition of public grants and subsidized loans. The OPTN directly, or through member hospitals, could seek charitable contributions. Member hospitals could be obliged to provide a certain fraction of their transplants without charge to the patient, in recognition of the substantial value of the ''gift of life'' that the donors and families have provided for purely altruistic motives. Medicaid reimbursement could be sought more aggressively, for example, through the ''spend down'' provisions that enable many persons to qualify for insurance under that program. These and other options present difficult problems of policy and design; the Secretary simply requires here that the OPTN devote its energy to devising solutions and proposing policies to implement them. We are particularly interested in ideas that the OPTN could use to implement this provision.

As previously discussed, this general subject consumed a great deal of time and attention at the public hearings. Those hearings did not, however, focus on the details of the proposed rule or on how best to amend those.

With respect to proposed § 121.7(b), the Department received three comments during the original comment period about the process of adopting final allocation policies. Two commenters raised the issue of publishing proposed changes to allocation policies in the **Federal Register**. One said that the Secretary's decisions should be published; and the other suggested that, to meet the requirements of the Administrative Procedure Act, all proposed changes should be published with analyses before the Secretary makes a decision.

UNOS asked if the OPTN contractor would be required to submit to the Secretary for approval allocation policies in effect on the effective date of the final rule, pursuant to the process described in the final rule. For policies that the OPTN wants to be enforceable, the answer is yes. With the exception of particular policies established in this rule, all policies that have not been approved by the Secretary as enforceable remain voluntary, as explained in the 1989 **Federal Register** Notice. OPTN members that disagree with those policies may appeal them to the Secretary.

During the public hearing, a great many comments were directed to the question of the appropriate level of Federal oversight. While virtually all commenters agreed that the Department should have some role, opinions as to what that role should be varied from passive monitoring to taking very direct charge. Many of the particular suggestions made reflected the legal constraints that apply to organ transplantation. Some of these commenters also misunderstood the role and obligations of the Federal government for requirements that are established by law, even if implemented in part through private parties rather than by Federal staff. If the OPTN were a purely voluntary organization that happened to be a Federal contractor and if approved OPTN rules had no binding effect on patients or hospitals, then the appropriate level of oversight might be relatively low and limited primarily to efficient execution of the contract. But under the current law, patients have, as a practical matter, no choice but to use the system governed by the OPTN. Moreover, hospitals can lose the right to participate in Medicare and Medicaid and OPOs can lose reimbursement under Medicare and Medicaid for noncompliance with OPTN rules and requirements.

Both the genesis and wording of the National Organ Transplant Act (NOTA), as amended, obligate the Secretary to utilize the transplantation community substantially in both developing and executing transplantation policy. Under the statutory framework established by the Congress, however, the Department has oversight obligations, arising from the NOTA, as well as other laws and executive orders. For example, the Secretary has an affirmative obligation to make sure that policies and actions of the OPTN do not violate the civil rights of candidates for organ transplants. In this regard, however, most commenters stated, and the Secretary agrees, that

Departmental oversight should not micro-manage the development of purely medical criteria or routine day to day decision-making of attending medical professionals or the OPTN contractor.

The Department, in the preamble to the proposed rule (59 FR 46486), made clear its intention to provide the public with an opportunity to comment on organ allocation policies and proposed changes to them. While we believe that the comment process administered by the OPTN itself is invaluable in obtaining technical advice, it does not reach all of the affected public—including potential donors and interested persons who are not OPTN members and have no access to the OPTN—or otherwise provide the functions and protections accorded by the impartial review by the Secretary. These principles are carried forward in the final rule. To allow sufficient time for public comment on policies that the Secretary decides to publish, we have deleted from proposed § 121.7(b)(3) the 30-day time limitation and have substituted ''within a reasonable time.'' See, § 121.4(c)(2). The Secretary recognizes the importance of these issues, and expects the Department to act expeditiously on them. To ensure stability of the system, organ allocation policies, once implemented, continue to be in force during pending appeals or revisions.

New § 121.4 provides for an ongoing process of review that attempts to marry several goals: relying on the expert OPTN process to the maximum extent feasible; providing for independent review by the Department with additional opportunity for public comment; providing for cases where changes in policies may need to be made more rapidly than either process or both together would allow; and allowing the Secretary to take such other actions as the Secretary deems appropriate. Key to the effective functioning of this process is the acceptance by the transplant community of OPTN policies that have not been (and may never be) formally approved as enforceable requirements, but that most institutions choose to accept. A body of voluntary standards that can be rapidly revised, particularly for purely technical changes, is a crucial function of the OPTN system and one that the Secretary strongly supports. The Secretary believes that this rule puts in place an approach that accommodates all of the above goals.

7. Section 121.8—Allocation of organs

The majority of written comments received on proposed § 121.7 were opinions both for and against elements of the existing individual organ allocation policies, rather than comments on the content of this section of the proposed rule.

Several people discussed either the desirability or undesirability of permitting variances to current policies for allocating organs. Other commenters suggested broadening the geographic areas for organ allocation, localizing the areas for organ allocation, or allocating organs on a nationwide basis. One commenter said that allocation should be nationwide, because the current system is unfair to veterans. Under the medical coverage provided by the Department of Veterans Affairs (VA), veterans who need organ transplants are required by the VA to be listed with a transplant program with which the VA has contracted. Another commenter said that local allocation is an important incentive to organ procurement and that the relationship should be studied. Another commenter objected to disparities in waiting time among geographic areas.

The American Society of Transplant Physicians suggested a conference to determine the suitability of patients for transplant, the establishment of standardized criteria to determine when a patient should be placed on the waiting list, and to define standards for a patient to be retransplanted. The United Network for Organ Sharing (UNOS), the OPTN contractor, provided a list of factors to be considered by the OPTN Board of Directors in developing organ allocation policies. All of these issues are addressed in this preamble. The Secretary notes that since the publication of the NPRM, some of these suggestions have been adopted.

The Secretary originally received 62 letters commenting on organ allocation policies, of which 50 were about the lung allocation policy (many of those concerning lungs were form letters from patients at a single institution). These commenters, most of whom were individuals identifying themselves as organ transplant recipients, potential recipients, and friends or relatives of potential recipients, urged that geographic areas for lung allocation be broadened to permit more organs to be allocated to a particular medical program.

Comments on other organ allocation policies were also received from individuals affiliated with hospitals, from the American Society of Transplant Physicians, from the Cystic Fibrosis Foundation, from a law firm representing a hospital, and from a member of Congress on behalf of a constituent. Two comments were on the kidney allocation policy, one supporting local allocation and the other providing a copy of technical comments sent to the OPTN on revising the point system. One comment was on the heart allocation policy, suggesting that the geographic boundaries for allocation under the current policy be made more flexible. Two comments were not specific with respect to a particular organ, but recommended that allocation be nationwide based on time on the waiting list.

The Secretary also received letters urging action on liver allocation with emphasis on wider sharing. These comments, and many others on related allocation issues, arising both in the original comment period and at the public hearing, are addressed below in our proposed performance goals.

When the proposed rule was issued in 1994, the Department posed several open-ended questions about allocation policy, with the expectation that public response would help us decide how best to handle allocation policy and the extent to which we would seek to establish such policy in this final rule or in policy-by-policy reviews. Both in the initial set of public comments and in the months surrounding the public hearing, the Department received a great deal of information about, and many criticisms of, current allocation policies. For example, we learned that current allocation policies, by allowing local geographic boundaries to override patient needs, do not follow an ethical opinion addressing this very issue, promulgated through the Code of Medical Ethics of the Council on Ethical and Judicial Affairs of the American Medical Association. Second, we received the early results of computer modeling sponsored independently by UNOS and the University of Pittsburgh Medical Center (UPMC). These modeling efforts provided quantitative estimates of a great many variables—lives saved both pre-and post-transplant, time on waiting list, graft survival rates, etc.—that had previously been difficult to address systematically when alternative allocation policies were compared. Third, the OPTN itself continued to study, debate, and consider major revisions to its policies. Building on this new information, a primary purpose of the December hearings was to obtain even more information and opinions on organ allocation policies, particularly those affecting livers. That purpose was achieved.

Based on these sources and much other information, the Department has determined that the original proposal in the NPRM was insufficient. The

transplantation community is very divided, on allocation policy in general and specifically on liver allocation, and the existing policy development process is unlikely to bridge those divisions. Medical issues, ethical issues, and matters of trust and actual practice are substantially intertwined. Yet, the Department is unwilling, at this time, to issue a prescriptive allocation policy. We believe the OPTN must be primarily responsible for establishing medical criteria for patient listing and status categories, and for developing equitable allocation policies that reflect the Secretary's policies, as expressed in this regulation.

The Secretary decided, therefore, to approach the issue in terms of performance goals. The basic idea of a performance goal is to set a target, allow the operating entity (in this case the OPTN) to determine how best to meet that goal, and then measure performance against that goal. This model is widely used in business and in public programs. It is the model for this Department's Healthy People 2000 goals and other initiatives as well as the recently enacted Government Performance and Results Act. Quite apart from its other advantages, it promises to clarify and strengthen the Department's review and approval process for OPTN policies.

Based on the detailed and helpful dialogue at the hearing, and the clearly expressed preferences of commenters on both sides of specific issues, the Secretary has determined that three broad performance goals for organ allocation are needed. The topics of these goals are: (1) minimum listing criteria, (2) patient status, and (3) priority for patients with the highest medical urgency. The Secretary has also added a requirement, discussed below, for the OPTN to assess the cumulative effect of its policies, and develop new policies as appropriate, regarding socioeconomic equity. All of these goals are subject to sound medical judgment, both as to specific patients and as to overall standards, in order to avoid organ wastage, reflect advances in technology, and otherwise operate an effective and efficient allocation system.

Listing (§ 121.8(a)(1)). Many commenters at the hearings pointed out that current allocation policies (which give substantial weight to overall waiting time without regard to status) encourage aggressive physicians to list patients for transplants as early as possible, in some cases years before they will need or want a transplant. Other physicians are more conservative, and some patients do not come to the attention of transplant professionals until later in the course of their underlying condition. As a result, persons with equal waiting times may have very different medical urgency. This means that overall waiting time as a ''tie-breaker'' is unfair, encourages ''gaming'' behaviors and distrust within the transplant community, and discourages sharing of organs across geographic areas (because a less needy patient in one local area may obtain preference over a more needy patient in another local area simply by virtue of aggressive early listing). We have determined, therefore, to require that the OPTN develop listing criteria that are based on objective medical criteria pertinent to each organ, and to update these criteria to reflect increasing medical knowledge. The OPTN already has efforts underway that go a long way toward achieving this objective, and the Secretary applauds those. As explained below, overall waiting time will also be replaced by waiting time in status as a ''tie breaker.''

Patient Status (§ 121.8(a)(2)). Another set of themes emerging from the hearings is the recognition that current liver allocation criteria fail to differentiate adequately among different degrees of medical urgency and the desire for substantial improvements in the use of objective medical criteria for the classification of patients. In some cases, existing criteria are based on situational factors, such as whether a person is hospitalized, which are neither medical criteria nor necessarily good proxies for underlying medical condition or urgency. They can also encourage choices on the part of managing physicians to make sure that their own patients are not disadvantaged relative to other persons. At the same time, we know that advances in transplantation medicine and the OPTN's extensive investment in patient information systems have made possible improvements in the classification of patients. The ever-improving knowledge base about the medical factors that correlate with transplant outcomes, combined with the use of computer technology and statistical analysis, allow sophisticated ranking of patients, without the need to group disparate patients into relatively few and crude categories. The Secretary has decided to endorse the requested reforms and require improved categorization of patients, based on objective medical criteria that distinguish among different levels of urgency in sufficient detail as to reduce discriminatory effects.

Priority for the Most Urgent and Geographic Equity (§ 121.8(a)(3)). By far the most controversial aspect of current allocation policies is that the ''local first'' feature creates inequities in access for organs among patients of equal medical urgency, making where they live or list a more important factor than objective measures of medical status in obtaining an organ. All patients are affected by these inequities, but the consequences fall most heavily on those whose medical need is greatest and who are most likely to die before receiving an organ. As shown in tables 3a and 3b below, there are vast differences in median waiting times for kidneys among different transplant programs and different organ procurement areas (table 3a addresses transplant hospitals and is adapted from OPTN data printed in the Cleveland Plain Dealer on February 5, 1997; table 3b addresses organ procurement areas and is adapted from OPTN data on waiting times that will shortly be published):

TABLE 3a.—SHORTEST AND LONGEST WAITING TIMES BY KIDNEY TRANSPLANT PROGRAM 1994–1995

	Median [1]
Shortest Hospital Waiting Times:	
Harris Methodist, Fort Worth, TX	54
Presbyterian-University, Pittsburgh, PA	79
Southwest Florida, Fort Myers, FL	114
Henrietta Egleston, Atlanta, GA	144
Oregon Health Sciences, Portland, OR	147
Longest Hospital Waiting Times:	
University of Pennsylvania, Philadelphia, PA	822
Northwestern Memorial, Chicago, IL	828
Lehigh Valley, Allentown, PA	838
William Beaumont, Royal Oak, MI	850
Milton Hershey, Hershey, PA	858

[1] Median waiting times (days).

Source: *Cleveland Plain Dealer,* February 5, 1997, reporting UNOS data.

TABLE 3b.—SHORTEST AND LONGEST KIDNEY TRANSPLANT WAITING TIMES BY LOCAL ALLOCATION (OPO) AREA, 1993–1995 FOR BLOOD TYPE O

	Median [1]
Shortest OPO Waiting Times:	
Oregon Health Sciences University Hospital	107
Lifelink of Southern Florida	143
Lifelink of Florida	161
Life Connection of Ohio	204
Longest OPO Waiting Times:	
Carolina Organ Procurement Agency	1,423

TABLE 3B.—SHORTEST AND LONGEST KIDNEY TRANSPLANT WAITING TIMES BY LOCAL ALLOCATION (OPO) AREA, 1993–1995 FOR BLOOD TYPE O—Continued

	Median [1]
Regional OPA of Southern California	1,501
California Transplant Donor Network	1,513
New York Organ Donor Network	1,680

[1] Waiting times (days).

Source: UNOS data, soon to be published in report on waiting times. The OPO waiting times are longer than hospital waiting times mainly because type O patients wait longer than most other blood types.

Unfortunately these data, although the best available, do not isolate the differences in patient condition or in transplant centers listing practices that underlie some of the observed disparity. For example, as discussed previously, some doctors aggressively list patients very early in the course of their disease to give them more waiting time and raise their chance of obtaining an organ. Such a practice artificially inflates waiting times in some areas. However, the differences in waiting times by area far exceed the differences in medical status by area.

These differences exist throughout the United States. As shown in Table 4, each OPTN region has many local OPO allocation areas with relatively short and relatively long waiting times:

TABLE 4.—RANGE OF KIDNEY TRANSPLANT WAITING TIMES AMONG OPOS BY OPTN REGION MEDIAN WAITING TIME IN DAYS, 1994 FOR BLOOD TYPE O

Median waiting times for kidneys	Days (shortest–longest)
Region 1 (New England)	413–1,360
Region 2 (DC, DE, MD, NJ, PA, WV)	702–1,378
Region 3 (Southeast)	143–761
Region 4 (OK, TX)	386–655
Region 5 (California & Southwest)	374–1,513
Region 6 (Northwest)	107–1,061
Region 7 (Upper Midwest)	794–1,176
Region 8 (CO, IA, KS, MO, NE, WY)	287–754
Region 9 (NY)	228–1,680
Region 10 (IN, MI, OH)	204–1,422
Region 11 (KY, NC, SC, TN, VA)	231–1,423

Source: UNOS data, soon to be published in report on waiting times.

Similar waiting time differences exist for other organs. To some degree, these differences in waiting times result from the current absence of standardized listing criteria, as discussed above. Hence, these are imperfect measures of differentials. They also reflect, however, the fact that current patients who happen to list in areas with either higher incidence of end stage organ disease, or less ability to generate organ donors, are systematically disadvantaged by policies that do not permit the organs to go to the patients who need them the most. They also work to the disadvantage of prudent purchasers who wish to designate or contract with particularly high quality (or low cost) transplant hospitals to serve their patients. Under current allocation policies, neither individual patients nor concerned payers have the freedom to select their preferred medical provider without, in many cases, increasing the chance that the patient will wait longer and die while waiting for an organ.

Individual patients are directly affected, regardless of medical need. Although the Department is mindful that anecdotes can be misleading, the following example illustrates the inherent effects of establishing unduly restrictive geographic barriers to equitable organ allocation. In a recent case reported in the press (Sunday World Herald of Omaha, Nebraska, May 25, 1997), a patient was forced to choose between listing with a ''local'' hospital 250 miles away but in an organ procurement area that covered his State and had access to relatively more organs, or with his strongly preferred and truly local hospital just 20 minutes across a river and in another State that had access to relatively fewer organs. Cases such as this are inherent in a system that established defined areas for the purposes of administering organ procurement, but whose boundaries also have been used to limit organ allocation. Reliance on boundaries that make sense for administrative convenience may lead to inequities in organ allocation criteria. For example, in a number of States one OPO is surrounded by another; and in Texas there is an OPO that is composed of four non-contiguous areas separated by other OPOs. Some OPOs are based on the service area of a single hospital; some follow the boundaries of a single State; and others serve four or more States. These and other vagaries of this system are shown in the following map. Because of the differences in OPO size, geography, and population, the Secretary has decided that OPO areas should not be the primary vehicle for organ allocation.

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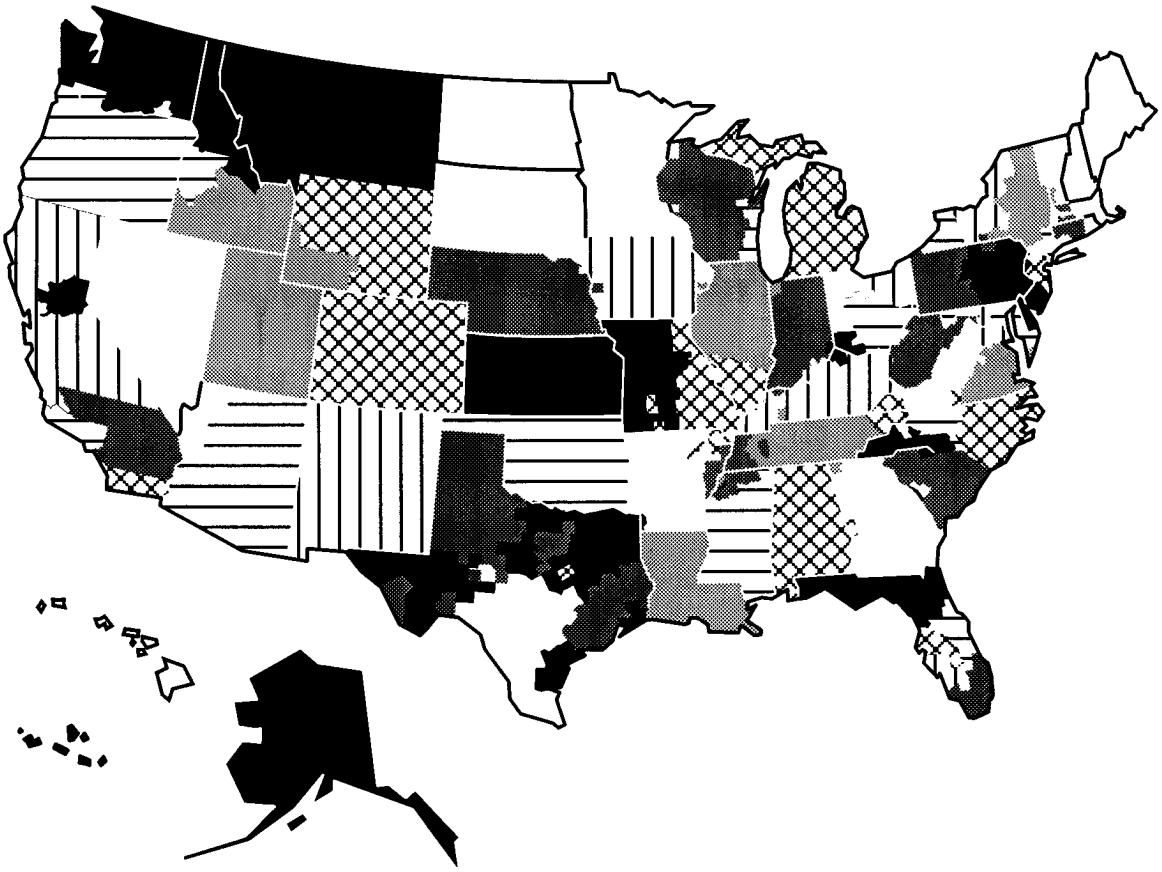
Organ Procurement Organization Service Areas, 1997



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Payers are also directly affected. Their ability to select transplant hospitals for their patients is hampered if listing patients solely at those hospitals forces them to compete with local patients for the limited supply of local organs, even though this listing frees up organs in the areas in which the patient would otherwise be listed. Some large payers have tools at their disposal to ameliorate this problem, such as listing some patients at more than one center (multiple listing), listing some patients at centers with shorter waiting lists, or accelerating hospitalization to put patients in a preferred status. However, most payers do not use such techniques and only a minority of patients benefit from such ''gaming.''

Perhaps the greatest inequity that the current system of local priority creates is that it particularly disadvantages those who face imminent death through unusually rapid deterioration. The chance that an organ that will match one's physiology will be available in the local area within the next week is very small. Yet, the chance that an appropriate organ will be available somewhere in the country and that it can be transported without risking wastage is much higher.

The transplant community has differing opinions over the issue of broader sharing. According to some commenters, this is in part because some hospitals and their patients reap the benefits of a highly productive OPO and they are concerned that they may receive fewer organs under a national system. Many commenters have pointed out that local preference draws upon, and reinforces, close bonds among local organ procurement organizations and local hospitals and physicians. Almost all agree that there are logistical and practical reasons why organs cannot be shipped back and forth across the country in response to the daily needs of every individual patient.

As shown below in Table 5, there are great disparities among OPOs in the production of donor organs, and under the current system, the productivity of the local OPO directly impacts on the number of transplants done in the OPO service area.

TABLE 5.—DONORS PER MILLION POPULATION 1995

Donors per million pop.	Percentage of OPOs
<15.00	19.4
15.00–20.00	22.4
20.01–25.00	37.3
25.01>	20.9

Note: The range of OPO donors per million population is 6.4 to 31.6.

Source: Calculation by the Division of Transplantation using UNOS Data.

Major review agencies, including the Inspector General of this Department and the Congress' General Accounting Office, have reviewed allocation issues and issued reports concluding there are major inequities and that major reform is needed to make the allocation system a truly ''national'' system as intended by the Congress.

The American Medical Association has studied organ allocation through a panel of experts. In its 1996 Code of Medical Ethics it states that: ''Organs should be considered a national, rather than a local or regional, resource. Geographical priorities in the allocation of organs should be prohibited except when transportation of organs would threaten their suitability for transplantation.'' In reaching this conclusion, the AMA panel reviewed the evidence concerning several organ types, and a wide range of alternative formulations. Of particular importance was their finding that current organ allocation policies were, in some cases, seeking to favor patients of lesser urgency but more likely to benefit, but that in actual practice these benefit differences were far too small to justify differential priority.

Taking all of these arguments into account, the Secretary has determined that a national performance goal is needed to encourage the OPTN to take advantage of advances in technology and survival rates, and to bring policies in line with the intent of the National Organ Transplant Act. That goal would reduce geographic inequities by requiring that persons with equal medical urgency (i.e., in the same status as defined under the second performance goal) have essentially equal waiting times regardless of where they list. This standard emphasizes, however, that the sickest categories of patients should receive as much benefit as feasible under this standard, in accordance with sound medical judgment. This is a significant departure from current policies, not only in making geography less important for allocation purposes, but also in its approach to waiting time disparities. The relevant ''tie-breaker'' will no longer be total waiting time, perhaps years, but will become waiting time within a group of patients with equal medical urgency.

We are mindful that there are practicalities involved, including especially transportation. The problem is not occasional cross-continental shipping from one large city to another, which is relatively straightforward. Instead, however, there can be severe logistical problems with frequent shipping of organs (often preceded by a special team that travels to retrieve the organ and return with it), or with moving organs among relatively transportation-disadvantaged areas, even within the same State. The performance goals are designed to allow (and require) the OPTN to craft policies tailored to each organ transplant type that are workable, feasible, and avoid organ wastage.

Many commenters urged that the Secretary require national sharing of organs, without any role for geographic factors. Others urged regional sharing. We prefer the performance goal approach. Achieving the goal will certainly require greater geographic sharing and will probably require national sharing for some organs for patients with specified medical conditions. Indeed, regional sharing is already a prominent feature of heart allocation, and national sharing a prominent feature of kidney allocation. However, we believe that any simple formulation would inhibit the ability of the OPTN to craft the most sensible policies that achieve practical as well as ethical results, and we wish to encourage change over time as medical science and medical criteria improve. Therefore, we are at this time using the performance goal approach for all organs (with an accelerated schedule for the initial revision of policies for liver allocation).

Implicit in the requirement that patients with equal medical urgency and waiting time in status have an equal chance of receiving an organ is reform of policies that encourage organs to be diverted from patients of blood type O, the ''universal donor,'' in favor of patients of other blood types, if that would preclude equalization of waiting times in status. One of the inequities of present organ allocation policies is that patients of blood type O wait much longer for organs than other patients. For example, according to recently calculated data from the OPTN, the median waiting time for primary kidney transplants in 1994 was 824 days overall, but 1,007 days for patients of blood type O. For hearts, the median waiting time was 224 days overall, but 353 days for patients of blood type O in

1996. Blood type is not an indicator of medical urgency, although it is a key determinant in organ matching.

The Secretary appreciates that there are many factors that can contribute to achieving the geographic equity goal. For example, if the Department's organ donation initiative were to achieve a high rate of success, then fewer organs would need to be shared. Improved listing criteria and medical status categories will reduce measured inequities. Nonetheless, within foreseeable parameters, we see no basis to expect that inequities can be eliminated for any major organ category without broader geographic organ sharing, on at least a broad regional basis for all patients with high levels of urgency.

We also require the OPTN to take into account key constraints on organ allocation. There are patients with urgent need for whom transplantation is futile. Organs cannot be used without an assessment of the immune system and other physical conditions of patients. Broad geographic sharing should not come at the expense of wasting organs through excessive transportation times. Efficient management of organ allocation will sometimes dictate less transportation when the highest ranking patient can wait a day or two for the next available organ. Sound medical judgment must be exercised before a final decision on whether to transplant a particular organ into a particular patient. Our goals allow for these factors to affect transplantation outcomes. For example, current OPTN policies take into account the special medical needs of children. The Secretary endorses this approach and expects that the OPTN will continue to take these needs into account as it develops new medical criteria and allocation policies.

Transition Protections (§ 121.8 (a)(5)) Finally, we have added a requirement that transition protections (sometimes termed ''grandfather'' rights) be considered whenever a change in policy disadvantages an identifiable set of patients already waiting on the national list of transplant candidates.

To implement these protections, the OPTN would determine whether a change disadvantaged some patients, and if so, consider developing a transition policy to eliminate that disadvantage. The transition policy would be submitted to the Department for review along with the new policy, together with estimates of the likely effects of each. Because a transition policy complicates organ allocation, and because the Secretary wants to preserve OPTN flexibility to develop and implement minor improvements with no consequential effect on existing patients' priorities, the transition provision allows the OPTN some flexibility as to whether, for how long, and for which patients the transition procedure would be developed. Of course, the OPTN would be free to devise particular approaches that would be most efficient and effective for a particular patient population. As with all other allocation policies, the Department would review each proposed transition procedure.

In addition, the Secretary has adopted a special transition provision for the first revision of the liver allocation policy. The OPTN is directed to develop a transition proposal for the Secretary's review which would, to the extent feasible, treat each individual on the national list and awaiting transplantation on the date of the publication of this regulation in the **Federal Register** no less favorably than he or she would have been treated had the revised policy not become effective. The transition procedures for this initial revision of the liver allocation policy may be limited in duration or applied only to individuals with greater than average medical urgency if this would significantly improve administration of the list or if such limitations would be applied only after accommodating a substantial preponderance of those disadvantages by the change in the policy. See § 121.8(a)(5)(ii).

Kidneys pose potential problems because, unlike other organs, a significant fraction of patients have already spent years on the national list and turnover is much lower. On the other hand, transition procedures may be particularly important for kidney patients for the same reason. We request comments on the transition procedure generally and specifically as to its suitability for kidney patients.

(a) *Indicator Data* (§ 121.8 (a)(4) and 121.8 (b)) In order to assess how well the OPTN's current or proposed allocation policies achieve the performance goals previously stated, the Secretary requires the OPTN to collect and report indicator data on outcomes, and to compare alternative policies against estimated or projected outcomes. It is primarily against these indicators that the Secretary will determine whether the OPTN's proposed revisions to organ allocation policies will be approved. The Secretary expects the OPTN to develop appropriate indicators, but has specified several of central concern. These are: disparities in waiting times in status among transplant programs (especially disparities among the sickest categories of patient); life-years lost (both pre-and post-transplant); the number of patients who die while waiting for a transplant, and the number of patients mis-classified. Our requirements for performance indicators are presented in § 121.8(a)(4). See also, § 121.8 (a)(3), discussed earlier, for the allocation policies themselves.

Over the past year, a great deal of the debate and analysis of alternative allocation policies has benefitted from the results of computer-based modeling of liver allocation. While current modeling has some limitations, it is nonetheless useful today and holds great promise of assisting the OPTN in devising, as well as assessing, policies. The Secretary expects the OPTN to develop and use such models for all organs and to present results to the Department.

(b) *Deadlines for Initial Reviews* (§ 121.8(c)) The Secretary expects the achievement of these goals to be an ongoing process as medical technology, experience, and our understanding of transplantation improve over time. Therefore, we have provided for periodic policy revisions. However, for all organs other than livers, the Secretary is requiring that the OPTN develop initial revised policies to meet the goals, and to submit these within one year from the effective date of this rule. For livers, the Secretary is requiring development of policies that will meet these goals, to be submitted by 60 days from the effective date of this rule.

Shortly after this deadline the Secretary will take action with respect to the OPTN liver allocation proposal, depending on the information available to us as to which option best meets the performance goals set out in this rule. During consideration, the Secretary is committed to using a process allowing for effective comment and presentation of alternatives. In order to minimize the time needed to develop approved policies, the Secretary will follow carefully the OPTN's progress in developing the new liver allocation policies.

(c) *Liver Allocation Policies* The OPTN has wrestled with liver allocation issues for a decade. A brief summary of this history helps in understanding both the current OPTN policy and the Department's approach in this regulation. One of the two main purposes of the December hearing was to obtain additional information and views on liver allocation.

UNOS adopted a liver allocation policy in 1986, the first year of OPTN operations. The allocation policy featured a point system assigning relative weights for medical urgency, blood group compatibility and waiting

time to patients within distinct distribution units. This initial system allocated organs first among all patients locally (with ''local'' waiting lists meaning the OPO procurement area, ranging from a single transplant hospital's list to the combined lists of all transplant hospitals in an entire State), then to patients in the OPTN region. At the time this policy was adopted, the country was divided into nine regions. Eventually, the number of regions was expanded to the current eleven to reduce differences in population size among the regions. Major differences still remain, however.

The liver allocation policy also included an informal emergency voluntary sharing practice known as ''UNOS STAT'' whereby a transplant hospital would notify the UNOS Organ Center (the 24-hour organ placement operation maintained by UNOS) that a patient was critically ill and expected to die within 24 hours without a transplant. The Organ Center, in turn, would immediately notify all OPOs and transplant programs of the urgent need. Should a liver become available, the OPO could bypass the usual allocation process and the liver could be directed to the UNOS STAT patient's hospital. In effect, UNOS STAT was a system for sharing livers nationally, but only for the medically neediest patients. Between 1987 and 1990, it is estimated that 15 percent of the patients who received transplants were designated as UNOS STAT.

Objections were raised about the use of UNOS STAT, citing a lack of formal, uniform rules governing its use, and a concern that it was being used excessively or inappropriately. It was abolished by the OPTN in 1991. In addition to eliminating the UNOS STAT category, the liver allocation policy modified in 1991 expanded significantly the definition of the most urgent category by redefining it to mean death within seven days without a transplant (rather than 24 hours as in UNOS STAT). The rationale for the change was to provide greater opportunity within the formal allocation system for transplantation of chronically ill patients as well as those with acute fulminant liver failure.

Waiting time accrual under the liver allocation criteria was also modified to give greater priority to the most urgent patients. Status 1 (originally Status 4; in the discussion the sickest patients will always be referred to as Status 1, the current definition) patients were assigned the highest priority within the same distribution unit by only allowing waiting time accrued by a patient while listed as Status 1 to count for liver allocation. The Status 1 criteria specified until recently that such patients have a life expectancy of less than 7 days without a liver transplant. Patients who are listed as Status 1 automatically revert to Status 2 after 7 days unless they are relisted as Status 1 by an attending physician. Prior to this policy change, it was possible for a patient who had been waiting a long time in a lower status to accumulate enough waiting time points to give that patient enough total points to be ranked higher than a patient who was a Status 1. The definitions of Status 2, 3, and 4 patients were, until changed, as described below:

Status 2: Patients are continuously hospitalized in an acute care bed for at least 5 days, or are in the intensive care unit. Continuous hospitalization is required.

Status 3: Patients require continuous medical care but may be followed at home or near the transplant hospital.

Status 4: Patients at home, functioning normally.

However, because the system allocates organs first locally, then regionally or nationally only if no local patients are a good match for the organ, and because at any time it is likely that the relatively few (or no) local patients in Status 1 will match, many organs go to Status 2 and 3 patients despite their being ranked lower in medical priority. In the mid 1990s, about two thirds of liver transplants were received by patients waiting in the ''local'' area, about one fifth by patients in the region and outside of the ''local'' area, and about one eighth by patients outside the region. Therefore, the preference for ''local'' plays a significant role in determining a patient's likelihood of receiving an organ. Under the current system, there is a wide range among OPOs and the OPTN regions in the number of patients on the waiting list, the number of donor livers available, and the ratio of patients per donor. Consequently, patients in different locations have disproportionate probabilities of being offered a liver under this arrangement. Further, because fixed boundaries are used in local and regional distribution, some patients nearest the site of the donor who are otherwise highly ranked according to urgency or waiting time continue to wait while less sick patients in the ''local'' region are transplanted. As a result, some patients with higher medical urgency die waiting for a liver while other patients with less medical urgency receive a transplant.

Between 1990 and 1996, the number of liver transplant hospitals performing at least one liver transplant increased from 75 to 110, and the number of liver transplant programs performing 35 or more liver transplants per year increased from 18 to 41. Liver transplants increased from 2,676 to 4,012. Thus, patients have more transplant hospitals from which to choose, but at the same time competition among liver transplant programs for available livers has increased. During 1996, there were 8,026 registrations for a liver transplant.

Some people criticize this policy because livers are allocated ''local first'' to whomever is highest ranked in the local area of procurement. Thus, less sick patients can be transplanted before sicker patients in other local allocation areas. They believe that the sickest patients should always be transplanted first regardless of their location, because their lives are most at risk. In 1996, about 21 percent of liver patients transplanted were Status 1 and about 30 percent were Status 2. Almost 48 percent of transplanted patients were Status 3, and less than 1 percent were Status 4.

The counter argument to this criticism is that, if sickest patients are always given preference, there is a less efficient use of the available livers, because the sickest patients (Status 1) have lower survival rates than transplant recipients with other statuses. Others say that if less sick patients receive lower preference than under the current policy, more of them will become sicker while waiting and then will have lower survival rates when they are eventually transplanted. Optimally, patients should be transplanted at a time when they are sick enough to benefit from a transplant, but not so sick that the risk of losing the graft is heightened. OPTN data show, however, that at one year after transplant there is about an 11 percentage point difference in patient survival rates and 13 percentage point difference in graft survival rates between former Status 1 and 2. Some argue that part of this difference is due to a side effect of local preference rather than greater risk of graft loss: Status 1 patients, they assert, often get an inferior organ that was made available only after it was turned down for use for any patient in another local procurement area.

Table 6, taken from pages 143 and 149 of the *1997 Annual Report of the OPTN and Scientific Registry* shows graft and patient survival rates of liver transplant patients, by status:

TABLE 6.—THREE MONTH AND ONE YEAR GRAFT AND PATIENT SURVIVAL RATES OF LIVER TRANSPLANT PATIENTS BY STATUS

Waiting list status at transplant	N	3 Month survival rate		One year survival rate	
		Graft (percent)	Patient (percent)	Graft (percent)	Patient (percent)
Status 1	1,019	74.6	81.9	67.7	76.3
Status 2	1,562	84.0	89.8	77.1	83.6
Status 3	3,437	90.0	95.1	84.0	91.4
Status 4	91	87.8	97.6	82.2	93.7
Unknown	162	n.c.	n.c.	n.c.	n.c.
Overall	6,271	85.4	91.6	79.1	87.0

NOTE: Covers patients transplanted 1994–95 for which a survival time could be determined.
n.c.=not calculated

Another frequent criticism of the current policy is that there is wide variation in waiting times from one geographic area to another. A counter argument is that this variation cannot be attributed entirely to the allocation policy, because it may also be a function of patient selection decisions and the number of organs procured locally. However, the allocation policy, particularly as it relates to the size of the initial allocation area, is a major determinant of variation in waiting times. For livers, waiting time differentials among transplant hospitals and among organ allocation areas vary by a factor of five or more.

A third criticism of the ''local first'' policy is that it greatly limits patient choice. If some non-local transplant hospitals do a better job and attract more patients, these patients come to those hospitals only at the price of a reduced chance for a transplant and compete with each other for the limited supply of organs available locally. A counter argument is that some patients prefer to list at local hospitals and that an assured supply of local organs facilitates this particular choice.

Consideration of Alternative Policies

Following discussions with the Department, which suggested that computer modeling be undertaken, UNOS contracted with the Pritsker Corporation in 1995 to develop a computer simulation model for liver allocation. The model presents the hypothetical outcomes resulting from the application of a number of alternative allocation policies. Among the many outcomes measured were: patients transplanted, percentages of patients transplanted by status, number of pre- and post-transplant deaths, median waiting times, and distance from donor location to transplant location.

The Liver/Intestinal Transplantation Committee of the OPTN considered seven policies that were most representative of all those modeled, including a policy for national sharing proposed by the University of Pittsburgh Medical Center (UPMC). The UPMC proposal and the other options had also been modeled by the CONSAD Research Corporation under contract with the UPMC. The Committee's subsequent recommendations were reviewed by the OPTN Patient Affairs Committee and by its Allocation Advisory Committee which put forth an alternate proposal. This proposal included a modest component of regional sharing of organs, but rejected major regional sharing as well as the national sharing advocated by UPMC.

At its meeting in June 1996, the Board of Directors considered the policies proposed by the Liver/Intestinal Committee and the Allocation Advisory Committee, as well as the existing liver allocation policy. The Board decided to change the existing policy in several ways, including redefining Status 1 to include only patients with ''acute'' failure, placing other patients in intensive care into the broader Status 2 group along with other patients of lesser urgency, eliminating Status 4 as an urgency category for prioritizing liver transplant candidates, and mandating regional rather than local sharing for the newly defined Status 1 group (region for Status 1 allocation would be the area encompassing the 20 percent of the total number of Status 1 and 2 candidates on the national list who are nearest to the available organ). The Board of Directors then sent this proposal into an OPTN public hearing process held in the fall. In November 1996, the Board voted to adopt the new Status definitions, but to drop regional sharing. This change was scheduled to take place in January 1997. However, for the reasons described below, the Board suspended the new Status definitions (except for dropping Status 4) and the previous allocation system remained in place with little change.

At the Department's public hearing in December 1996, these system revisions became a major issue. The de facto effect of the Board's vote, as presented by many witnesses and uncontradicted by any evidence, was substantially to disadvantage the group called ''chronic crashers'', which had previously had a high priority as the predominant group within Status 1. In effect, the Board had increased the priority for ''acute'' patients with high medical urgency and little waiting time at the expense of another group with almost equally high medical urgency. While the Board did not present a formal rationale for the change in the record of its meeting, the change appears to be premised on the Board's belief that acute patients have a higher survival rate if transplanted promptly, and were disadvantaged under the current system, as well as its belief that some types of chronic liver disease, for example liver disease caused by alcoholism (alcoholic liver disease or ALD), had substantially lower survival rates.

As to the survival rate issue, the Department agrees with the approach taken by the American Medical Association in its report that supported the 1996 Code of Medical Ethics provisions discussed earlier. The report noted, ''only very substantial differences in the likelihood of benefit among patients are relevant to allocation decisions.'' In fact, as reported in the *UNOS Update* magazine of September/October 1996, the ''acute'' category of fulminant liver failure actually has a lower survival rate after transplant than most types of chronic liver disease.

With respect to ALD, the Department notes that data presented at a National Institutes of Health Workshop indicated, ''[r]ates of graft and patient survival after liver transplant for ALD are excellent and are similar to those for other chronic liver diseases. * * *''

As a result of the airing of these matters at the HHS hearing, the OPTN Board of Directors rescinded its decision and placed the new policy on hold (while allowing, however, limited

experimentation with broader sharing for ''acute'' patients in two OPTN regions). The net effect was temporarily to restore the prior system. At its meeting of June 25–26, 1997, the OPTN Board approved another policy, which would favor ''acute'' over ''chronic crasher'' patients. This revised policy puts the ''acute'' group first, the ''chronic crasher'' group second, and less urgent patients lower. Whatever the merits of giving preference to ''acute'' or ''chronic'' patients, these changes do little to reduce the fundamental inequities affecting patients across the country, the vast majority of whom have ''chronic'' liver disease. On the other hand, the new preference for ''acute'' patients exhibits a commendable understanding of the crucial argument in favor of this group: medical urgency.

All of these policy priorities, ranging from STAT to ''acute'', represent OPTN attempts to favor the most urgent needs. In its performance goals, the Department retains and emphasizes this recurring theme of OPTN policies regarding allocation of livers as well as other organs.

In light of the extensive deliberative process within the OPTN, the many policies that have been considered, the substantial technical information available, the availability of two modeling tools that provide approximate quantitative estimates of the differing effects of alternative policies, and above all the demonstrated inequity of the current liver allocation policies, the Department is not providing the OPTN the same period of time to reform liver allocation policy that it is providing for other organs. For all organs other than livers, the OPTN has one year from the effective date of these regulations to develop and submit to the Department allocation policies that meet the aforementioned performance standards. For livers, the Secretary is allowing 60 days from the effective date of these regulations. The Secretary appreciates that this time is far shorter than normal OPTN time frames, which include an opportunity for public comment. However, lengthy deliberations have already occurred and a great deal of information is available that will facilitate rapid reform. Moreover, the regulation specifies that no further public comment need be solicited by the OPTN before the deadline, although the OPTN may choose to do so. Similarly, the OPTN may choose to begin this process immediately if it believes that more time is required.

The final rule requires that the OPTN submit proposed transition procedures at the same time that it submits the proposed new allocation policy, together with supporting data. The Department will review these materials expeditiously, along with alternative proposals and public comments. The Department's plan is to obtain public input immediately following the deadline for the OPTN proposal. Commenters may propose alterations or alternatives. We ask that all proposals, whether from the OPTN or commenters, identify likely effects on inequalities in waiting times for patients of like medical urgency, on mortality, on life-years, on likelihood of organ wastage, and on other outcomes of importance.

The Secretary anticipates that similar procedures will be followed for other organs. In assessing these reforms for both livers and other organs, the Secretary will take into account that increased donation, more objective listing standards, and objective medical criteria for status categories all have significant potential for reducing geographic inequities. However, the Secretary has seen no evidence suggesting that fundamental inequities can be removed in the near future without broader geographic sharing of organs.

This final rule has not established specific quantitative measures that an OPTN liver allocation policy must attain to receive Secretarial approval. We expect the OPTN to use its medical expertise and consultative process to develop an appropriate policy. However, based on the use of the performance goals as a regulatory framework, it is unlikely that the Secretary would approve a policy that did not achieve a significant reduction in the disparity of waiting times, particularly for the most urgent patients.

(d) *Directed Donation* (§ 121.8(e)) Proposed § 121.7(d) on directed donation elicited several comments. Suggestions were made to delete the section on the basis that it would be misconstrued, and to refine it to take into account varying State laws. One commenter said that it contradicts the intent of the National Organ Transplant Act, and another said that directed donation should be discouraged but not prohibited. The existing OPTN policy discourages directed donation to designated groups or classes of people, but permits directed donation to named individuals. This policy is consistent with provisions of the Uniform Anatomical Gift Act, a model law that has been adopted by all States. The Department has retained in the final rule the language of proposed § 121.7(d) permitting directed donation of organs to named individuals. See, § 121.8(e). It should be pointed out that the final rule permits directed donation of an organ to named individuals only.

8. Section 121.9—Designated Transplant Program Requirements

Section 1138 of the Social Security Act creates an extraordinarily severe sanction for failure to comply with approved OPTN rules and requirements. This, in turn, would make it unfair and impossible to create standards higher than a threshold that any competent hospital might attain. In the proposed rule, the Department suggested the idea of ''designated transplant programs'' as a way around this dilemma.

Under this approach, failure to meet certain OPTN standards could result in an inability to receive organs, without necessarily jeopardizing either other transplant programs at the same institution or all Medicare and Medicaid reimbursement. No commenters objected to this approach, and no controversy over this approach surfaced at the public hearing. Accordingly, the Department has decided to retain the proposed approach, while improving it to reflect useful suggestions from commenters.

Most of the commenters on this section of the proposed rule recommended that the standards for the training and experience of transplant surgeons and transplant physicians, required for designation under proposed § 121.8(a)(2), apply also to Medicare-approved transplant programs designated under proposed § 121.8(a)(1). Three commenters suggested that transplant programs be designated on the basis of a minimum volume of transplant procedures and on patient survival standards, criteria now used in approving certain transplant programs for reimbursement under Medicare. Another commenter said that the NPRM was contradictory in admitting as OPTN members all Medicare-approved transplant hospitals, while expressing concern about proliferation of transplant hospitals and emphasizing that the Department did not wish to exclude hospitals from entering the field of transplantation. In the preamble to the proposed rule, the Department stated that the criteria for designation under proposed § 121.8(a)(1) and (2) are complementary, providing designated transplant program status to programs that meet Medicare standards, as well as to non-Medicare-approved programs which meet other requirements established by the OPTN. The Department's concern about the number of transplant hospitals was expressed in the context of ''uncontrolled proliferation of transplant facilities,'' that is, permitting designated status

without a method of ensuring the quality of care. See 59 FR 46488.

The Department sees the merit in having uniform standards for designated transplant programs, but believes that it would be disruptive to impose them unilaterally at this time. Instead, the Secretary will consider this issue in the context of revising the OPTN and Medicare standards. In that light, the Department has asked the OPTN contractor to consider developing standards regarding risk-adjusted graft and patient survival rates, and possibly volume of transplant procedures, if the latest scientific evidence supports such standards. If appropriate, such standards could supplement the requirements for designated transplant programs under § 121.9, following the notice and comment provisions of the Administrative Procedure Act.

The OPTN contractor, UNOS, said that the OPTN would not be able to provide patients with information about key personnel in Medicare-approved transplant programs, because it would have such information only for transplant programs designated under proposed § 121.8(a)(2). In addition, UNOS suggested that the OPTN be given authority to collect, maintain, and distribute data on key personnel for all transplant programs. The Department believes that the OPTN should define such a role through its Board of Directors' policy development process under § 121.4, and has asked the contractor to do so. Thus, explicit regulatory language is not required. In the meantime, to the extent that information is not readily available from the OPTN, we expect individuals to obtain it from the transplant programs themselves.

Two commenters suggested that a conflict exists between proposed § 121.8(c) and proposed § 121.3(d)(2) with respect to designation of transplant programs and membership of transplant hospitals. Under proposed § 121.3(d)(2), the OPTN is directed to accept as members of the OPTN transplant hospitals which meet the requirements of proposed § 121.3(c)(1) or (2). Under proposed § 121.8(c), (now § 121.9(c)), the OPTN may accept or reject applications from transplant programs for designated status. There is no conflict, because membership under § 121.3 does not confer designated status under § 121.9. One commenter said that proposed § 121.8(a) should indicate that designated transplant programs are also OPTN members. The Department has edited that paragraph in accordance with the suggestion. See, § 121.9(a). We have also added to § 121.9(c) a requirement that the OPTN act ''within 90 days'' on requests for designated status, making it comparable to the change made in § 121.3(c)(3), discussed above.

With respect to the disciplines listed in proposed § 121.8(a)(2)(v) as areas for collaborative involvement for designated transplant programs, two commenters suggested adding histocompatibility and immunogenetics. The Department has done so. See, § 121.9(a)(2)(v). The commenters also suggested that the term ''tissue typing'' in proposed § 121.8(a)(2)(vi) be changed to ''histocompatibility testing.'' The change has been made. See, § 121.9(a)(2)(vi).

The Department also has added a provision at § 121.9(a)(2) requiring transplant programs to have adequate resources to provide transplant services to their patients and promptly to notify the OPTN and patients listed for transplantation if the program becomes inactive. We are aware of at least one instance in which a transplant program became inactive, yet did not advise its patients of its inability to perform transplants. Such a situation also could lead to use of the enforcement provisions of § 121.10.

9. Section 121.10—Reviews, Evaluation, and Enforcement

Two comments were received on this section of the proposed rule. In response to one comment, an editorial suggestion, the Department has clarified proposed § 121.9(b)(1)(iii) to indicate that compliance by member OPOs and transplant hospitals with OPTN policies, as well as regulations, is covered in reviews and evaluations carried out by the OPTN. See, § 121.10(b)(1)(iii).

The other comment was an expression of concern about patients listed at transplant programs whose designated status to receive organs for transplantation may be suspended. The Department wishes to assure all who share this concern that the enforcement provisions of § 121.10(c) allow for an orderly phase-out and transition period should such a situation occur. Under § 121.10, the OPTN is required to monitor the compliance of individual transplant programs, to report to the Secretary the results of any reviews or evaluations that indicate noncompliance, and to make recommendations for appropriate action by the Secretary. The Secretary expects the OPTN to pay particular attention to programs experiencing difficulty. The rule further permits the Secretary to request more information from the OPTN or from the alleged violator, or both, before accepting or rejecting the OPTN's recommendations, or to take any other action the Secretary deems necessary. We expect that enforcement of these provisions will follow the pattern established by UNOS and member transplant hospitals in seeking voluntary compliance with OPTN policies in the past. That is, through a dialogue between the OPTN (and the Secretary, if necessary) and the transplant hospital alleged to be in violation of the rules, every effort will be made to reach a resolution before a decision is made to suspend a transplant program's designated status. It is the Secretary's intention that the OPTN develop a policy which minimizes disruption and cost to patients, and keeps them informed. The best interests of patient care will be paramount in monitoring and enforcement of compliance with this rule. In this regard, we have also elaborated on the procedures for OPTN reviews of transplant hospitals and OPOs. The OPTN shall conduct those reviews in accordance with the schedule specified by the Secretary and shall report progress on those reviews to the Secretary. See § 121.10 (b)(3) and § 121.10(b)(4).

10. Proposed Section 121.10—Appeals of OPTN Policies and Procedures

The Department received two comments on this section of the proposed rule. One commenter pointed out that appeals submitted to the Secretary must be sufficiently clear and substantiated. We agree that the Secretary must have appropriate information on which to base a decision, and believe that the language of the proposed rule provides the latitude needed for the Secretary to obtain such information. See, § 121.4(d). The other commenter expressed an opinion that the Secretary's role in approving policies and deciding appeals could lead to arbitrary and capricious actions, and suggested that the Secretary's decisions be published in the **Federal Register**. Similar points were raised in comments about proposed §§ 121.3 and 121.7 regarding publication of the Secretary's decisions on allocation and other policies of the OPTN, discussed above.

The Secretary's authority under proposed § 121.10(b) is not dependent on appeal and may be exercised at any time. We have moved the language of proposed § 121.10(a) to § 121.4(d). Because proposed § 121.10(b) is redundant in light of § 121.4(b)(2) and (d), we have deleted this section from the final rule.

11. Section 121.11—Record Maintenance and Reporting Requirements

Most of the comments on this section expressed concern that the proposed rule falls short of needed protections of confidentiality, and suggested as a model the protections delineated in MEDPAR, a Medicare data system used by HCFA. We agree with the need to ensure protection of confidentiality and believe that the protocols in MEDPAR may lend themselves appropriately to the records falling within the purview of § 121.11. We also believe, however, that the design of a system to protect the confidentiality of OPTN records should be left to the OPTN, subject to the Secretary's review and the data release provisions of this final rule. We expect the OPTN to submit for the Secretary's consideration a policy which will protect the confidentiality of OPTN records, but at the same time permit access by researchers to the OPTN and Scientific Registry data bases. Thus, we have amended proposed § 121.11(a) to reflect that records must be maintained and made available subject to policies of the OPTN and this final rule, as well as to applicable limitations based on personal privacy. We have also amended this section from the original proposal to clarify that the OPTN must follow such standard practices as making its information transactions and dissemination electronic to the extent feasible (unless requested in hard copy), and in disseminating information to include manuals and other explanatory materials as necessary to assure that the material is easily and accurately understood and used. We have also emphasized in § 121.11(b) and elsewhere that the OPTN should use rapidly advancing Internet technology to make information swiftly, conveniently, and inexpensively available throughout the nation.

Two commenters suggested adding a requirement that member transplant hospitals submit data to the Scientific Registry, a repository of data on transplant recipients that is operated under contract with the Department. Proposed § 121.11(b)(1) requires that the OPTN submit data to the Scientific Registry. We agree that a parallel requirement for transplant hospitals and OPOs is also appropriate, and have added it. See, § 121.11(b)(2). Another commenter suggested establishing a 90-day time limit for the submission of data under proposed § 121.11(b)(2). Such an explicit provision is not necessary because proposed § 121.11(b)(2) requires that information be provided on a prescribed schedule. In addition, UNOS suggested requiring the submission of cost data to the OPTN. Although we believe the language of the proposed rule is broad enough to permit the OPTN to request submission of such data, we have added to the final rule the phrase ''and other information that the Secretary deems appropriate.'' We have also corrected omissions in proposed § 121.11(b) by including the Secretary as a recipient of the information. We have added to the reporting requirements the phrase ''the OPTN and the Scientific Registry as appropriate. . . .'' This reflects the fact that some data which are to be reported or otherwise made available to the public are held by the contractor operating the Scientific Registry, while other data are held by the OPTN contractor.

The OPTN and the Scientific Registry are often asked by researchers, payers, the press, patients, and others for data. We appreciate the importance of the contractors' obligation to maintain the confidentiality of patient-identified data. However, we also recognize that data, collected as a consequence of Federally funded contracts and of official designation as a contractor of the Federal government, generally should be in the public domain. Even patient-identified data can be shared with researchers who provide appropriate protections against redisclosure. It is vitally important that *bona fide* researchers and modelers have ready and timely access to detailed data in order to explore ways to improve organ transplantation and allocation. Therefore, information should be made available to the public while protecting patient confidentiality. To correct the oversight of omitting this activity from the proposed rule, we have added § 121.11(b)(1)(v) which requires the OPTN and the Scientific Registry to respond promptly (normally within 30 days) and favorably to requests from the public for data to be used for *bona fide* research or analysis purposes, to the extent that the contractors' resources permit, or as directed by the Secretary. The contractors may impose reasonable charges for responding to such requests. Pursuant to Federal government-wide policy under OMB Circular No. A–130, charges should reflect only the marginal cost of preparing the data for dissemination, not the cost of collecting or maintaining it.

We have also added language in paragraph § 121.11(b)(1)(vi) saying that the contractors must respond similarly to reasonable requests from the public. The regulation does not require the contractors to satisfy every request; however, the ability to charge for data requests should enable the contractors to accommodate most requests. In addition, the contractors would have to provide ready access to data that it originally received from transplant hospitals and OPOs, to these same institutions. See, § 121.11(b)(1)(vii).

The Secretary has added language to § 121.11(b)(2) making clear that hospitals and OPOs must provide data directly to the Department upon request, and must authorize the OPTN and Scientific Registry to release data to the Department or others as provided in the regulation. The OPTN has informed us of difficulties it has in complying with both instructions from the Department and its perceived obligation to these institutions not to disclose data that might be made public by the Department. While we do not believe this to be a serious dilemma, we have drafted the final rule to make it clear that any hospital or OPO must, as a condition of its OPTN membership, make data available without restriction for use by the OPTN, by the Scientific Registry, by the Department, and in many circumstances by others, for evaluation, research, patient information, and other important purposes. In this regard, we particularly emphasize that we are requiring that current, institution-specific performance data be made available so that patients, payers, referring physicians, the press, and others can appraise the quality of transplantation programs. The Congress made this an obligation of the OPTN.

We have added language in § 121.11(b)(1)(I)(B) stating that the OPTN and the Scientific Registry shall submit to the Secretary information the Secretary deems necessary to prepare the Report to Congress required by section 376 of the Act, in order to clarify the contractors' responsibility in this area.

To complete the articulation of this policy, we have added a new paragraph (c) to § 121.11, ''Public access to data.'' This paragraph provides that the Secretary may release to the public information upon determining that the release will serve the public interest. For example, data on comparative costs and outcomes at different transplant programs, information on waiting list time, and information on the frequency with which transplant hospitals refuse offers of organs for their listed patients, will assist patients and their families and advisors in deciding where they wish to be transplanted. This release of data is consistent with section 375 of the Act, 42 U.S.C. 274c, which directs the Department to provide information to patients, their families, and their physicians about transplantation resources and about the comparative

costs and patient outcomes at each transplant hospital affiliated with the OPTN, in particular. It is also consistent with the Department's practice of having the contractor include in its published reports extensive data, including transplant hospital-specific survival data.

The provisions of § 121.11(c) were not included in the NPRM of September 8, 1994. To delay the implementation of this paragraph would be contrary to the public interest in that the decision-making of these parties regarding this life-saving procedure should be fully informed as soon as possible. The release of data is essential to allow patients, their families, and their physicians to make the most informed decisions possible about transplantation. Furthermore, the release of these data is consistent with the above-cited section of law and with the well-established practice of publishing center-specific outcome data, and thus public comment prior to publication is unnecessary.

The Secretary specifically requests comments on whether the above provisions sufficiently achieve the several important purposes served by provision of information to the OPTN, the Department, and the public, while protecting patient privacy.

12. Section 121.12—Preemption

A new section regarding preemption has been added to the final rule. This section does not require notice and comment rulemaking by the agency, as it does not alter the rights and responsibilities of any party. Instead, it simply applies the preemption principles derived from the Supremacy Clause of the United States Constitution. The Secretary is directed by section 372 to oversee a national system for distribution of organs, and the policies of the OPTN currently require organ sharing across State lines. The performance goals and indicators articulated by these rules are almost certain to increase interstate sharing.

At least one State has passed a law that appears to limit organ sharing policies. A national organ sharing system based primarily on medical need, with geographic considerations having less weight than at present as an allocation criterion, would be thwarted if a State required that, prior to sharing an organ with any other State, there be a written agreement with that other State or a requirement that the hospital or OPO first attempt to match the organ with an eligible transplant candidate within the State, regardless of status.

Similarly, a State enforcing such a law would almost certainly render impossible the compliance of transplant hospitals and OPOs within that State with rules and requirements of the OPTN, and thus would jeopardize their ability to obtain Medicare and Medicaid reimbursement. This too would thwart the Federal scheme created by Congress.

A further negative effect would flow from the enactment by additional States of such restrictive laws. If more States were to enact such laws, greater disruption in the allocation of organs under the OPTN's policies would occur. Patients registered for transplants in such States would almost certainly die as a result of the restrictions on organ sharing, while other patients would receive organs even though their transplants would not be approved until later under the OPTN's policies. Accordingly, for policy as well as legal reasons, the Department has added the preemption statement to the regulation.

The preceding discussion constitutes a Federalism Assessment, as required by Executive Order 12612, and we certify that this rule was assessed in light of the principles, criteria, and requirements of that Order.

III. Economic and Regulatory Impact

A. Legal Requirements

A number of statutes and executive orders require us to analyze the economic impacts of final rules.

Executive Order (E.O.) 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Special analysis is required for regulations which are ''significant'' because they create economic effects of $100 million or more; create adverse effects on the economy, public health, or other named categories; create serious inconsistency with actions of another agency; or materially alter the budgetary impact of entitlements and other programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues.

The Regulatory Flexibility Act requires that we analyze regulations to determine whether they create a significant impact on a substantial number of small entities (for purposes of the Act, all not-for-profit hospitals and all OPOs are categorized as small entities), and if so to prepare a Regulatory Flexibility Analysis exploring ways to mitigate adverse impact.

Executive Orders 12875 and 12612 (dealing, respectively, with ''Enhancing the Intergovernmental Partnership'' and ''Federalism'') require that we review regulations to determine if they unduly burden States, localities, or Indian tribes, or if they inappropriately infringe upon the powers and responsibilities of States.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that we determine whether regulations may result in the expenditure of $100 million either by State, local, and tribal governments, or by the private sector.

The Congressional review procedure of section 801(a)(2)(A) of title 5, United States Code, enacted in 1996, requires that rules with an economic effect of $100 million or more or other comparable effects be classified as ''major'', and that these rules may not take effect until the Congress has had 60 days to review them.

We have determined that this rule will not have consequential effects on States, local governments, or tribal governments, because it affects primarily the operation of private sector OPTN functions and the allocation of organs among patients based on their medical condition. It will not require an expenditure of $100 million or more by the private sector. Therefore, it does not meet the special consultative requirements of the Unfunded Mandates Reform Act. We have determined that it will not have a significant impact on a substantial number of small entities, and so certify under the provisions of the Regulatory Flexibility Act. However, because there is significant concern over the effects of changes in allocation policies on smaller hospitals, and because we considered as an alternative the possibility of imposing quality standards on transplant hospitals, we have prepared a voluntary Regulatory Flexibility Analysis (RFA). The analysis which follows, together with the remainder of this preamble, constitutes an RFA. We have also determined that this is an economically ''significant'' rule under E.O. 12866 and a ''major'' rule for purposes of Congressional review of agency rulemaking. (This rule is also ''significant'' under E.O. 12866 because it ''materially alters'' the rights of recipients—patients—of entitlement and grant programs). The analysis that follows, together with the remainder of this preamble, constitutes a Regulatory Impact Analysis (RIA) meeting these requirements.

This combined Regulatory Impact Analysis and Regulatory Flexibility Analysis also serves to analyze the effects of policies that we expect to approve under the procedures put in place under this rule, and that are assessed in this preamble, including all organ allocation policies necessary to

implement the performance goals and indicators that we establish.

At the time of the proposed rule, we stated that it would be premature to analyze alternatives because of the procedural emphasis of the NPRM. We stated that we would analyze comparatively the range of options that we considered, including the existing OPTN policies, based on the comments and information we later received. Subsequent events explained earlier in this preamble, and the information that we have subsequently received, have made it both desirable and possible to analyze qualitatively, and in part to quantify, the effects of the substantive, non-procedural policies promulgated under this final rule. We are far better able to quantify the effects of changes in liver allocation policy than of changes in allocation policy for other organs. However, we expect those changes to be qualitatively similar, and this analysis covers all allocation policies.

B. Effects of Organ Transplantation

Industry Structure and Size. As indicated in Table 7 below, covering selected organs, transplantation services are a very substantial set of medical procedures, although only a very small fraction of the trillion dollar health care sector.

TABLE 7.—ESTIMATED BILLED CHARGES FOR TRANSPLANTS, 1996

Major organ	No. programs 1996	No. transplants 1996	Average billed charges per transplant 1996 ($1000s)	Total program billed charges 1996 ($1000s)	Average program billed charges 1996 ($1000s)
Kidney	253	11,099	$94	$1,043,306	$4,124
Liver	120	4,058	290	1,176,820	9,807
Pancreas	120	1,022	110	112,420	937
Heart	166	2,342	228	533,976	3,217
Lung	94	805	241	194,005	2,064
Total programs	753	19,366		3,060,527	
Total hospitals	281	19,366		3,060,527	10,892

Sources: Data on numbers of programs and hospitals 1996 Annual Report of the OPTN, page 20 and C–2. Data on transplants performed from Facts About Transplantation in the U.S., UNOS, July 23, 1997. Data on billed charges per transplant from ''Cost Implications of Human Organ and Tissue Transplantations, an Update: 1996,'' by Richard H. Hauboldt, F.S.A., of Milliman & Robertson, page 30, excluding OPO charges.

These data show that on average, transplant programs generate revenues in the millions of dollars. Since most transplant hospitals operate several programs, the unduplicated revenue average across the 281 transplant hospitals that are OPTN members is about $11 million annually. This includes not just the cost of the transplant procedure itself, but also pre- and post-transplant charges such as time in the hospital waiting for a transplant. Because the source of these data uses billed rather than negotiated charges, actual receipts may be somewhat lower than shown above.

The range of revenues is much broader than these averages convey because the number of transplants performed varies so widely. Table 8 below, taken from OPTN and Scientific Registry data, shows the dozen highest volume programs for liver transplants performed in 1995 and 1996. These dozen programs performed one fourth of all liver transplants. Taken together, the two dozen lowest volume programs of those that performed transplants in 1996 only performed about 80 transplants, 2 percent of the total. Among active liver programs, the median program performed about 30 transplants, while the average was about 36.

TABLE 8.—12 OF THE HIGHEST VOLUME LIVER TRANSPLANT PROGRAMS, 1995–1996

Transplant program	1995 Volume	1996 Volume
UCLA Hospital Center, Los Angeles, CA	230	245
Presbyterian-University Hospital, Pittsburgh, PA	209	179
Mount Sinai Medical Center, New York, NY	209	180
Jackson Memorial Hospital, Miami, FL	194	179
Baylor University Medical Center, Dallas, TX	140	118
University of Chicago Medical Center, Chicago, IL	132	130
University of California, San Francisco, CA	106	100
University of Nebraska Medical Center, Omaha, NE	94	81
Rochester Methodist Hospital, Rochester, MN	91	89
University of Alabama Hospital, Birmingham, AL	82	86
Shands Teaching Hospital & Clinics, Gainesville, FL	81	102
University of Michigan Hospital, Ann Arbor, MI	78	59
Total	1,646	1,548

Source: 1997 Annual Report of the OPTN, pp. 391–396

Thus transplant volumes, and revenues, are highly skewed, with the average much higher than the median.

The billing cost data in Table 7 focus primarily on hospitals, and do not include procurement charges, which average approximately $24,000 per major organ in 1996, for a total of approximately one-half billion dollars

per year in addition to the $3 billion spent at transplant hospitals. Procurement charges are paid through organ procurement organizations. OPOs are by law given local (in some cases state-wide or larger) monopolies through a review and designation system administered directly by the Federal government. Currently, there are 63 of them, averaging some $8 million annually in revenues. Most of the revenues of both transplant programs and OPOs are paid by Federally funded health programs, primarily Medicare and Medicaid, but also Federal Employees Health Benefits Program (FEHBP), CHAMPUS, the Uniformed Services and the VA. In total, the government is by far the largest single payer for transplantation.

Included in the data above, but not separately identified, are laboratory costs. These can be very substantial, as a wide range of condition-related tests are necessary to monitor patient urgency, and both donors and recipients must have a broad range of laboratory tests.

The data above also include follow-up charges for one year, but not subsequent follow-up charges for immunosuppressive therapy and other costs. These average, according to Milliman & Robertson, about $7,000 for pancreas, $16,000 for kidneys, and between $21,000 and $29,000 for the other major organs in 1996. Adjusted for survival, Milliman & Roberts estimate the five-year cost of major organ transplants including follow-up costs as follows: heart, $317,000; liver, $394,00; kidney, $172,000; lung, $312,000; and pancreas, $149,000.

There are other sources of data on these categories of costs, each using somewhat different estimating techniques. Their estimates are generally comparable though sometimes lower. We note that such figures do not generally estimate the marginal cost of transplantation, after subtracting other costs that would be incurred if the patient did not receive an organ. Marginal costs are much lower. In the case of kidneys, a number of studies have estimated that transplantation costs are more than offset by reductions in other medical costs such as dialysis costs.

For purposes of the Regulatory Flexibility Act, an entity is considered ''small'' if it has revenues below a certain size threshold, or operates as a not-for-profit entity that is not dominant in its field. For health care providers, such as hospitals, the threshold amount is $5 million in annual revenues. Taking into account total hospital revenues and not just transplant revenues, few or no transplant hospitals fall below this threshold. However, the great majority of these institutions are not-for-profit entities, and hence qualify as ''small entities'' despite their substantial revenues.

Patient Effects. Table 9 below provides dramatic evidence of the importance both of increasing organ donation and of reducing unnecessary deaths while waiting for organs. Unlike growth in the waiting list, which in part reflects factors such as earlier and more aggressive listing, these data on deaths while waiting for organs provide clear evidence of the need for transplantation.

TABLE 9.—REPORTED DEATHS ON THE WAITING LIST 1988–1996

Year	Organ								
	1988	1989	1990	1991	1992	1993	1994	1995	1996
Kidney	739	759	917	975	1052	1285	1361	1510	1814
Kidney-Pancreas	0	0	0	0	15	61	71	86	91
Pancreas	6	23	21	37	33	3	13	4	5
Liver	195	284	316	435	495	562	657	799	954
Heart	494	518	612	779	780	763	724	769	746
Heart-Lung	61	77	68	45	44	51	48	28	48
Lung	16	38	50	139	219	252	286	340	385
Intestine	0	0	0	0	0	3	15	19	22
Overall	1,502	1,666	1,962	2,360	2,580	2,902	3,055	3,421	4,065

Source: UNOS web site at http://www.UNOS.org/sta—dol.htm, data as of January 13, 1997.

The approximately 20,000 annual transplants of major organs fall into two broad groups. More than half are kidneys. In the case of kidneys, dialysis is an alternative to transplantation for extended periods of time. Therefore, for most patients transplantation is not a matter of immediate survival. Instead, the benefits of transplantation fall largely (though not exclusively) in the domain of improved quality of life. These improvements can be very substantial, as physical health while on dialysis is significantly impaired, and dialysis imposes major stresses and substantial inconveniences in carrying out normal activities. In sum, dialysis sustains life but not well-being whereas a transplant can and often does restore well-being. For other organs, a transplant is in most cases a matter of survival. There are life-prolonging technologies that work for some patients (e.g., left ventricular assist devices for hearts) but for most awaiting extrarenal organs, a transplant is literally essential to survival. Thus, in round numbers the annual benefits of organ transplantation include about eleven thousand lives vastly improved by kidney transplantation, and another eight thousand lives both vastly improved and prolonged by transplantation of other major organs.

It is common, in benefit cost analysis, to use a concept termed ''value of a statistical life'' to estimate in monetary terms the benefits from lives saved. Estimates of this value can be derived from information on the preferences of individuals for reduction in the risk of death, and their willingness to pay for such reductions. In this case, however, it is important to take into account two major factors that reduce the usefulness of a statistical life as a measure: (a) most organ transplant recipients are much older than average and hence gain fewer years than would average beneficiaries of other life-saving interventions, and (b) an organ transplant carries a substantial risk of either the graft or the patient not surviving. For example, according to historical data from the 1997 Annual Report of the OPTN (page 23), only 62 percent of cadaveric kidney grafts survive 5 years, and only 81 percent of these patients survive 5 years (patient survival is substantially higher because dialysis is usually an option if the organ fails). Five year patient survival rates for livers 72 percent, for hearts 67 percent, and for lungs 43 percent. As each year passes, additional patients die, though at lower rates than in the first year or two. Survival rates

have improved in recent years, but the statistical expectation of increased longevity and/or graft survival from a transplant is on the order of a dozen years (a rough estimate since we do not yet know what the long-term experience will become), not the 40 years (half a lifetime) that underlies most estimates of statistical lives. Using the more conservative concept of a ''statistical life-year'' saved, then, the benefit from each year's cohort of approximately eight thousand non-renal transplant recipients approximates one hundred thousand life years. In a recent rule-making on tobacco, HHS estimated the value of a statistical life-year at about $116,000 (see **Federal Register** of August 28, 1996, at page 44576). This was a conservative estimate that would reasonably apply to organ transplantation (though a figure several times as high could equally reasonably be used). Applying the conservative $116,000 value to statistical life-years saved by non-renal organ transplants, the social benefit from each annual cohort of recipients is on the order of $12 billion. (Additional benefits could be calculated for quality of life improvements for kidney recipients.) Thus, whether one counts lives saved, life-years extended, or improved quality of life, and whether or not expressed as dollars, the social benefits of transplantation far exceed the admittedly expensive costs of transplantation.

C. Effects of This Rule

This rule creates three major effects. First, it establishes terms of public oversight and accountability for the entire organ transplantation system, and the OPTN in particular. We believe that this reform creates major public benefits in the categories of ''good government,'' preserving public trust and confidence in organ allocation, and assuring the rule of law. The Secretary does not believe that such oversight creates any consequential costs. Its benefits are substantial, but intangible. They may well lie primarily in future problems avoided (e.g., reduction in organ donation if the public were to lose confidence in the fairness of the OPTN in allocating organs) rather than in specific current problems solved.

Second, this rule requires creation of a system of patient-oriented information on transplant program performance. At present, the fundamentals of such a system exist through the efforts of the OPTN. The OPTN collects, validates, and analyzes a great deal of important information. It publishes, in collaboration with this Department, a *Report of Center Specific Graft and Patient Survival Rates*. This report consists of 9 volumes and 3,200 pages, and contains valuable information. However, from a patient perspective it is not up-to-date or easy to use. The most recent version was the 1997 report, but the data were current only up through April, 1994. The primary limitations of the Report are that the survival rates are for patients transplanted several years earlier and that there is no information regarding the waiting list at individual transplant centers. We believe the data should be more current. In addition, we believe center specific waiting times and numbers and percentages of transplant center organ turndowns of organs for non-medical reasons should be made available to the patients. Finally, versions are needed that are easy to use for patients, physicians, and families who wish to compare center performance on any or all of these dimensions.

Third, this rule will improve equity by creating performance goals against which the OPTN can reform current allocation policies. Such a reform has important benefits—though benefits virtually impossible to quantify—in their own right. We note that ''equity'' is an important goal under Executive Order 12866. Unfortunately, improved equity is an extraordinarily difficult concept to quantify. It is a goal and as it is achieved, benefits accrue to members of society at large, to donor families, to transplant candidates, and to transplant recipients. We do have some measures of additional benefits arising in part from improved equity, such as life-years saved, but these are a separate category of benefit. We believe that a system that allocates organs to those most in need in accordance with sound medical judgment, but with as little regard to geography as reasonable, has profound benefits quite apart from those that are life saving.

Table 10 below summarizes a number of measures of the effects of alternative approaches to improved equity in organ allocation, for livers. Comparable data are not readily available for other organs, and for a number of reasons liver transplants are particularly susceptible to improvement (hearts, for example, are already shared regionally and kidney patients have dialysis options). However, these liver data suggest the kinds of improvements that can be made for other organs.

TABLE 10.—SUMMARY OF MEASURES OF ALTERNATIVE APPROACHES TO LIVER ALLOCATION

	1996 Policy	Allocation committee	Inpatient first	National
Percent transplanted by hospitalization:				
Inpatient	59%	73%	96%	97%
Outpatient	41%	27%	4%	3%
Share of organs:				
Local	78%	44%	38%	20%
Regional	18%	28%	31%	6%
National	4%	28%	31%	74%
Number transplants:				
Initial	10,992	10,998	10,451	10,231
Repeat	1,663	1,659	2,189	2,425
Total	12,655	12,657	12,640	12,656
Number on waiting list at end	11,534	11,788	12,729	13,050
One year survival rate	80%	81%	76%	73%
Deaths:				
Pre-transplant	3,704	3,599	3,168	2,963
Post-transplant	2,539	2,555	2,967	3,144
Total	6,243	6,154	6,135	6,107
Life-years:				
Pre-transplant	26,600	27,193	29,443	29,915

TABLE 10.—SUMMARY OF MEASURES OF ALTERNATIVE APPROACHES TO LIVER ALLOCATION—Continued

	1996 Policy	Allocation committee	Inpatient first	National
Post-transplant	24,712	24,840	22,759	21,765
Total	51,312	52,033	52,202	51,680

Source: These estimates all come from modeling runs created by the Pritsker Corporation for the OPTN. Most of those results were included in information provided at OPTN Board of Directors meetings. All data cover a three year period, and are not annual estimates. Actual data for 1996 do not necessarily agree with these modeling estimates, which apply to future years.

These data show, in broad outline, the effects of several alternative policies for liver allocation. We emphasize that none of the alternatives modeled included the effects of improved listing and status standards, and for that and other reasons discussed below, these results cannot be taken as precise predictions of the effects of changes.

These data also omit a large number of alternative policies that have been modeled, in the interest of economy of presentation. Of particular interest are a set of policies that deal with a family of options that have been termed ''time and distance weighted.'' This family of options seeks to minimize transportation of organs while achieving equity based on medical urgency and waiting time. In effect, organs are transported long distances only when there is no alternative for patients with high priority. Organs are kept locally when only very small differences in patient benefit could be achieved by regional or national transportation. Depending on the precise weights given to medical status, waiting time, and distance, inequities due to waiting time disparities can be greatly reduced. (See testimony of Dr. John P. Roberts of the University of California, San Francisco, presented at the public hearing and two letters from Dr. Roberts included as Exhibit L in the Liver and Intestinal Organ Transplantation Committee Report presented to the OPTN Board of Directors for its meeting on June 25, 1997) .

In Table 10, some of the most studied options are presented. These options focus increasingly on broader geographical sharing, and on greater reliance on medical urgency, from left to right. The first column simply presents the predicted results of 1996 policy. The ''Allocation Committee'' column shows the results of an option reviewed and subsequently rejected by the OPTN Board in 1996, that would have allocated organs to Status 1 (most urgent) patients across regions comprising 20 percent of the eligible hospitalized patients. Other patients would have received either a slightly improved or no chance at organs from out of the local area. Thus, this represents a very modest change towards regional sharing from current policy. The third column, ''Inpatient First'', shows the results of an option that would have allocated organs first nationally to hospitalized patients, and only then to Status 3 patients. The ''National'' column shows the results of an option proposed by the University of Pittsburgh Medical Center that would have allocated organs by status, primarily on a national basis, from most to least urgent (even the ''National'' proposal preserved a substantial role for local allocation, by allocating first to a local patient in Status 1, then nationally, then to a local patient in Status 2, then nationally, etc.).

One very striking result is that even a modest policy change can very substantially change the kinds and places of patients receiving organs. The Allocation Committee option decreases the share of livers allocated to non-hospitalized patients (Status 3 and 4) from 41 percent to 27 percent, and decreases the number of organs shared locally from 78 percent to 44 percent.

Taking the remainder of the rows in order, broader sharing has no consequential effect on the number of transplants, but raises the number of repeat transplants, thereby reducing the number of individuals transplanted. This is a consequence of transplanting very sick patients who are more likely to reject an organ graft after transplantation. The number on the waiting list rises when organs go first to more urgent patients. This is both a good and bad outcome—longer waiting is ''bad'' but not if the alternative for other patients is death. Survival rates decrease with a priority to the most urgent because the most urgent patients tend to have more advanced disease and additional co-morbidities (as discussed below, we do not believe that current simulation results accurately measure likely survival rates). However, as shown in the estimate of deaths, the net effect of these changes is to reduce premature death, despite the decrease in survival rates. Of importance is that the net total change in deaths masks a very pronounced difference in direction for deaths pre-transplant (which are substantially reduced), and deaths post-transplant (which in the Pritsker model increase almost enough to offset pre-transplant lives saved—but see discussion below of the CONSAD model). Life-years exhibit a similar pattern to deaths, but are arguably a better measure of real effects. Over a longer period of years, the total number of people dying under all options will approach equality—but only if there is no increase in transplant survival rates through medical progress. But a life-year lived is never ''lost'' and represents an unambiguous gain for the patients who benefit. Unfortunately, the post-transplant life-years increase very little or decrease under broader sharing (as estimated by Pritsker), whereas the years on the waiting list, not dying but not well, increase dramatically.

As shown both in the Pritsker results and in the CONSAD results presented below, no organ allocation gains are free. Taking as an example deaths under a National policy, the Pritsker model estimates that over a three year period some 700 fewer people would die pre-transplant, and some 600 more people would die post-transplant. These are changes of one-fifth or more in the number dying in each group. Both costs and benefits are very high, thus reducing the net benefit substantially.

The CONSAD model produces generally similar results, but shows a distinct difference in the magnitude of deaths and life-years (as shown in Table 11):

TABLE 11.—NUMBERS OF PRE- AND POST-TRANSPLANT DEATHS AND LIFE YEARS UNDER ALTERNATIVE LIVER ALLOCATION POLICIES

	1996 Policy	Allocation committee	Inpatient first	National
Deaths:				
Pre-transplant	4,571	4,394	4,060	4,216
Post-transplant	2,468	2,487	2,734	2,527
Total	7,039	6,881	6,794	6,743
Life-years:				
Pre-transplant	15,093	17,837	19,580	18,683
Post-transplant	38,107	38,096	35,537	36,465
Total	51,200	53,933	55,117	55,148

Source: CONSAD model run dated March 24, 1997.

As shown, under the CONSAD model the net life saving and life-year saving effects of broader sharing are much more pronounced, as well as more favorable to post-transplant experience. CONSAD shows National allocation preventing a net of over 300 deaths and saving a net of almost 4,000 life-years, in contrast to Pritsker's estimate of about 140 deaths and about 400 life-years (though 900 life-years for Inpatient First). These are not small differences. Under the Pritsker model, deaths would decrease, and life-years would rise, only about 2 percent from current levels under the most favorable result for broader sharing. Under the CONSAD model, deaths would decrease about 4 percent and life-years would rise about 8 percent. Realistically, in view of the modeling issues discussed below, a 2 percent difference may represent less than the possible error in the model, though an 8 percent difference is much more robust—if the model parameters and assumptions are accurate. But even the CONSAD results indicate that improved allocation policies have at best a limited potential to improve outcomes. In contrast, improved organ donation represents an unambiguous and potentially much larger gain.

There are known differences in model assumptions and approaches that illustrate the strengths and weakness of both efforts. The Pritsker model results ''throw away'' the first of the four years modeled, to show more clearly the long-term rather than transitional effect of change. In contrast, the CONSAD model cumulates the results of years one, two, and three, rather than two, three, and four. Since many life-years and deaths occur in the transition year, totals vary for this reason. Second, the Pritsker model assumes that all transplant programs operate at the same effectiveness as in the early 1990's, all through the modeling years. The CONSAD model, in contrast, assumes a slow but steady increase in transplant program performance and patient survival. This assumption naturally results in fewer deaths and more life-years gained in CONSAD runs, differentially in favor of those who would otherwise die but could now expect to survive.

One difficulty shared by both models is that the OPTN has not released current data on transplant outcomes. Thus, these modeling results rely on data centering around 1990 and 1991 (including several years before and after) rather than on the latest outcome data. Because current graft and patient survival rates are known to be higher, this makes certain outputs, particularly graft survival rates, deaths, and life-years, inaccurate. CONSAD attempts to estimate recent progress, but this is not a complete substitute for better baseline data.

Showing the importance of progress over time, UNOS data show that between 1990 and 1995, one year patient survival for liver transplant recipients increased from 83 to 87 percent.

Neither model completely captures a variety of real world nuances. For example, under current policies survival rates for the sickest patients who receive organs from outside their local area may be influenced adversely by the sometimes lower quality of the organs they receive that have been turned down elsewhere. But no hard data exist, and neither model attempts to estimate such an effect. Neither model attempts to deal with a hypothetical breakthrough in technology. Neither model deals with the ''friction'' involved in transporting organs over broader geographic areas (although they do produce estimates of increased organ travel); both assume no wastage or reduced graft survival results. None of these differences or commonalities imply a fatal weakness in either or both of these models, but simply a recognition that simulation modeling is by its very nature a partial and incomplete attempt to predict results with any number of assumptions potentially affecting outcomes.

From the Department's perspective, what is most important about these modeling results is that despite the somewhat different interests of their sponsors and the potential bias that might result, and the infant efforts that they represent, these two independent efforts agree almost completely on the qualitative effects to be expected from changes in allocation policies, and substantially on the magnitudes involved as well.

More complex to display are measures that capture likely effects of improved policies on disparities in waiting times. As discussed earlier in this preamble, program-specific, area-specific, and region-specific results look very different, because aggregation masks disparities. However, even regional differences are substantial. Table 12 below follows shows the disparities under the 1996 policy, the Allocation Committee (regional) proposal, the Inpatient First proposal, and the National (local first, then national) proposal, as measured in average days waiting for a liver transplant:

TABLE 12.— ANALYSIS AVERAGE DAYS WAITING FOR A LIVER TRANSPLANT UNDER ALTERNATIVE LIVER ALLOCATION POLICIES

OPTN region	1996 Policy	Allocation committee	Inpatient first	National
Region 1	102	123	110	105
Region 2	126	120	121	124
Region 3	23	70	81	109
Region 4	91	91	100	113
Region 5	121	113	109	119
Region 6	56	107	94	107
Region 7	118	113	105	110
Region 8	110	116	106	122
Region 9	119	99	107	115
Region 10	88	92	93	110
Region 11	70	76	88	123
Standard Deviation	32.24	17.93	11.55	6.81

Source: CONSAD model run dated March 24, 1997.

In this table, the standard deviation entry measures the extent to which Regional averages differ. The standard deviation is a statistical measuring tool. In this context, it means that under the current system about two-thirds of the regions are within 32.24 days of the average (both longer and shorter), and the remaining one-third are more than that many days longer or shorter than the average. As these results show, even modest geographic sharing based on a proxy for medical need greatly reduces disparities in waiting time, from a standard deviation of 32.24 days under current policy to as few as 6.81 days under a national system of distribution. (Of course, as discussed previously, current measures of waiting time disparities are weak because the lack of listing standards does not create uniform, status-related measures that would be truly fair as tie-breaking criteria.)

Another dimension of improved equity arises from reducing the role of ethically irrelevant characteristics such as race or insurance coverage in organ allocation. We already know, from prior studies, that racial minorities—particularly African Americans—may not benefit to the extent that their medical need warrants. In the final rule, as noted previously, we have tasked the OPTN to develop policies to reduce socio-economic inequities. No data from the modeling efforts or other sources enable us to predict precise effects, even if the full potential of such policies were clear. However, to the extent that improved allocation policies reduce the ability of patients, payers, or physicians to ''game'' the system, it will necessarily benefit the more disadvantaged patients.

The performance goals created by this rule do not directly mandate any of the allocation options just discussed. Instead, we require the OPTN to craft new policies that achieve those goals. To the extent that the modeling results capture our expectations, we expect those reformed policies to show results much more similar to the rightmost two columns in tables above than to the leftmost two columns. But neither precise policy nor expected results have been modeled yet. And neither modeling effort purports to measure directly equity, except insofar as reduced disparities in waiting time in status capture this goal.

One final effect of the Department's overall initiative is extremely important, though not attributable to this regulation. Increases in organ donation are an unambiguous benefit. If, as seems possible, the package of initiatives proposed by the Department could increase organ donation by 20 percent or more, the benefits in lives saved and life-years increased would both dwarf the estimates of these effects as calculated by the simulation models. Increased donation would also reduce waiting times. However, it would not necessarily reduce disparities in waiting times. Only more equitable organ sharing policies can directly reduce such disparities.

D. Alternatives Considered

Throughout this preamble, we have presented and analyzed alternatives that the Department considered. Many of those selected have an importance unrelated to regulatory impact as such, or have little or no economic effect. There were, however, two broad strategic options that we elected not to pursue at this time.

First, we could have required volume or performance standards for transplant programs. The possibility of such standards was presented at the public hearings, even though we had never proposed specific standards for consideration. A great deal of research evidence exists on differences among transplant programs in survival rates (the most common measure), and on how volume correlates with those rates. Nonetheless, we rejected that approach for a number of reasons. There are a number of technical problems with such standards that could have been overcome to varying degrees. For example, a volume standard would require an exception for new programs during a transition period or it would forever preclude new programs either in the many areas of the country that do not have such programs, or to compete with established programs where those now exist. More difficult to solve, a quality standard would have to deal with the variance introduced by small programs. For example, assuming a particular program had a ''true'' performance rate of 50 percent for a particular procedure, and performed the first four procedures with two successes and two failures, the fifth procedure would result either in a 60 percent or 40 percent cumulative rate, making it look very much better or worse than its true performance. Two or three favorable or unfavorable results in a row would not be statistically unusual. Lucky or unlucky runs that would substantially affect potential error in apparent versus ''real'' results are likely in some low volume transplant programs. Further, the need to ''case mix adjust'' adds significant complexity, and more variance. Yet another problem arises because standards imply ''pass-fail'' rates which do not necessarily push better programs to even higher performance. And still another arises because a standard set today may be obsolete a year from now as performance generally improves. Not unimportantly, virtually the consensus view of the testimony on this subject at our public hearings opposed volume and even quality standards, and favored

more and better information. Using better information, patients and physicians can and will reward better transplant programs by their choices, and exert pressure on all hospitals to improve. For these and other reasons, we elected to require instead improved information on transplant program performance. We believe that better information can equal or exceed the benefits of ''pass-fail'' standards without their potentially arbitrary and disruptive effects.

Nothing in this volume/quality position related to minimum volume is intended to discourage large payers and prudent purchasers from setting their own standards. There is a big difference between a single national standard that every program must meet or be terminated, and elective payer standards. We encourage payers to explore and set such standards, which can even focus on levels of excellence that could not reasonably be set as nationally uniform minimum levels. We also expect the OPTN to explore setting standards of excellence, and to continue both research and modeling on such standards.

A second set of strategic options revolved around the possibility of imposing directly, at this time, specific allocation standards focusing on geographic equity. Such options would have the advantage of reducing known inequities, and could rest substantially on the very competent work already performed both by the OPTN itself and other entities. For example, without any change in medical criteria, an ''inpatient first'' allocation policy could be introduced for liver allocation. A ''time and distance weighted'' allocation policy, with high weight given to health status, could also greatly improve equity without increasing average travel times for donor livers as much as other options (see Table 13).

TABLE 13—ESTIMATED AVERAGE MILES TRANSPORTED OF DONATED LIVERS UNDER ALTERNATIVE LIVER ALLOCATION POLICIES

Option for liver allocation	Average distance in miles
1996 Policy	161
National Sharing	1,072
Time and Distance Proposal	242

Source: CONSAD Modeling run provided to Dr. John Roberts December 11, 1996. This particular Time and Distance Proposal gives only medium weight to health status directly but substantial weight to waiting time, which is correlated.

We have not adopted this family of options because we believe that the performance goal approach we have crafted is likely to produce superior results quickly and maintain its relevance as technology changes. With the cooperation of the OPTN in bringing its expertise to bear, there is no reason why policies better than any yet proposed cannot be developed. In this regard, improved listing criteria and medical status criteria will both reduce the need for broader sharing and increase the professional trust and confidence needed to make that sharing work. Not only can most transplant programs expect to gain as many organs for their patients as they lose, but their own most urgent cases will benefit.

A third option would have been to take no action at this time, as urged by some. Under this option, we would defer absolutely to the OPTN's judgment in the operation of the network. We rejected it for a number of reasons. These include the demonstrated need for improvements in the equitable allocation of organs, the Secretary's vital oversight role, and the need for a system to carry out the Department's legal obligations, including decisions on what binding standards will be used to determine whether hospitals can participate in the Medicare and Medicaid programs.

E. Effects on Transplant Programs

A great deal of fear and concern was evidenced at the public hearing over effects on transplant programs, particularly smaller programs, if broader sharing were to occur. Many witnesses feared the possibility that patients would select, and organs follow to, the largest programs (some of these witnesses asserted, and others denied, that the largest programs had the best outcomes). The Department believes that such fears are exaggerated, for many reasons. Perhaps most important of these is that any such effects will depend on the policies that the OPTN itself will devise. We expect that the OPTN can identify policies that achieve equity and medical goals for patients without harming medical care institutions.

In the discussion that follows, we note again that the majority of transplant hospitals are ''small entities'' under the Regulatory Flexibility Act simply by virtue of their non-profit status, and that there is no known correlation of size of transplant program with size of parent institution (beyond the fact that most small hospitals do not conduct transplant programs at all).

For the most part, the smaller transplant programs already compete directly with larger programs, even within the ''local first'' allocation schemes, or have the only program in their metropolitan area. As shown selectively in Table 14 below (covering one-fourth of the States in alphabetical order), and graphically on the map below, the approximately 112 liver transplant programs active in 1995 were concentrated in a far smaller number of cities. In fact, about a dozen States had no liver transplantation program at all.

TABLE 14—NUMBER OF SMALL, MEDIUM AND LARGE VOLUME LIVER PROGRAMS IN SELECTED STATES

State	City	No. small (<12)	No. medium (12–34)	No. large (35>)	Total
AL	Birmingham	0	0	1	1
AK	None in Alaska	0	0	0	0
AR	None in Arkansas	0	0	0	0
AZ	Phoenix	1	0	0	1
	Tucson	0	1	0	1
CA	Los Angeles area	1	2	2	5
	Sacramento	1	0	0	1
	San Diego area	0	2	0	2
	San Francisco Bay area	0	0	3	3
CO	Denver	2	0	1	3
CT	Hartford	1	0	0	1
	New Haven	0	1	0	1
DC	Washington area	1	0	1	2
FL	Gainesville	0	0	1	1
	Miami	0	0	1	1

TABLE 14—NUMBER OF SMALL, MEDIUM AND LARGE VOLUME LIVER PROGRAMS IN SELECTED STATES—Continued

State	City	No. small (<12)	No. medium (12–34)	No. large (35>)	Total
GA	Atlanta	1	0	1	2
HI	Honolulu	1	0	0	1
IL	Chicago	0	2	2	4
IN	Indianapolis	0	1	1	2
Total	17 Cities	9	9	14	32

Source: OPTN and Scientific Registry data supplied to the Department, through 1995, dated March 1, 1996.

These 13 States and 17 metropolitan areas contain 32 liver transplant programs (the hundreds of remaining metropolitan areas, smaller cities, and rural areas in these States have no local transplant programs—their patients must travel). Of the nine small (fewer than 12 transplants annually) programs, four have no local competitors. These four have effective local monopolies for those patients (undoubtedly a majority) who would prefer local transplantation if given a choice. The five with competitors are already surviving strong competition in their own health market. Thus, with or without changes in allocation policy that favor broader sharing, these transplant hospitals have substantial advantages or a demonstrated capacity to withstand competition for patients.

The map below shows the pattern of choice for the entire nation, grouping all transplant hospitals into small and medium (less than 35 transplants) or large (35 or more transplants). It shows that most transplant hospitals already share cities or are located in closely adjacent cities.

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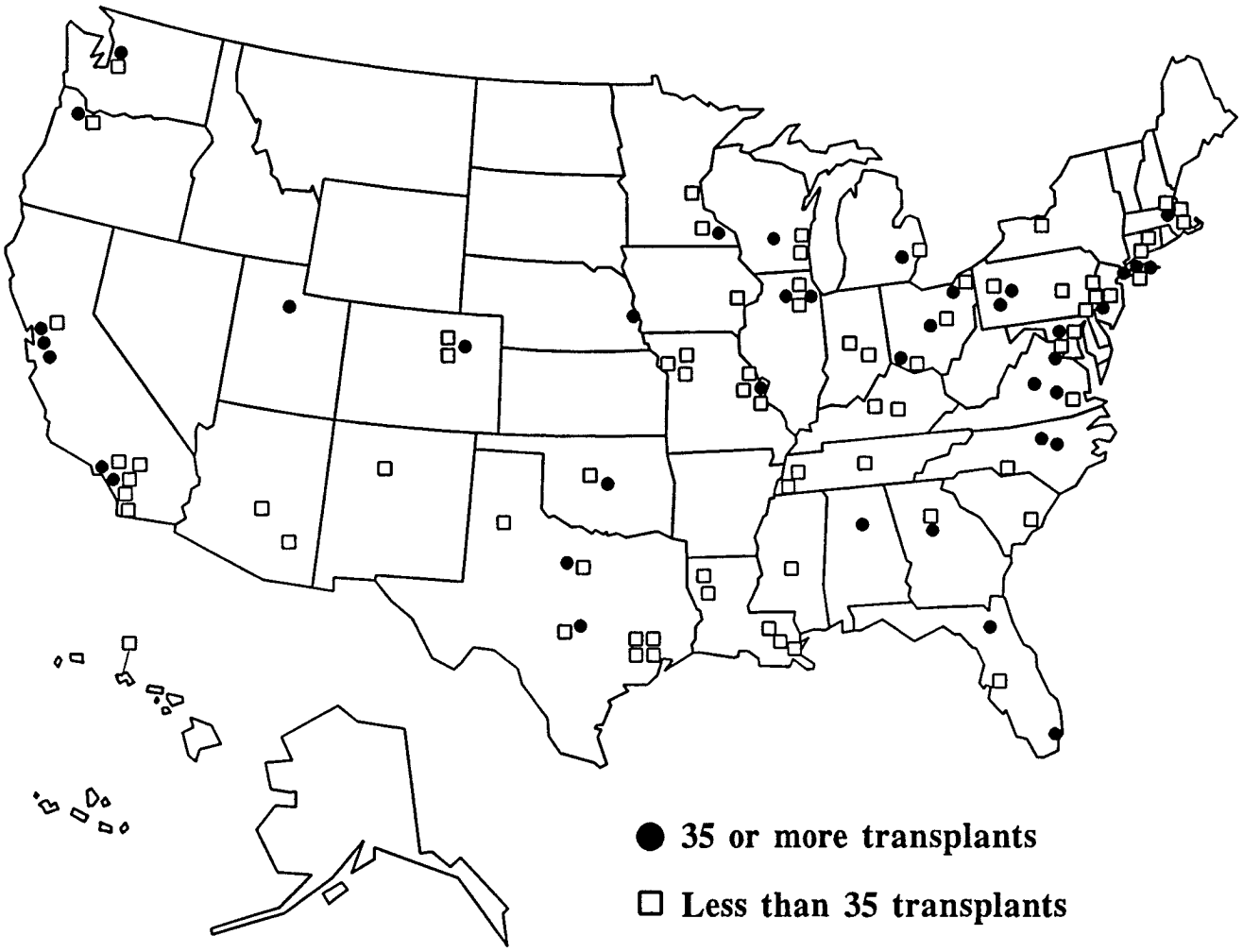
Distribution of All Current Liver Transplant Programs

by 1995 Volume



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Another potential concern arises from the fact that on average, smaller transplant hospitals serve relatively less sick patients and larger transplant hospitals tend to handle more hospitalized patients (Status 1 and 2) (there are numerous exceptions to these average tendencies). If nothing else changed but the relative ability of the sickest patients to obtain organs, smaller transplant hospitals would be expected to lose transplant volume. One of the modeling firms, CONSAD, addressed this issue. As summarized in Table 15, its modeling shows the following percentage shares of patients transplanted at medium and large transplant hospitals under the alternative policies modeled, *assuming no behavioral responses by the programs.*

TABLE 15

Liver transplants	1996 Policy (percent)	Allocation committee (percent)	Inpatient first (percent)	National (percent)
Large programs (>35)	40	45	51	52
Medium programs (12–34)	37	34	30	30
Smaller programs (>12)	24	21	19	18

Source: CONSAD modeling run, dated March 24, 1997.

This result assumes that programs continue their current policies as to which patients they tend to transplant, e.g., that smaller transplant hospitals do not more aggressively seek to retain the sickest patients. That seems extremely unlikely. Why would a program that is worried about volume not change its practices to improve its volume? But even in this ''worst'' case for smaller centers, they still perform 18 percent of total liver transplantation, and the medium programs still perform 30 percent of total liver transplantation. Far more likely, ''threatened'' programs will strengthen their programs and attract as many or more patients than they do at this time.

Finally, all of these computer simulations assume that the number of available organs remains unchanged. We believe that improved use of OPOs in identifying candidates for donation and in contacting families of potential donors to request permission can alone significantly improve organ supply. Data suggest that the Pennsylvania mandatory referral program has increased by about 40 percent the number of organ donors. The other actions that the Department will take can also have significant effects in increasing donation. Thus, it is quite likely that transplant programs of all sizes will see volume increases from the entire package of reforms. Our expectation that on average donations can be raised by about 20% over two years would allow all centers to increase the number of patients they transplant.

In sum, nothing in the available data nor reasonable expectations as to future business strategies by transplantation programs suggest either that smaller transplant hospitals will be driven out of business or that patients in cities served by smaller centers will be deprived of local service. However, the Department will monitor and review OPTN practices and policies as to their potential impacts on transplant institutions.

IV. Paperwork Reduction Act of 1995

This final rule contains information collections which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned control number 0915–0184 with an expiration date June 30, 1998. In addition, there are reporting and disclosure requirements that have not yet been approved (as noted in the table). The title, description, and respondent description of all information collections are shown below with an estimate of the annual reporting and record keeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Organ Procurement and Transplantation Network.

Description: Information will be collected from transplant hospitals, organ procurement organizations, and histocompatibility laboratories for the purpose of matching donor organs with potential recipients, monitoring compliance of member organizations with system rules, conducting statistical analyses, and developing policies relating to organ procurement and transplantation.

The practical utility of the data collection is further enhanced by requirements that the OPTN must report a variety of data to the Secretary, including data on performance by organ and status category, including program-specific data, OPO specific data, data by program size, and data aggregated by organ procurement area, OPTN region, the nation as a whole, and other geographic areas (§ 121.8(a)(4)(iv)). The OPTN must also transmit proposed allocation policies and performance indicators which will be used to assess the likely effects of policy changes and to ensure that the proposed policies are consistent with these rules.

The OPTN and Scientific Registry must make available to the public timely and accurate information the performance of transplant programs, and must respond to requests from the public for data needed for bona fide research or analysis purposes or to assess the performance of the OPTN or Scientific Registry, to assess individual transplant programs, or for other purposes (§ 121.11(b)(1)(C)).

The OPTN must provide to each member OPO and transplant hospital the plans and procedures for reviewing applications and for monitoring compliance with these rules and OPTN policies. The OPTN must also report to the Secretary on OPOs and transplant hospitals that may not be in compliance with these rules or OPTN policies, and on their progress toward compliance.

The OPTN and Scientific Registry are required to maintain and manage the information on candidates, donors, and recipients.

Description of Respondents: Non-profit institutions and small organizations.

ESTIMATED ANNUAL REPORTING AND RECORD KEEPING BURDEN

Section	Activity	Annual No.	Annual frequency of respondents	Average burden per response	Annual burden hours
121.3(c)(2)	OPTN membership application requirements for OPOs, hospitals, histocompatibility laboratories.	30	*** 1	40	1,200
121.6(c)** (Reporting)	Submitting criteria for organ accept	900	1	0.1	90
121.6(c)** (Disclosure)	Sending criteria to OPOs	900	1	0.1	90
121.7(b)(4)	Reasons for refusal	900	38	0.1	3,400
121.7(e)*	Transplant to prevent organ wastage	900	.5	0.1	42
121.9(b)	Certification application requirements for transplant programs.	10	*** 1	2.0	20
121.11(b)(2)*	Transplant candidate registration	900	33	0.1	3,000
121.11(b)(2)*	Donor registration	63	159	0.2	2,000
121.11(b)(2)*	Potential Recipient	63	476	0.1	3,000
121.11(b)(2)*	Donor Histocompitability	56	143	0.1	800
121.11(b)(2)*	Transplant Recipient Histocom.	56	321	0.1	1,800
121.11(b)(2)*	Transplant Recipient Registration	900	23	0.25	5,250
121.11(b)(2)*	Transplant Recipient Follow-up	900	128	0.2	23,000
Total		1,059			43,692

*The data collection forms for these activities have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB No. 0915–0157).

**These requirements have been submitted for OMB approval. These requirements will not be effective until the Department obtains OMB approval.

***Current members of the OPTN and currently certified transplant programs will not have to re-apply for membership and certification following promulgation of the new regulation. Only new applicants will be required to apply, one time.

The final rules also require OPOs and transplant hospitals to maintain records, as follows:

Section	Requirement
121.7(b)(4)	Documentation of reason for refusal.
121.7(c)(2)	Documentation of suitability tests.
121.11(a)(2)	Maintain records on organ donors and recipients.

According to staff of OPOs and transplant hospitals, such record keeping is integral to the operation of these facilities. Therefore, these record keeping requirements impose no additional burden. In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A separate announcement will be published in the **Federal Register** when the Department obtains Office of Management and Budget approval for § 121.6(c), which contains information collection requirements. Written comments and recommendations concerning the proposed information collection should be sent to: Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD, 20857. Comments should be received within 60 days after publication of this document in the **Federal Register**.

List of Subjects in 42 CFR Part 121

Organ transplantation, Hospitals.

Dated: March 20, 1998.

Claude Earl Fox,

Acting Administrator, Health Resources and Services Administration.

Approved:

Donna E. Shalala,

Secretary.

Regulation Text

Accordingly, 42 CFR part 121 is added to subchapter K to read as follows:

PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

Sec.

Authority: Sections 215, 371–376 of the Public Health Service Act (42 U.S.C. 216, 273–274d); Sections 1102, 1106, 1138 and 1872 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8 and 1395ii).

§ 121.1 Applicability.

(a) The provisions of this part apply to the operation of the Organ Procurement and Transplantation Network (OPTN) and to the Scientific Registry.

(b) In accordance with Section 1138 of the Social Security Act, hospitals in which organ transplants are performed and which participate in the programs under titles XVIII or XIX of that Act, and organ procurement organizations designated under Section 1138(b)(1)(F) of the Social Security Act, are subject to the requirements of this part.

§ 121.2 Definitions.

As used in this part—

Act means the Public Health Service Act, as amended.

Designated transplant program means a transplant program that has been

found to meet the requirements of § 121.9.

Family member means a family member of a transplant candidate, transplant recipient, or organ donor.

National list means the OPTN computer-based list of transplant candidates nationwide.

OPTN computer match program means a set of computer-based instructions which compares data on a cadaveric organ donor with data on transplant candidates on the national list and ranks the candidates according to OPTN policies to determine the priority for allocating the donor organ(s).

Organ means a human kidney, liver, heart, lung, or pancreas, and for purposes of the Scientific Registry, the term also includes bone marrow.

Organ donor means a human being who is the source of an organ for transplantation into another human being.

Organ procurement organization or *OPO* means an entity so designated by the Secretary under Section 1138(b) of the Social Security Act.

Organ procurement and transplantation network or *OPTN* means the network established pursuant to Section 372 of the Act.

Potential transplant recipient or *potential recipient* means a transplant candidate who has been ranked by the OPTN computer match program as the person to whom an organ from a specific cadaveric organ donor is to be offered.

Scientific Registry means the registry of information on transplant recipients established pursuant to Section 373 of the Act.

Secretary means the Secretary of Health and Human Services and any official of the Department of Health and Human Services to whom the authority involved has been delegated.

Transplant candidate means an individual who has been identified as medically suited to benefit from an organ transplant and has been placed on the national list by the individual's transplant program.

Transplant hospital means a hospital in which organ transplants are performed.

Transplant physician means a physician who provides non-surgical care and treatment to transplant patients before and after transplant.

Transplant program means a component within a transplant hospital which provides transplantation of a particular type of organ.

Transplant recipient means a person who has received an organ transplant.

Transplant surgeon means a physician who provides surgical care and treatment to transplant recipients.

§ 121.3 The OPTN.

(a) *Composition of the Board.* (1) The OPTN shall establish a Board of Directors of whatever size the OPTN determines appropriate, provided that it includes at least the following members:

(i) Six members representing the following categories (two members from each category):

(A) Transplant coordinators;

(B) Organ procurement organizations;

(C) Histocompatibility experts;

(ii) Eight individuals representing transplant candidates, transplant recipients, organ donors, and family members;

(iii) Ten members from the following categories (two members each):

(A) Transplant surgeons;

(B) Transplant physicians;

(C) Transplant hospitals;

(D) Voluntary health associations; and

(E) Other experts from related fields including medical examiners, hospital administration, or donor hospital personnel in such fields as trauma, emergency medical services, critical care, neurology, or neurosurgery; and

(iv) Six members from the general public from fields such as behavioral science, computer science, economics, ethics, health care financing, law, policy analysis, sociology, statistics, or theology. These members need not have technical expertise in organ donation or allocation.

(2) None of the members who are transplant recipients, transplant candidates, organ donors, family members, or general public members under paragraph (a)(1) of this section shall be employees of, or have a similar relationship with, the categories of members listed in paragraph (a)(1)(i) or paragraph (a)(1)(iii) or the OPTN.

(3) The Board of Directors shall include:

(i) Individuals representing the diversity of the population of transplant candidates and recipients served by the OPTN, including, to the extent practicable, minority and gender representation reflecting the population of potential transplant candidates served by the OPTN;

(ii) No more than 50 percent transplant surgeons or transplant physicians; and

(iii) At least 25 percent transplant candidates, transplant recipients, organ donors and family members.

(4) Individuals on the Board shall be elected for a two-year term.

(b) *Duties of the OPTN Board of Directors.* (1) *Executive Committee.* The Board of Directors shall elect an Executive Committee from the membership of the Board. The Executive Committee shall include at least one member who is a transplant candidate, transplant recipient, organ donor, or family member; one general public member, one OPO representative, and not more than 50 percent transplant surgeons and transplant physicians.

(2) *Executive Director.* The Board of Directors shall appoint an Executive Director of the OPTN. The Executive Director may be reappointed upon the Board's determination that the responsibilities of this position have been accomplished successfully.

(3) *Committees.* The Board of Directors shall establish such other committees as are necessary to perform the duties of the OPTN. Committees established by the Board of Directors shall include:

(i) Representation by transplant coordinators, organ procurement organizations, and transplant hospitals, and at least one transplant candidate, transplant recipient, organ donor or family member; and

(ii) To the extent practicable, minority and gender representation reflecting the diversity of the population of potential transplant candidates served by the OPTN.

(4) The Board of Directors shall develop and propose policies for the equitable allocation of organs, as described in § 121.8.

(c) *Membership of the OPTN.* (1) The OPTN shall admit and retain as members the following:

(i) All organ procurement organizations;

(ii) Transplant hospitals participating in the Medicare or Medicaid programs; and

(iii) Other organizations, institutions, and individuals that have an interest in the fields of organ donation or transplantation.

(2) To apply for membership in the OPTN:

(i) An OPO shall provide to the OPTN the name and address of the OPO, and the latest year of designation under section 1138(b) of the Social Security Act;

(ii) A transplant hospital shall provide to the OPTN the name and address of the hospital, a list of its transplant programs by type of organ; and

(iii) Any other organization, institution, or individual eligible under paragraph (c)(1)(iii) of this section shall demonstrate to the OPTN an interest in the fields of organ donation or transplantation.

(3) The OPTN shall accept or reject as members entities or individuals

described in paragraph (c)(1)(iii) of this section within 90 days.

(4) Applicants rejected for membership in the OPTN may appeal to the Secretary. Appeals shall be submitted in writing within 30 days of rejection of the application. The Secretary may:

(i) Deny the appeal; or

(ii) Direct the OPTN to take action consistent with the Secretary's response to the appeal.

(d) *Corporate Status of the OPTN.* (1) The OPTN shall be a private, not-for-profit entity.

(2) The requirements of this section do not apply to any parent, sponsoring, or affiliated organization of the OPTN, or to any activities of the contracting organization that are not integral to the operation of the OPTN. Such an organization is free to establish its own corporate procedures.

(3) No OPTN member is required to become a member of any organization that is a parent, sponsor, contractor, or affiliated organization of the OPTN, to comply with the by-laws of any such organization, or to assume any corporate duties or obligations of any such organization.

(e) *Effective date.* The organization designated by the Secretary as the OPTN shall have six months from July 1, 1998, or six months from its initial designation as the OPTN, whichever is later, to meet the board composition requirements of paragraph (a) of this section. The organization designated by the Secretary as the OPTN shall have six months from July 1, 1998, or six months from initial designation as the OPTN, whichever is later, to meet any other requirements of this section, except that the Secretary may extend such period for good cause.

§ 121.4 OPTN policies: Secretarial review and appeals.

(a) The OPTN Board of Directors shall be responsible for developing, with the advice of the OPTN membership and other interested parties, policies within the mission of the OPTN as set forth in section 372 of the Act and the Secretary's contract for the operation of the OPTN, including:

(1) Policies for the equitable allocation of cadaveric organs in accordance with § 121.8;

(2) Policies, consistent with recommendations of the Centers for Disease Control and Prevention, for the testing of organ donors and follow-up of transplant recipients to prevent the spread of infectious diseases;

(3) Policies that reduce inequities resulting from socioeconomic status, including, but not limited to:

(i) Ensuring that patients in need of a transplant are listed without regard to ability to pay or source of payment;

(ii) Procedures for transplant hospitals to make reasonable efforts to make available from their own resources, or obtain from other sources, financial resources for patients unable to pay such that these patients have an opportunity to obtain a transplant and necessary follow-up care;

(iii) Recommendations to private and public payers and service providers on ways to improve coverage of organ transplantation and necessary follow-up care; and

(iv) Reform of allocation policies based on assessment of their cumulative effect on socioeconomic inequities;

(4) Policies regarding the training and experience of transplant surgeons and transplant physicians in designated transplant programs as required by § 121.9;

(5) Policies for nominating officers and members of the Board of Directors; and

(6) Policies on such other matters as the Secretary directs.

(b) The Board of Directors shall:

(1) Provide opportunity for the OPTN membership and other interested parties to comment on proposed policies and shall take into account the comments received in developing and adopting policies for implementation by the OPTN; and

(2) Provide, at least 30 days prior to their proposed implementation, proposed policies to the Secretary, who may provide comments and/or objections within a reasonable time, or may publish the policies in the **Federal Register** to obtain comments from the public. The Board of Directors shall indicate which of the proposed policies it recommends be enforceable under § 121.10. If the Secretary seeks public comments, these comments will be considered and may affect subsequent response to the OPTN. The OPTN shall take into account any comments the Secretary may provide. If the Secretary objects to a policy, the OPTN may be directed to revise the policy consistent with the Secretary's direction. If the OPTN does not revise the policy in a timely manner or if the Secretary otherwise disagrees with its content, the Secretary may take such other action as the Secretary determines appropriate.

(c) The OPTN Board of Directors shall provide the membership and the Secretary with copies of the policies as they are adopted, and make them available to the public upon request. The Secretary will publish lists of these documents in the **Federal Register**, indicating which ones are subject to the special compliance requirements and potential sanctions of section 1138 of the Social Security Act. The OPTN shall also continuously maintain OPTN policies for public access on the Internet, including current and proposed policies.

(d) The OPTN, or its members, or other individuals, or entities objecting to policies developed by the OPTN or the Secretary may submit appeals to the Secretary in writing. Any such appeal shall include a statement of the basis for the appeal. The Secretary will seek the comments of the OPTN on the issues raised in the appeal of an OPTN-developed policy. Policies remain in effect during the appeal. The Secretary may:

(1) Deny the appeal;

(2) Direct the OPTN to revise the policies consistent with the Secretary's response to the appeal, or

(3) Take such other action as the Secretary determines appropriate.

(e) The OPTN shall implement policies and:

(1) Provide information to OPTN members about these policies and the rationale for them.

(2) Update policies developed in accordance with this section to accommodate scientific and technological advances.

§ 121.5 Listing requirements.

(a) A transplant hospital which is an OPTN member may list individuals only for a designated transplant program.

(b) Transplant hospitals shall assure that individuals are placed on the national list as soon as they are determined to be candidates for transplantation. The OPTN shall advise transplant hospitals of the information needed for such listing.

(c) An OPTN member shall pay a registration fee to the OPTN for each transplant candidate it places on the national list. The amount of such fee shall be determined by the OPTN with the approval of the Secretary. No less often than annually, and whether or not a change is proposed, the OPTN shall submit to the Secretary a statement of its proposed registration fee, together with such supporting information as the Secretary finds necessary to determine the reasonableness or adequacy of the fee schedule and projected revenues. This submission is due at least three months before the beginning of the OPTN's fiscal year. The Secretary will approve, modify, or disapprove the amount of the fee within a reasonable time of receiving the OPTN's submission.

§ 121.6 Organ procurement.

The suitability of organs donated for transplantation shall be determined as follows:

(a) *Tests.* An OPTN member procuring an organ shall assure that laboratory tests and clinical examinations of potential organ donors are performed to determine any contraindications for donor acceptance, in accordance with policies established by the OPTN.

(b) *HIV.* Organs from individuals known to be infected with human immunodeficiency virus shall not be procured for transplantation.

(c) *Acceptance criteria.* Transplant programs shall establish criteria for organ acceptance, and shall provide such criteria to the OPTN and the OPOs with which they are affiliated.

§ 121.7 Identification of organ recipient.

(a) *List of potential transplant recipients.* (1) An OPTN member procuring an organ shall operate the OPTN computer match program within such time as the OPTN may prescribe to identify and rank potential recipients for each cadaveric organ procured.

(2) The rank order of potential recipients shall be determined for each cadaveric organ using the organ specific allocation criteria established in accordance with § 121.8.

(3) When a donor or donor organ does not meet a transplant program's donor acceptance criteria, as established under § 121.6(c), transplant candidates of that program shall not be ranked among potential recipients of that organ and shall not appear on a roster of potential recipients of that organ.

(b) *Offer of organ for potential recipients.* (1) Organs shall be offered for potential recipients in accordance with policies developed under § 121.8 and implemented under § 121.4.

(2) Organs may be offered only to potential recipients listed with transplant programs having designated transplant programs of the same type as the organ procured.

(3) An organ offer is made when all information necessary to determine whether to transplant the organ into the potential recipient has been given to the transplant hospital.

(4) A transplant program shall either accept or refuse the offered organ for the designated potential recipient within such time as the OPTN may prescribe. A transplant program shall document and provide to the OPO and to the OPTN the reasons for refusal and shall maintain this document for one year.

(c) *Transportation of organ to potential recipient.* (1) *Transportation.* The OPTN member that procures a donated organ shall arrange for transportation of the organ to the transplant hospital.

(2) *Documentation.* The OPTN member that is transporting an organ shall assure that it is accompanied by written documentation of activities conducted to determine the suitability of the organ donor and shall maintain this document for one year.

(3) *Packaging.* The OPTN member that is transporting an organ shall assure that it is packaged in a manner that is designed to maintain the viability of the organ.

(d) *Receipt of an organ.* Upon receipt of an organ, the transplant hospital responsible for the potential recipient's care shall determine whether to proceed with the transplant. In the event that an organ is not transplanted into the potential recipient, the OPO which has a written agreement with the transplant hospital must offer the organ for another potential recipient in accordance with paragraph (b) of this section.

(e) *Wastage.* Nothing in this section shall prohibit a transplant program from transplanting an organ into any medically suitable candidate if to do otherwise would result in the organ not being used for transplantation. The transplant program shall notify the OPTN and the OPO which made the organ offer of the circumstances justifying each such action within such time as the OPTN may prescribe.

§ 121.8 Allocation of organs.

(a) *Policy development.* The Board of Directors established under § 121.3 shall develop, in accordance with the policy development process under § 121.4, organ-specific policies (including combinations of organs, such as for heart-lung transplants) for the equitable allocation of cadaveric organs among potential recipients. Such policies shall meet the requirements in paragraphs (a)(1), (2), (3), (4) and (5) of this section. Such policies shall be reviewed periodically and revised as appropriate.

(1) Minimum listing criteria for including transplant candidates on the national list shall be standardized and, to the extent possible, shall contain explicit thresholds for listing a patient and be expressed through objective and measurable medical criteria.

(2) Transplant candidates shall be grouped by status categories ordered from most to least medically urgent, with a sufficient number of categories to avoid grouping together persons with substantially different medical urgency. Criteria for status designations shall contain explicit thresholds for differentiating among patients and shall be expressed, to the extent possible, through objective and measurable medical criteria.

(3) Organ allocation policies and procedures shall be in accordance with sound medical judgment and shall be designed and implemented:

(i) To allocate organs among transplant candidates in order of decreasing medical urgency status, with waiting time in status used to break ties within status groups. Neither place of residence nor place of listing shall be a major determinant of access to a transplant. For each status category, inter-transplant program variance in the performance indicator ''waiting time in status'' shall be as small as can reasonably be achieved, consistent with paragraph (a)(3)(ii) of this section. Priority shall be given to reducing the waiting time variance in the most medically urgent status categories before reducing the waiting time variance in less urgent status categories, if equivalent reductions cannot be achieved in all status categories; and

(ii) To avoid futile transplantation, to avoid wasting organs, and to promote efficient management of organ placement.

(4) The OPTN shall:

(i) Develop mechanisms to promote and review compliance with each of these goals;

(ii) Develop performance indicators to facilitate assessment of how well current and proposed policies will accomplish these goals;

(iii) Use performance indicators, including indicators described in paragraph (a)(4)(iv) of this section, to establish baseline data on how closely the results of current policies approach these goals and to establish the projected amount of improvement to result from proposed policies; and

(iv) Timely report data to the Secretary on performance by organ and status category, including program-specific data, OPO specific data, data by program size, and data aggregated by organ procurement area, OPTN region, the nation as a whole, and such other geographic areas as the Secretary may designate. Such data shall include inter-transplant program variation in waiting time in status, total life years pre- and post-transplant, patient and graft survival rates following transplantation, patients mis-classified by status, and number of patients who die waiting for a transplant. Such data shall cover such intervals of time, and be presented using confidence intervals or other measures of variance, as appropriate to avoid spurious results or erroneous interpretation due to small numbers of patients covered.

(5) *Transition.* (i) *General.* When the OPTN revises organ allocation policies under this section, it shall consider whether to adopt transition procedures that would treat people on the national list and awaiting transplantation prior to the adoption or effective date of the revised policies no less favorably than they would have been treated under the previous policies. The transition procedures shall be transmitted to the Secretary for review together with the revised allocation policies.

(ii) *Special rule for initial revision of liver allocation policies.* When the OPTN transmits to the Secretary its initial revision of the liver allocation policies, as directed by paragraph (c)(2) of this section, it shall include transition procedures that, to the extent feasible, treat each individual on the national list and awaiting transplantation on April 2, 1998 no less favorably than he or she would have been treated had the revised liver allocation policies not become effective. These transition procedures may be limited in duration or applied only to individuals with greater than average medical urgency if this would significantly improve administration of the list or if such limitations would be applied only after accommodating a substantial preponderance of those disadvantaged by the change in the policies.

(b) *Secretarial review of policies and performance Indicators.* The OPTN's transmittal to the Secretary of proposed allocation policies and performance indicators shall include such supporting material, including the results of model-based computer simulations, as the Secretary may require to assess the likely effects of policy changes and as are necessary to demonstrate that the proposed policies comply with the performance indicators and transition procedures of paragraph (a) of this section.

(c) *Deadlines for initial reviews.* (1) The OPTN shall conduct an initial review of existing allocation policies and, except as provided in paragraph (c)(2) of this section, no later than July 1, 1999 transmit initial revised policies to meet the requirements of § 121.8 (a), together with supporting documentation to the Secretary for review in accordance with § 121.4.

(2) No later than August 31, 1998 the OPTN shall transmit revised policies and supporting documentation for liver allocation to meet the requirements of § 121.8 (a) to the Secretary for review in accordance with § 121.4. The OPTN may transmit these materials without seeking further public comment under § 121.4(b) or (c).

(d) *Variances.* The OPTN may develop experimental policies that test methods of improving allocation. All such experimental policies shall be accompanied by a research design and include data collection and analysis plans. Such variances shall be time limited. Entities or individuals objecting to variances may appeal to the Secretary under the procedures of § 121.4.

(e) *Directed donation.* Nothing in this section shall prohibit the allocation of an organ to a recipient named by those authorized to make the donation.

§ 121.9 Designated transplant program requirements.

(a) To receive organs for transplantation, a transplant program in a hospital that is a member of the OPTN shall abide by these rules and shall:

(1) Be a transplant program approved by the Secretary for reimbursement under Medicare and Medicaid; or

(2) Be an organ transplant program which has adequate resources to provide transplant services to its patients and agrees promptly to notify the OPTN and patients awaiting transplants if it becomes inactive and which:

(i) Has letters of agreement or contracts with an OPO;

(ii) Has on site a transplant surgeon qualified in accordance with policies developed under § 121.4;

(iii) Has on site a transplant physician qualified in accordance with policies developed under § 121.4;

(iv) Has available operating and recovery room resources, intensive care resources and surgical beds and transplant program personnel;

(v) Shows evidence of collaborative involvement with experts in the fields of radiology, infectious disease, pathology, immunology, anesthesiology, physical therapy and rehabilitation medicine, histocompatibility, and immunogenetics and, as appropriate, hepatology, pediatrics, nephrology with dialysis capability, and pulmonary medicine with respiratory therapy support;

(vi) Has immediate access to microbiology, clinical chemistry, histocompatibility testing, radiology and blood banking services, as well as the capacity to monitor treatment with immunosuppressive drugs; and

(vii) Makes available psychiatric and social support services for transplant candidates, transplant recipients and their families; or

(3) Be a transplant program in a Department of Veterans Affairs hospital which is a Dean's Committee hospital which shares a common university-based transplant team of a transplant program which meets the requirements of § 121.9(a) (1) or (2).

(b) To apply to be a designated transplant program, transplant programs shall provide to the OPTN such documents as the OPTN may require which show that they meet the requirements of § 121.9(a) (1), (2), or (3).

(c) The OPTN shall, within 90 days, accept or reject applications to be a designated transplant program.

(d) Applicants rejected for designation may appeal to the Secretary. Appeals shall be submitted in writing within 30 days of rejection of the application. The Secretary may:

(1) Deny the appeal; or

(2) Direct the OPTN to take action consistent with the Secretary's response to the appeal.

§ 121.10 Reviews, evaluation, and enforcement.

(a) *Review and evaluation by the Secretary.* The Secretary or her/his designee may perform any reviews and evaluations of member OPOs and transplant programs which the Secretary deems necessary to carry out her/his responsibilities under the Public Health Service Act and the Social Security Act.

(b) *Review and evaluation by the OPTN.* (1) The OPTN shall design appropriate plans and procedures, including survey instruments, a peer review process, and data systems, for purposes of:

(i) Reviewing applications submitted under § 121.3(c) for membership in the OPTN;

(ii) Reviewing applications submitted under § 121.9(b) to be a designated transplant program; and

(iii) Conducting ongoing and periodic reviews and evaluations of each member OPO and transplant hospital for compliance with these rules and OPTN policies.

(2) Upon the approval of the Secretary, the OPTN shall furnish review plans and procedures, including survey instruments and a description of data systems, to each member OPO and transplant hospital. The OPTN shall furnish any revisions of these documents to member OPOs and hospitals, after approval by the Secretary, prior to their implementation.

(3) At the request of the Secretary, the OPTN shall conduct special reviews of OPOs and transplant programs, where the Secretary has reason to believe that such entities may not be in compliance with these rules or OPTN policies or may be acting in a manner which poses a risk to the health of patients or to public safety. The OPTN shall conduct these reviews in accordance with such schedules as the Secretary specifies and

shall make periodic reports to the Secretary of progress on such reviews and on other reviews conducted under the requirements of this paragraph.

(4) The OPTN shall notify the Secretary in a manner prescribed by the Secretary within 3 days of all committee and Board of Directors meetings in which transplant hospital and OPO compliance with these regulations or OPTN policies is considered.

(c) *Enforcement of OPTN rules.* (1) *OPTN recommendations.* The Board of Directors shall advise the Secretary of the results of any reviews and evaluations conducted under paragraph (b)(1)(iii) or paragraph (b)(3) of this section which, in the opinion of the Board, indicate noncompliance with these rules or OPTN policies, or indicate a risk to the health of patients or to the public safety, and shall provide any recommendations for appropriate action by the Secretary. Appropriate action may include removal of designation as a transplant program under § 121.9, termination of a transplant hospital's participation in Medicare or Medicaid, termination of a transplant hospital's reimbursement under Medicare and Medicaid, or termination of an OPO's reimbursement under Medicare and Medicaid, if the noncompliance is with a policy designated by the Secretary as covered by section 1138 of the Social Security Act.

(2) *Secretary's action on recommendations.* Upon the Secretary's review of the Board of Directors' recommendations, the Secretary may:

(i) Request further information from the Board of Directors or the alleged violator, or both;

(ii) Decline to accept the recommendation;

(iii) Accept the recommendation, and notify the alleged violator of the Secretary's decision; or

(iv) Take such other action as the Secretary deems necessary.

§ 121.11 Record maintenance and reporting requirements.

(a) *Record maintenance.* Records shall be maintained and made available subject to OPTN policies and applicable limitations based on personal privacy as follows:

(1) The OPTN and the Scientific Registry, as appropriate, shall:

(i) Maintain and operate an automated system for managing information about transplant candidates, transplant recipients, and organ donors, including a computerized national list of individuals waiting for transplants;

(ii) Maintain records of all transplant candidates, all organ donors and all transplant recipients;

(iii) Operate, maintain, receive, publish, and transmit such records and information electronically, to the extent feasible, except when hard copy is requested; and

(iv) In making information available, provide manuals, forms, flow charts, operating instructions, or other explanatory materials as necessary to understand, interpret, and use the information accurately and efficiently.

(2) *Organ procurement organizations and transplant programs.* (i) *Maintenance of records.* All OPOs and transplant programs shall maintain such records pertaining to each potential donor identified, each organ retrieved, each recipient transplanted and such other transplantation-related matters as the Secretary deems necessary to carry out her/his responsibilities under the Act. The OPO or transplant program shall maintain these records for seven years.

(ii) *Access to facilities and records.* OPOs and transplant hospitals shall permit the Secretary and the Comptroller General, or their designees, to inspect facilities and records pertaining to any aspect of services performed related to organ donation and transplantation.

(b) *Reporting requirements.* (1) The OPTN and the Scientific Registry, as appropriate, shall:

(i) In addition to special reports which the Secretary may require, submit to the Secretary a report not less than once every fiscal year on a schedule prescribed by the Secretary. The report shall include the following information in a form prescribed by the Secretary:

(A) Information that the Secretary prescribes as necessary to assess the effectiveness of the Nation's organ donation, procurement and transplantation system;

(B) Information that the Secretary deems necessary for the report to Congress required by Section 376 of the Act; and,

(C) Any other information that the Secretary prescribes.

(ii) Provide to the Scientific Registry data on transplant candidates and recipients, and other information that the Secretary deems appropriate. The information shall be provided in the form and on the schedule prescribed by the Secretary;

(iii) Provide to the Secretary any data that the Secretary requests;

(iv) Make available to the public timely and accurate program-specific information on the performance of transplant programs. This shall include free dissemination over the Internet, and shall be presented, explained, and organized as necessary to understand, interpret, and use the information accurately and efficiently. These data shall be updated no less frequently than every six months and shall include three month, one year, three year and five year graft and patient survival rates, both actual and statistically expected, and shall be presented no more than six months later than the period to which they apply. Data presented shall include confidence intervals or other measures that provide information on the extent to which chance may influence transplant program-specific results. Such data shall also include such other cost or performance information as the Secretary may specify, including but not limited to transplant program-specific information on waiting time within medical status, organ wastage, and refusal of organ offers. These data shall also be presented no more than six months later than the period to which they apply;

(v) Respond to reasonable requests from the public for data needed for bona fide research or analysis purposes, to the extent that the OPTN's or Scientific Registry's resources permit, or as directed by the Secretary. The OPTN or the Scientific Registry may impose reasonable charges for the separable costs of responding to such requests. Patient-identified data may be made available to bona fide researchers upon a showing that the research design requires such data for matching or other purposes, and that appropriate confidentiality protections, including destruction of patient identifiers upon completion of matching, will be followed. All requests shall be processed expeditiously, with data normally made available within 30 days from the date of request;

(vi) Respond to reasonable requests from the public for data needed to assess the performance of the OPTN or Scientific Registry, to assess individual transplant programs, or for other purposes. The OPTN or Scientific Registry may impose charges for the separable costs of responding to such requests. An estimate of such charges shall be provided to the requester before processing the request. All requests should be processed expeditiously, with data normally made available within 30 days from the date of request; and

(vii) Provide data to an OPTN member, without charge, that has been assembled, stored, or transformed from data originally supplied by that member.

(2) An organ procurement organization or transplant hospital shall, as specified from time to time by the Secretary, submit to the OPTN, to the Scientific Registry, as appropriate, and

to the Secretary information regarding transplantation candidates, transplant recipients, donors of organs, transplant program performance, and other information that the Secretary deems appropriate. Such information shall be in the form required and shall be submitted in accordance with the schedule prescribed. No restrictions on subsequent redisclosure may be imposed by any organ procurement organization or transplant hospital.

(c) *Public access to data.* The Secretary may release to the public information collected under this section when the Secretary determines that the public interest will be served by such release. The information which may be released includes, but is not limited to, information on the comparative costs and patient outcomes at each transplant program affiliated with the OPTN, transplant program personnel, information regarding instances in which transplant programs refuse offers of organs to their patients, information regarding characteristics of individual transplant programs, information regarding waiting time at individual transplant programs, and such other data as the Secretary determines will provide information to patients, their families, and their physicians that will assist them in making decisions regarding transplantation.

§ 121.12 Preemption.

No State or local governing entity shall establish or continue in effect any law, rule, regulation, or other requirement that would restrict in any way the ability of any transplant hospital, OPO, or other party to comply with organ allocation policies of the OPTN or other policies of the OPTN that have been approved by the Secretary under this part.

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Part III

Department of Housing and Urban Development

Consolidated Notice of Funding Availability for Work Study Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4328–N–01]

Consolidated Notice of Funding Availability For Work Study Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Consolidated Notice of Funding Availability for Work Student Programs.

SUMMARY: This Notice of Funding Availability (NOFA) announces the availability of $6.5 million in HUD program funds covering two work study programs: the Community Development Work Study Program and the Hispanic-serving Institutions Work Study Program.

The NOFA invites applications from institutions of higher education, area-wide planning organizations (APOs), and States for grants under the Community Development Work Study Program (CDWSP) to provide assistance to economically disadvantaged and minority graduate students who participate in community development work study programs and are enrolled full-time in a graduate community building academic degree program. This notice announces HUD's intention to award up to $3.5 million from FY 1998 appropriations (plus any additional funds recaptured from prior appropriations) to fund work study programs to be carried out from August 1998 to September 2000.

The NOFA also invites applications from Hispanic-serving community colleges for grants under the Hispanic-serving Institutions Work Study Program (HSI-WSP) to provide assistance to economically disadvantaged and minority community college students who participate in community building work study programs and are enrolled full-time in an associate community building academic degree program. This Notice announces HUD's intention to award up to $3 million from FY 1998 appropriations to fund work study programs to be carried out from August 1998 to August 2000.

The specific statutory and regulatory requirements of the two work study programs have not been changed. This NOFA reflects the statutory requirements and differences in the two programs. Please pay careful attention to the individual program requirements that are identified for each of these programs. In the body of this NOFA is information concerning:

a. The purpose and background of the NOFA, and the funding level provided through this NOFA;

b. Eligible applicants and activities, factors for award, and award requirements; and

c. The application requirements and steps involved in the applications process.

APPLICATION DUE DATE: Completed applications (an original and three copies) must be received no later than 4:30 p.m. Eastern Standard Time May 19, 1998. In the interest of all competing applicants, an application will be considered as ineligible for consideration if it is not physically received by the deadline date and hour at the place noted below under **ADDRESSES.** Applicants should take this requirement into account and make early submission of their materials to avoid any risk of losing eligibility brought about by unanticipated delays or other delivery related problems. Applicants hand-delivering applications are advised that considerable delays may occur in attempting to enter the building because of security procedures.

ADDRESSES: Application kits may be obtained by calling the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. (These numbers are toll-free.) Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to the ''FR–4328.'' Applicants are requested to identify the specific program for which an application kit is being requested, as the two programs have different application kits. In addition, the application kit is available on the Internet from HUD's web site at WWW.HUD.GOV.

Completed applications (an original and three copies) must be submitted to: the Office of University Partnerships, in care of the Division of Budget, Contracts, and Program Control, Room 8230, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. Facsimile copies will not be accepted.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships at (202) 708–1537, ext. 5918. (This is not a toll-free number.) Hearing-or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (this number is toll free). Ms. Karadbil can also be reached via the Internet at: Jane__R.__Karadbil@hud.gov.

ADDITIONAL INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned the following OMB Control Numbers: Community Development Work Study Program, 2528–0175; Hispanic-Serving Institutions Work Study Program, 2528–0182. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Authorities; Purpose; Amounts Allocated; Program Requirements

A. Authorities

1. *Community Development Work Study Program (CDWSP):* Section 107(c) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) authorizes CDWSP.

2. *Hispanic-serving Institutions Work Study Program (HSI–WSP):* Section 107(c) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5307(c). Since Fiscal Year 1996, legislative history accompanying the Department's appropriations acts has earmarked funds under the Community Development Work Study Program for Hispanic-serving Institutions.

B. Purpose

The purpose of this NOFA is to:

1. Strengthen the ability of colleges and universities and their State and local government and non-profit organization partners to make more effective use of housing and community development program funding available from the Department and to use these available resources to implement coordinated housing and community development strategies established in local consolidated plans; and

2. Promote methods for developing more coordinated and effective approaches to dealing with urban and rural problems by recognizing the interconnections among the underlying problems and ways to address them through over-laying of available HUD programs.

C. Amounts Allocated

1. CDWSP $3,500,000, plus any additional funds recaptured from prior appropriations.

2. HSI–WSP $3,000,000.

D. General Program Requirements

1. *Statutory Requirements.* All applicants must comply with all

statutory and regulatory requirements applicable to the program for which they are seeking funding in order to be awarded funds. CDWSP regulations can be found at 24 CFR part 570.415. HSI–WSP regulations can be found in the **Federal Register** dated April 9, 1997, on pages 17492 through 17496. Copies of the appropriate regulations are included in the application kit and also contained on the HUD web site.

2. *Eligibility of the Institution.* The applicant must demonstrate that it is eligible to apply for the program:

a. For CDWSP, an eligible applicant is (1) an institution of higher education offering graduate degrees in a community development academic program, (2) an Area-wide Planning Organization (APO) applying on behalf of two or more eligible institutions of higher education located in the same SMSA or non-SMSA as the APO (as a result of a final rule for the program published at 24 CFR 570.415, institutions of higher education are permitted to choose whether to apply independently or through an APO); or (3) a State applying on behalf of two or more eligible institutions of higher education located in the State. If a State is approved for funding, institutions of higher education located in the State are not eligible recipients.

b. For HSI–WSP, an eligible applicant is a public or private nonprofit Hispanic-serving institution of higher education offering only two-year degrees in at least one community building academic degree program. To be an eligible Hispanic-serving institution, the applicant must meet the statutory definition of such an institution contained in Title III of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)(1). This statute defines an HSI generally as an eligible institution of higher education that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., their families' taxable income for the preceding year did not exceed 150 percent of the poverty level) who are first generation college students; and in which another 25 percent of the Hispanic students are either low-income individuals or first-generation college students. Previously, HUD used a list of Hispanic-serving Institutions issued by the Department of Education to determine eligibility. But a revision to program regulations issued in the **Federal Register** on February 25, 1998, 63 FR 9682, eliminates the use of that list and allows applicants to certify that they meet the statutory definition.

3. *Eligibility of the Degree Program.*

a. For CDWSP, an eligible community building academic degree program includes but is not limited to graduate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, and urban planning. The term excludes social and humanistic fields such as law, economics (except for urban economics), education, and history. The term also excludes joint degree programs except where both joint degree fields have the purpose and focus of educating students in community building.

b. For HSI, an eligible community building academic degree program is defined as an undergraduate associate degree program whose purpose and focus is to educate students in community building. The terms ''community building academic program'' or ''academic program'' refer to the types of academic programs encompassed in the statutory phrase ''community or economic development, community planning, or community management.'' For purposes of HSI–WSP, such programs include, but are not limited to associate degrees on community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, urban planning, land use planning, housing and related fields of study. Related fields of study that promote community building, such as administration of justice, child development, and human services delivery are eligible, while fields such as natural sciences, computer sciences, mathematics, accounting, electronics, engineering, and the humanities (such as English literature or history) would not be. A transfer program (i.e., one that leads to transfer to a four-year institution of higher education for the student's junior year) in a community building academic discipline is only eligible if the student is required to declare his/her major in this discipline while at the community college.

c. For both programs, applicants are encouraged to contact Jane Karadbil at the above listed telephone number if they have any questions about eligibility of a proposed degree program.

4. *Compliance with Fair Housing and Civil Rights Laws.* All applicants must comply with all applicable statutory and regulatory fair housing and civil rights laws as enumerated in 24 CFR 5.105(a). If the applicant has been charged with a violation of the Fair Housing Act by the Department or the Department of Justice or if an applicant has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act, the applicant is not eligible to apply for funding under this NOFA until the applicant resolves such charge or letter of findings to the satisfaction of the Department.

5. *Forms, Certifications and Assurances.* Each applicant must submit signed copies of the following assurances and certifications:

a. Standard Form (SF) 424–B, Assurances for Non-construction Programs;

b. Drug-Free Workplace Certification (HUD–50070);

c. Certification and Disclosure Form Regarding Lobbying Activities (SF–LLL);

d. Applicant/Recipient Disclosure Update Report (HUD–2880); and

e. Certification from an Independent Public Accountant or the cognizant government auditor stating that the financial management system employed by the applicant meets proscribed standards for fund control and accountability required by the pertinent OMB Circular.

6. *Other Required Forms and Agreements.* The application kit includes the required budget forms. Applicants are also required to submit draft student and work placement agreements, although HUD does not provide forms or samples of these documents.

7. *Negotiations.* After all applications have been rated and ranked and selections have been made, HUD may require winners to participate in negotiations to determine the Grant Budget. In cases where HUD cannot successfully conclude negotiations, or a selected applicant fails to provide HUD with requested information, awards will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest applicant.

II. Application Selection Process

A. Two Types of Reviews

Applicants must complete and submit applications in accordance with instructions contained in the application kit, and must include all certifications, assurances, and budget information requested in the kit. Following the expiration of the application submission deadline, HUD will review for threshold requirements, rate, and rank applications in a manner consistent with the procedures

described in this Notice and the provisions of the program regulations.

Two types of reviews will be conducted—a threshold review to determine applicant eligibility and a rating based on the selection criteria for all applications that pass the threshold review.

B. Threshold Criteria for Funding Consideration.

1. *General threshold requirements.* Applicants for either program must meet the following threshold requirements:

a. The applicant must be eligible to apply for the specific program.

b. The applicant must be in compliance with applicable civil rights laws and Executive Orders. The Department will use the following standards to assess compliance with civil rights laws at the threshold review. In making this assessment, the Department shall review appropriate records maintained by the Office of Fair Housing and Equal Opportunity, e.g., records of monitoring, audit, or compliance review findings, complaint determinations, compliance agreements, etc. If the review reveals the existence of any of the following, the application will be rejected:

(1) There is a pending civil rights suit against the applicant instituted by the Department of Justice;

(2) There is an outstanding finding of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, unless the applicant is operating under a HUD-approved compliance agreement designed to correct the area of noncompliance, or is currently negotiating such an agreement with the Department.

(3) There is an unresolved Secretarial charge of discrimination issued under Section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

(4) There has been an adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant is operating under a court order designed to correct the area of noncompliance or the applicant has discharged any responsibility arising from such litigation.

(5) There has been a deferral of the processing applications from the applicant imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 1.8) and procedures, or under Section 504 of the Rehabilitation Act of 1973 and the HUD Section 504 regulations (24 CFR 8.57).

2. *Additional threshold requirements for CDWSP.* For CDWSP these additional threshold requirements must be met before an application can be rated and ranked.

a. Number of students to be assisted. An applicant may request funding for up to five students, but in any case, for no less than three students. Since the work plan and other facets of the evaluation are assessed in the context of the number of students to be assisted. An applicant students for whom funding is requested, any application containing a request for fewer than three or more than five students per institution will be disqualified.

b. Eligibility of the Applicant and Its Proposed Academic Degree Program. The applicant must demonstrate that it is eligible to participate in the program, by demonstrating that it is either is an institution of higher education that offers graduate degrees in at least one eligible community building academic program or is an APO or State submitting an application submitting an application on behalf of such institutions. An application must also demonstrate that each institution participating in the program has the faculty to carry out its activities under the program. Each work placement agency must be involved in community building and must be an agency of a State or unit of local government, an area-wide planning organization, an Indian tribe, or a private nonprofit organization.

c. Graduation Rates. Institutions of higher education, APOs, and States must maintain at least a 50 percent rate of graduation of students from the FY 1995 funding round, which covered school years September 1995 to September 1997, in order to be eligible to participate in the current round of CDWSP funding. Institutions of higher education, APOs, and States funded under the FY 1995 CDWSP funding round that did not maintain such a rate will be excluded from participating in the FY 1998 funding round. Such institutions, APOs, and States will be eligible to participate in the 1999 round.

3. *Additional threshold requirements for HSI–WSP.* For HSI–WSP these additional threshold requirements must be met before an application can be reviewed and ranked.

a. Number of students to be assisted. An applicant may request funding for up to 10 students, and no less than three students. Please note that an applicant can request funding for less than 10 students. Since the work plan and other facets of the evaluation are assessed in the context of the number of students for whom funding is requested, any application requesting assistance for fewer than three students will be disqualified.

b. Eligible applicant and academic degree program. The applicant must demonstrate that it is eligible to participate in HSI-WSP, by demonstrating that it is a public or private nonprofit Hispanic-serving Institution offering only two-year degrees, in at least one eligible community building academic program. Applicants will be required to certify that they meet the statutory definition of an HSI.

C. Application Rating

To review and rate applications, the Department may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies. Applicants will be evaluated competitively and ranked against all other applicants that have applied for the same funding program.

HUD reserves the right to reduce the amount of funding for an applicant in order to fund as many highly ranked applications as possible. Additionally, if funds remain after funding the highest ranked application, HUD may fund part of the next highest ranking application (as long as it would provide assistance to the minimum number of students required to be served) in a given program area. If an applicant turns down the award offer, HUD will make the same determination for the next highest-ranking application. If funds remain after all selections have been made, the remaining will be carried over to the next funding cycle's competition.

D. General Factors for Award Used To Evaluate and Rank Applications.

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for each program is 100. The rating of the applicant or the applicants organization and staff, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to the project, to the extent of their participation.

E. Summary of Selection Factors

Following is a summary of the selection factors common to both programs, and the points for each of these factors, by program.

1. Quality of the Academic Program

a. CDWSP—30 points. For CDWSP, HUD will evaluate the quality of the

academic program offered by the institution of higher education (or institutions, in the case of an application from an APO or State) including, without limitation, the:

(1) Quality of course offerings;

(2) Appropriateness of course offerings for preparing students for careers in community building; and

(3) Qualifications of the faculty and percentage of their time devoted to teaching and research in community building.

b. HSI–WSP—40 points. For HSI–WSP HUD will evaluate:

(1) The quality of the academic program in terms of the community building course offerings, and academic requirements for students, including the likelihood of the academic program to prepare students to work with their designated populations in their community building careers (25 points). Applicants should describe the specific courses to be offered in the academic program, the populations to be served in the careers these academic programs will lead to, and how the courses will equip students to work with these populations.

(2) The qualifications of the faculty members and the percentage of time they will teach in the academic program and the qualifications of the academic supervisor (who may or may not be the program supervisor) to direct and manage the academic program (15 points).

2. Quality of the Work Placement Assignments

a. CDWSP—15 points. For CDWSP, HUD will evaluate the extent to which participating students will receive a sufficient number and variety of work placement assignments, the extent assignments will provide practical and useful experience to students participating in the program, and the extent assignments will further the participating students' preparation for professional careers in community building. In applying this factor, HUD will consider the quality and variety of work placement agencies and the quality and variety of projects/experiences at each agency and overall. Applicants must have a plan for rotating students among work placement agencies. Students engaging in community building projects through an institution of higher education may do so only through a community outreach center, which will in that instance be considered a work placement agency even if the community building projects are undertaken with or through a separate organization or entity. Accordingly, students engaging in community building through an institution of higher education's outreach center should do so during only part of their academic program and should rotate to other work placement agency responsibilities identified in the CDWSP regulations.

b. HSI–WSP—20 points. For HSI-WSP, HUD will evaluate the extent to which participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in the program, and the assignments will further the participating students' preparation for professional careers in community building. In assessing the number and variety of assignments, HUD will consider both the number and variety of work assignments available to a student working at any site.

3. Effectiveness of Program Administration

a. CDWSP—18 points. For CDWSP, HUD will evaluate the degree to which the applicant will be able to coordinate and administer the program. HUD will allocate the maximum points available under this criterion equally among the following three considerations, except that the maximum points available under this criterion will be allocated equally only between (1) and (2), where an applicant has not previously administered a CDWSP-funded program.

(1) The strength and clarity of the applicant's plan for placing CDWSP students on rotating work placement assignments and monitoring CDWSP students' progress both academically and in their work placement assignments;

(2) The degree to which the individual who will coordinate and administer the program has clear responsibility, ample available time, and sufficient authority to do so;

(3) The effectiveness of the applicant's prior coordination and administration of a CDWSP-funded program, where applicable (including the timeliness and completeness of the applicant's compliance with CDWSP reporting requirements). In addressing the timeliness of reports, the applicant should review its prior CDWSP grant agreements and reports and compare when reports were due with the reports actually submitted.

b. HSI-WSP—20 points. For HSI-WSP, HUD will evaluate:

(1) The degree to which the program director has clear responsibility, ample percentage of time, and sufficient institutional or academic authority to coordinate the overall administration of the program; and

(2) The adequacy of the applicant's plan for placing students in work placement assignments and keeping track of students during the two-year academic period and work placement assignments.

4. Demonstrated Commitment of the Applicant to Meeting the Needs of Economically Disadvantaged and Minority Students

a. CDWSP—10 points. For CDWSP, HUD will evaluate the applicant's commitment to meeting the needs of economically disadvantaged and minority students as demonstrated by the policies and plans regarding, and past efforts and successes in, recruiting, enrolling and financially assisting economically disadvantaged and minority students. If the applicant is an APO or State, HUD will consider the demonstrated commitment of each institution of higher education on whose behalf the APO or State is applying; HUD will also consider the demonstrated commitment of the APO or State to recruit and hire economically disadvantaged and minority students.

b. HSI-WSP—10 points. For HSI-WSP, HUD will evaluate the extent to which the applicant's recruitment activities, special education programs, and other means, including the provision of reasonable accommodations for students with disabilities, demonstrates an active, aggressive, and imaginative effort to identify, attract, and retain qualified minorities and economically disadvantaged students, including students with disabilities; and the extent to which the HSI-WSP award will not result in a decrease in the amount of the institution's own financial support available for minority and economically disadvantaged students, including students with disabilities, in the academic areas or the institution as a whole.

F. Specialized Selection Factors

Following is a summary of the selection factors specific to each of these programs, and the points for each of these factors, by program. The application kit contains more detail on each factor. Applicants must consult the kit before preparing their responses to these factors.

1. CDWSP

a. Rates of Graduation—7 points—HUD will evaluate the rates of students previously enrolled in a community building academic degree program, specifically (where applicable) graduation rates from any previously

funded CDWSP academic programs or similar programs.

b. Extent of Financial Commitment—10 points—HUD will evaluate the commitment and ability of the institution of higher education (or institutions, in the case of an application from an APO or State) to assure that CDWSP students will receive sufficient financial assistance above and beyond the CDWSP funding to complete their academic program in a timely manner and without working in excess of 20 hours a week during the school year. When addressing this issue, applicants should, among other responsive information, delineate the full costs budgeted annually for a student, explain the basis for the budget and explain how the financial assistance package offered to each CDWSP student will meet that budget. The applicant should have an adequate means of addressing reasonable variations in budget needs among students and for addressing emergency financial needs of students.

c. Likelihood of Fostering Students' Permanent Employment in Community Building—10 points—HUD will evaluate the extent to which the proposed program will lead participating students directly and immediately to permanent employment in community building, as indicated by:

(1) The past success of the institution of higher education in placing its graduates (particularly CDWSP-funded and similar program graduates, where applicable) in finding permanent employment in community building; and

(2) The amount of faculty/staff time and resources devoted to assisting students (particularly students in CDWSP-funded and similar programs, where applicable) in finding permanent employment in community building.

2. HSI–WSP

Likelihood of Fostering Students' Permanent Post-graduation Employment in Community Building or Transfer to a Four-Year Institution of Higher Education to Obtain a Bachelor's Degree in a Community Building Academic Discipline—10 points—HUD will evaluate the extent to which the institution's educational program (based on previous experience), including the assistance it provides to its students in finding post-graduation employment or transfer to a four-year institution for a bachelor's degree in a community building academic discipline, has led to career opportunities in community building fields.

G. Corrections to Deficient Applications

HUD will screen each application that is timely received to determine whether it is complete, and will notify an applicant in writing of any technical deficiencies in the application.

The notification will specify the date by which HUD must receive the applicant's correction of all technical deficiencies, which will be within 14 calendar days from the date of HUD's notification. If the due date falls on a Saturday, Sunday, or Federal holiday, the correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.

The correction period pertains only to non-substantive, technical deficiencies or errors. Current law does not permit HUD to allow substantive changes to applications after the due date. Technical deficiencies relate to items that:

(1) Are not necessary for HUD review under selection criteria/ranking factors; and

(2) Would not improve the substantive quality of the proposal. Examples of technical deficiencies would be a failure to submit proper certifications or failure to submit an application containing an original signature by an authorized official. If any of the items identified in HUD's written notification are not corrected and submitted within the required time period, the application will be ineligible for further consideration.

H. Final Selection

All applications that are rated will be rank ordered based on their total scores on the selection factors. Applications will be considered for selection based on their rank order. For CDWSP only, HUD may make awards out of rank order to achieve geographic diversity, and may provide assistance to support a number of students that is less than the number requested under an application (or in the case of CDWSP, a lower funding level per student), in order to provide assistance to as many highly ranked applications as possible.

If there is a tie in the point scores of two applications, the rank order will be determined by the applicants' scores in both CDWSP and HSI–WSP on the selection factor entitled ''Quality of the Academic Program.'' The application with the most points on this factor will be given the higher rank. If there is still a tie, the rank order will be determined by the applicants' scores on the selection factor entitled:

1. Effectiveness of program administration for CDWSP; or

2. Commitment to meeting the needs of economically disadvantaged and minority students for HSI–WSP.

The application with the most points for this selection factor will be given the higher rank.

For CDWSP only, if there are insufficient funds to fund an application, even if the application's request is reduced to the minimum number of students which could be funded (i.e., three students per institution of higher education), HUD may select the next ranked application which would not exceed the funding left available and still fund the minimum number of students allowed.

III. Promoting Comprehensive Approaches to Housing and Community Development

HUD believes the best approach for addressing community problems is through a community-based process that provides a comprehensive response to identified needs. In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have been published or are expected to be published this fiscal year. On March 31, 1998, HUD published in the **Federal Register** its SuperNOFA on Housing and Community Development Programs. This SuperNOFA covered 19 HUD Housing and Community Development programs. The March 31, 1998 SuperNOFA is the first of three SuperNOFAs that will be published in Fiscal Year 1998. By reviewing this first SuperNOFA, the two SuperNOFAs to follow, and other individual NOFAs that HUD may publish with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to upcoming NOFAs and the community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice. Applicants and interested parties may find out more about HUD's NOFAs through the HUD web site on the Internet.

IV. Other Matters

1. Environmental Review

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is

categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321) and no FONSI is needed. In addition, the provision of assistance under this NOFA is categorically excluded from environmental review under § 50.19(b)(3) and (b)(9).

2. Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This notice merely invites applications from certain institutions of higher education for grants under CDWSP or HSI–WSP. As a result, the notice is not subject to review under the Order.

3. Prohibition Against Lobbying Activities

Applicants for funding under this NOFA (except Indian Housing Authorities established by tribal governments exercising their sovereign powers with respect to expenditures specifically permitted by Federal law) are subject to the provision of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995, P.L. 104–65 (December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal Executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF–LLL are included in the application kit.

The Lobbying Disclosure Act of 1995, P.L. 104–65 (December 19, 1995), which repealed section 112 of the HUD Reform Act and resulted in elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered Executive or Legislative Branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

4. Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

a. *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

b. *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

5. Section 103 of the HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact HUD's Ethics Law Division (202) 708–3815 (voice), (202) 708–1112 (TTY). (These are not toll-free numbers.) For HUD employees who have specific program questions, the employee should contact the appropriate Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

6. Catalog of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance numbers for the two programs are: CDWSP, 14.234; HSI–WSP, 14.513.

Dated: March 23, 1998.

Andrew M. Cuomo,

Secretary.

[FR Doc. 98–8333 Filed 4–1–98; 8:45 am]

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federal register

Thursday
April 2, 1998

Part IV

Department of Housing and Urban Development

Fiscal Year 1998 Notice of Funding Availability for Community Outreach Partnership Centers (COPC) for Institutionalization Grants; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4309–N–01]

Fiscal Year 1998 Notice of Funding Availability for Community Outreach Partnership Centers (COPC) for Institutionalization Grants

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1998 for Institutionalization Grants.

SUMMARY: This NOFA announces the availability of Fiscal Year 1998 funding to make Institutionalization Grants under the Community Outreach Partnership Centers (COPC) Program. Funding for New Grants under the COPC Program was announced in HUD's SuperNOFA for Housing and Community Development Programs, published in the **Federal Register** on March 31, 1998.

Available funding. Approximately $500,000 to fund certain Institutionalization Grants.

Eligible applicants. Only public and private nonprofit institutions of higher education that received New Grants in FY 1995 and have not previously received an Institutionalization Grant.

Purpose. To assist in establishing or carrying out research and outreach activities addressing the problems of urban areas. Funding under this demonstration program shall be used to continue operation of Community Outreach Partnership Centers (COPC).

The NOFA contains information concerning: (1) the principal objectives of the competition, the funding available, eligible applicants and activities, and factors for award; (2) the application requirements; and (3) the application process, including how to apply and how selections will be made.

Application Due Dates and Instructions for Obtaining Applications

Applicants will be required to submit a new application. HUD recognizes, however, that applicants will probably be able to use most of their FY 1997 application, with the modifications listed in section II of this NOFA. For the list of specific application submission requirements, see section II of this NOFA. Please note that all certifications must be new. New application kits will not be available. Applicants should submit an original and two copies of their applications.

Applications must be physically received by the Office of University Partnerships, in care of the Division of Budget, Contracts, and Program Control, in Room 8230 by 4:30 p.m. Eastern Standard Time on May 4, 1998. Facsimiles of applications will not be accepted. The above-stated application deadline is *firm* as to *date, hour* and *place.* In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Applicants hand-delivering applications are advised that considerable delays may occur in attempting to enter the building because of security procedures.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships in the Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 8110 Washington, DC 20410, telephone (202) 708–1537. Hearing or speech-impaired individuals may call HUD's TTY number (202) 708–0770, or 1–800–877–8399 (Federal Information Relay Service TTY). Other than the ''800'' number, these are not toll-free numbers. Ms. Karadbil can also be contacted via the Internet at Jane__R.__Karadbil@hud.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2528–0180. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

I. Purpose and Substantive Description

A. Authority

This competition is authorized under the Community Outreach Partnership Act of 1992 (42 U.S.C. 5307 note; hereafter referred to as the ''COPC Act''). The COPC Act is contained in section 851 of the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992) (HCD Act of 1992). Section 801(c) of the HCD Act of 1992 authorizes $7.5 million for each year of the 5-year demonstration to create Community Outreach Partnership Centers as authorized in the COPC Act. The COPC Act also required HUD to establish a national clearinghouse to disseminate information resulting from research and outreach conducted at the centers.

B. Allocation and Form of Award

The competition in this NOFA is for up to $500,000 to fund certain Institutionalization Grants under the COPC Program.

Institutionalization Grants will be awarded to certain COPC grantees to help ensure that their COPC activities are institutionalized as an integral part of the teaching, research, and service missions of their colleges and universities. Each Institutionalization Grant will be for a one-year period, with a maximum grant size of $100,000. Applicants for Institutionalization Grants will be disqualified if they request more than the maximum allowable amount. The term of the grant will be for one year. If the grantee proposes entirely new activities, it may conduct activities under both its current and proposed Institutionalization Grants, until funds from both are fully expended. If the applicant proposes continuation of current activities, it must expend all the funds under the current grant before expending any new funds under an Institutionalization Grant. Current grantees may request a no-cost extension from HUD if necessary to finish expending all their FY 1995 grant funds.

C. Eligible Applicants

Applicants for this competition must be public or private nonprofit institutions of higher education that received New Grants in FY 1995 and have not previously received an Institutionalization Grant. Current COPC grantees that received grants as consortia must apply again as consortia, with all current member institutions participating in the proposed Institutionalization Grant, and with the same lead applicant as in their current COPC. A consortium is defined as a group of institutions of higher education. It can be composed of community colleges, four-year colleges, and universities. Applicants must demonstrate the continued existence and functioning of their consortia through all of the following documentation: a mention in the Executive Summary; funding in the budget (especially if the institutions received COPC funding in FY 1995) or a listing as matching funds; a task description in the Project Management Work Plan; and letters of commitment from the institutions. For more information about the specific application requirements see section II of this NOFA.

D. Program Requirements

Grantees must meet the following program requirements:

1. *Responsibilities.* In accordance with section 851(h) of the HCD Act of 1992, each COPC shall:

''(a) Employ the research and outreach resources of its sponsoring institution of higher education to solve specific urban problems identified by communities served by the Center;

(b) Establish outreach activities in areas identified in the grant application as the communities to be served;

(c) Establish a community advisory committee comprised of representatives of local institutions and residents of the communities to be served to assist in identifying local needs and advise on the development and implementation of strategies to address those issues;

(d) Coordinate outreach activities in communities to be served by the Center;

(e) Facilitate public service projects in the communities served by the Center;

(f) Act as a clearinghouse for dissemination of information;

(g) Develop instructional programs, convene conferences, and provide training for local community leaders, when appropriate; and

(h) Exchange information with other Centers.''

2. *Cap on Research Costs.* No more than 25 percent of the total project costs (Federal share plus match) can be spent on research activities.

3. *Match.* Grantees must meet the following match requirements.

(a) *Research Activities.* 50 percent of the total project costs of establishing and operating research activities.

(b) *Outreach Activities.* 25 percent of the total project costs of establishing and operating outreach activities.

This non-Federal share may include cash or the value of non-cash contributions, equipment and other allowable in-kind contributions as detailed in 24 CFR Part 84, and in particular Section 84.23 entitled ''cost sharing or matching.''

4. *Administrative.* The grant will be governed by the provisions of 24 CFR Part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations), A–122 (Cost Principles for Nonprofit Organizations), and A–133 (Audits of States, Local Governments and Non-profit Organizations). No more than 20% of the Federal grant funds may be used for planning and program administrative costs. Overhead costs directly related to carrying out activities under research and outreach need not be considered planning and program administrative costs, since those costs are eligible under that section. The 20% limitation imposed under this program applies only to Federal funds received through this grant, not to matching funds.

E. Eligible Activities

Eligible activities include:

1. Research activities which have practical application for solving specific problems in designated communities and neighborhoods, including evaluation of the effectiveness of the outreach activities. Such activities may not total more than one-quarter of the total project costs contained in any grant made under this NOFA (including the required 50 percent match).

2. Outreach, technical assistance and information exchange activities which are designed to address specific urban problems in designated communities and neighborhoods. Such activities must total no less than three-quarters of the total project costs contained in any grant made under this NOFA (including the required 25 percent match).

Applicants should propose activities that will bring their COPC projects to a successful conclusion or could result in securing funding to continue either current or new COPC activities from other sources, such as local governments or foundations. Applicants are reminded that leases for office space in which to house the Community Outreach Partnership Center are an eligible cost under the following conditions:

(a) The lease must be for existing facilities;

(b) No repairs or renovations of the property may be undertaken with Federal funds; and

(c) Properties in the Coastal Barrier Resource System designated under the Coastal Barrier Resources Act (16 U.S.C. 3501) cannot be leased with Federal funds.

F. Ineligible Activities

Grant funds cannot be used for:

1. Research activities which have no clear and immediate practical application for solving urban problems or do not address specific problems in designated communities and neighborhoods.

2. Any type of construction, rehabilitation, or other physical development costs.

3. Costs used for routine operations and day-to-day administration of regular programs of institutions of higher education, local governments or neighborhood groups.

II. Application Content and Review Process

Applications must contain the following documents. Many of these documents can simply be redlined and strikeout versions of the application submitted for the last funding round; but others must be newly prepared and signed. All of the forms can be downloaded from the University Partnerships website at http// www.oup.org.

a. A new SF–424, signed by the Chief Executive Officer of the Institution or his/her designee. If a designee signs, a letter from the Chief Executive Officer delegating signatory authority must be included.

b. A new transmittal letter signed by the Chief Executive Officer or his/her designee.

c. A revised Executive summary, with the changes relating to the consortium partners noted in redline/strikeout.

d. A new SF–424B, Assurances.

e. All of the budget documents previously submitted, with the changes resulting from participation by the consortium partners noted in redline/ strikeout.

f. A revised Project Management Work Plan, with the changes relating to the consortium partners' activities noted in redline/strikeout.

g. A revised Narrative Statement Responding to the factors, with the changes resulting from participation by the consortium partners noted in redline/strikeout.

h. A new Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Form-LLL).

i. A new Certification Regrading Drug-Free Workplace Requirements.

j. Current financial management and audit information, which can be resubmission of the previously submitted materials if there have been no changes.

k. Letters of commitment from the consortium partners to participate in the project.

Following the expiration of the application submission deadline, HUD will review to determine if the application meets the following threshold criteria on compliance with civil rights laws. In making this assessment, HUD shall review appropriate records maintained by the Office of Fair Housing and Equal Opportunity, such as records of monitoring, audit, or compliance review findings, complaint determinations, compliance agreements. If the review reveals the existence of any of the following, the application will be rejected:

a. There is a pending civil rights suit against the sponsor instituted by the Department of Justice.

b. There is an outstanding finding of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, unless the applicant is operating under a HUD-approved compliance agreement designed to correct the areas of non-compliance, or is currently negotiating such an agreement with HUD.

c. There is an unresolved Secretarial charge of discrimination issued under section 819(g) of the Fair Housing Act 42 U.S.C. 3619(g), as implemented by 24 CFR 103.400.

d. There has been an adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant is operating in compliance with a court order designed to correct the area of noncompliance, or the applicant has discharged any responsibility arising from such litigation.

e. There has been a deferral of the processing of applications from the sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) and HUD regulations (24 CFR 1.8), the Attorney General's Guidelines (28 CFR 50.3), or under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD regulations (24 CFR 8.57).

All applications that pass this threshold review will be reviewed under the selection criteria listed below and then ranked in a manner consistent with the procedures described in this Notice.

III. Rating Factors/Selection Process

(a) Rating Factors. Applicants will be required to meet three selection factors, summarized as ''Past Performance,'' ''Proposed Activities,'' and ''Potential for Institutionalization.'' Each factor and the maximum points assigned to it are described below:

1. *(30 points)* The demonstrated past performance of the applicant, as measured by: the research and outreach resources made available to the applicant under the current COPC grant; the ability of the applicant to provide local leadership and disseminate results of the grant; and the effectiveness of the activities undertaken in the grant.

2. *(30 points)* The effectiveness of the proposed research and outreach activities, as measured by: need for the activities; involvement of the community in these activities; demonstrated commitment of the application by providing a matching contribution; and likelihood that these activities can be successfully carried out within the grant period.

3. *(40 points)* The potential of the proposed outreach strategy to ensure institutionalization of the COPC functions at the college or university, as measured by the extent to which the proposed COPC functions will become an integral part of the teaching, research and urban service mission of the institution and the extent to which the COPC activities are supported by the highest levels of institutional leadership. In reviewing this factor, HUD will consider the extent to which the COPC activities are part of and will enhance a broader set of existing or planned activities and will foster a culture that rewards faculty and student work on these activities.

(b) Selection Process. An applicant must receive a score of at least 70 points in order to be funded. Applications will be rated but not ranked. There is sufficient funding for all eligible applications.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD may disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

V. Promoting Comprehensive Approaches to Housing and Community Development

HUD believes the best approach for addressing community problems is through a community-based process that provides a comprehensive response to identified needs. In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have been published or are expected to be published this fiscal year. On March 31, 1998, HUD published in the **Federal Register** its SuperNOFA on Housing and Community Development Programs. This SuperNOFA covered 19 HUD Housing and Community Development programs. The March 31, 1998 SuperNOFA is the first of three SuperNOFAs that will be published in Fiscal Year 1998. By reviewing this first SuperNOFA, the two SuperNOFAs to follow, and other individual NOFAs that HUD may publish with respect to the program purposes and the eligibility of applicants and activities described in these NOFAs, applicants may be able to relate the activities proposed for funding under this NOFA to upcoming NOFAs and the community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice. Applicants and interested parties may find out more about HUD's NOFAs through the HUD web site on the Internet.

V. Findings and Certifications

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, the notice solicits participation in an effort to provide assistance to institutions of higher education for establishing and carrying out research and outreach activities addressing the problems of urban areas. The COPCs established under this notice will work with local communities to help resolve urban problems. The notice does not impinge upon the relationships between the Federal government and State or local governments.

Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact HUD's Ethics Law Division (202) 708–3815. (This is not a toll-free number.)

Byrd Amendment

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are subject to this NOFA. Applicants must file, therefore, a certification stating that they have not made and will not make any prohibited payments and, if payments or agreement to make payments of nonappropriated funds for these purposes have been made, a SF–LLL disclosing such payments should be submitted. The certification and the SF–LLL are included in the application package issued pursuant to this NOFA.

Protection of Human Subjects

45 CFR part 46, Subtitle A on the protection of human subjects does not apply to the COPC program because the research activities to be conducted under the program are only incidentally regulated by the Department solely as part of its broader responsibility to regulate certain types of activities whether research or non-research in nature.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made for the 1997 NOFA in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding of No Significant Environmental Impact is applicable to this NOFA and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, U.S. Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for this program is 14.511.

Dated: March 23, 1998.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 98–8334 Filed 4–1–98; 8:45 am]

BILLING CODE 4210–62–P

Federal Register

Thursday
April 2, 1998

Part V

Department of the Treasury

Fiscal Service

31 CFR Part 285

Transfer of Debts to Treasury for Collection; Interim Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR PART 285

RIN 1510–AA68

Transfer of Debts to Treasury for Collection

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Debt Collection Improvement Act of 1996 (DCIA) requires Federal agencies to transfer any nontax debt which is over 180 days delinquent to the Department of the Treasury for debt collection action; this is known as ''cross-servicing.'' This rule establishes the procedures and criteria for transferring delinquent debt to the Department of the Treasury, explains the statutory exceptions to this requirement, and establishes standards under which the Secretary of the Treasury will make a determination whether or not to grant exemptions. This rule also mandates that agencies refer debts to private collection contractors and to debt collection centers in accordance with procedures established by the Financial Management Service.

DATES: *Effective:* April 2, 1998. Comments must be received on or before May 4, 1998.

ADDRESSES: All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, 401 14th Street SW, Room 151, Washington, D.C. 20227. A copy of this rule is being made available for downloading from the Financial Management Service web site at the following address: http://www.fms.treas.gov.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874–6859; or Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

Section 31001(m)(1) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358 (1996), codified at 31 U.S.C. 3711(g), requires Federal agencies to transfer to the Secretary of the Treasury any nontax debt that has been delinquent for a period of 180 days. Upon such transfer the Secretary of the Treasury will take appropriate action to collect or terminate collection action on the debt. The DCIA lists several exemptions to this requirement. In addition, the Secretary of the Treasury may exempt any class of debts from this requirement.

Under the DCIA, the Secretary of the Treasury is authorized to prescribe regulations as the Secretary considers necessary to carry out this requirement. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations governing this and other provisions of the DCIA. This rule describes when a debt must be transferred to the Department of the Treasury for debt collection action and when a debt will be considered in an exempt category. This rule explains the relationship between the requirement to transfer debt to Treasury for debt collection action (i.e., cross-servicing) and the DCIA requirement, codified at 31 U.S.C. 3716(c), that agencies notify the Secretary of the Treasury of all debt over 180 days delinquent for purposes of administrative offset. This rule also describes the factors that the Secretary of the Treasury will consider in determining whether to exempt a class of debts from the mandatory provisions of 31 U.S.C. 3711(g).

The DCIA also authorizes the Secretary of the Treasury to designate other Federal agencies as debt collection centers and to maintain a schedule of private collection contractors eligible for referral of debts owed to the United States. This rule mandates that agencies refer debts to debt collection centers and to private collection contractors in accordance with procedures established by the FMS.

Readers are reminded that most of the provisions of the DCIA became effective upon enactment on April 26, 1996. FMS is publishing this rule to clarify and interpret the DCIA provisions pertaining to the referral of debts to the Department of the Treasury and Treasury-designated debt collection centers for collection action. However, publication of this rule does not delay the effective date of the DCIA, nor does it postpone the duty of Federal agencies to comply with the provisions of the DCIA.

Section Analysis

(a) Definitions

The intent of 31 U.S.C. 3711(g) is to centralize the collection of delinquent debt owed to the Government within Treasury, which has the authority to designate debt collection centers to administer centralized collection. Therefore, the definitions in paragraph (a) of this rule are intended to apply to every Federal agency in the Government and every entity who owes delinquent nontax debt to the Federal Government.

(b) General Rule

Paragraph (b) of this section explains that ''cross-servicing'' is the term used to refer to the function performed by a Federal agency that is providing debt collection services for another Federal agency. Debt collection services may include, but are not limited to, sending demand letters, telephoning the debtor, and referring the debt for collection by offset or by a private collection contractor. The Department of the Treasury and debt collection centers, more fully described in paragraph (f) of this section, are authorized to perform cross-servicing.

(c) Mandatory Transfer to FMS

Paragraph (c)(1) of this section states the general rule that unless a nontax debt which is over 180 days delinquent falls within one of the exempt categories listed under paragraph (d) of this section, it must be transferred to the Financial Management Service (FMS) of the Department of the Treasury for collection action. For accounting and reporting purposes, however, the debt remains on the books and records of the agency which transferred the debt, i.e., the creditor agency. The terms ''transfer'' and ''refer'' (see paragraph (h), below) as used in this rule have the same meaning.

Paragraph (c)(2) of this section describes the actions which FMS may take relative to a debt which is transferred to FMS under this paragraph. Paragraph (c)(2) clarifies that FMS will take action upon a debt in accordance with the statutory and regulatory requirements and other authorities that apply to that debt or to the particular action being taken subject to terms and conditions agreed upon, in writing, between FMS and the creditor agency. Transfer of a debt to FMS does not change the rights and/or obligations of the debtor. Thus, for example, if an agency's authority to compromise a certain type of debt is set forth in a statute or regulation, that statute or regulation would continue to govern.

Paragraph (c)(3) of this section describes when a debt will be considered 180 days delinquent for purposes of mandatory transfer to FMS. Paragraph (c)(3) recognizes that there are circumstances where 180 days or more has passed from the time a debt is first established as delinquent on an agency's books and records, but collection action on that debt may not be appropriate either because there has not been a final agency determination

regarding the debt, or there is a legal bar to further collection action. The 180 day period begins when the creditor agency first establishes the debt as delinquent and continues to run even though collection action may be barred. Nevertheless, agencies are not required to transfer to FMS debts which are over 180 days delinquent until such time as a final agency determination regarding the debt is made or the legal bar to further collection action is removed. For example, agencies are not required to transfer debt where the amount due is in dispute and the agency has not yet made a final determination regarding the amount due; where an administrative appeals process is pending and continued collection action during the appeals process is prohibited; or where the automatic stay in a bankruptcy proceeding applies. Once a final agency determination regarding the debt is made or the legal bar to further collection action is removed, however, the debt must be immediately transferred to FMS. Agencies are cautioned that circumstances where an agency's determination regarding a debt is still pending at the time the debt is 180 days delinquent should generally exist only where an applicable statute or regulation requires it. In all other circumstances, agency determinations regarding debts must be made within reasonable time frames which, absent compelling circumstances, should not exceed 180 days from the time the debt is first established.

(d) Exceptions to Mandatory Transfer

Paragraph (d) of this section describes more fully the exceptions to mandatory transfer listed in the DCIA. Paragraph (d)(1) lists the statutory exceptions. Paragraph (d)(2) more fully describes each exception.

Under paragraph (d)(2)(i) of this section, a debt is in litigation only if it has been referred to the Attorney General for litigation or if proceedings before a court of competent jurisdiction are actually pending. For debts which have been referred to the Attorney General for litigation, it is not necessary that court proceedings actually be pending. For other debts, however, such as debts owed to agencies with independent litigating authority or those debts which are the subject of defensive litigation, proceedings before a court must actually be pending. A debt which has only been referred to agency counsel for legal review is not considered to be in litigation. Nothing in the DCIA or in this rule is intended to affect an agency's authority to refer debts, which are not subject to mandatory transfer to FMS, to the Attorney General where appropriate.

Under paragraph (d)(2)(ii) of this section, a debt is in foreclosure if judicial foreclosure proceedings before a court of competent jurisdiction are actually pending or a Notice of Default or comparable action required under applicable law to initiate a nonjudicial foreclosure proceeding against real or personal property has been issued. Additionally, for a debt to be considered in foreclosure it is also necessary that the agency expects to receive proceeds from the foreclosure which may be applied to the debt.

Under paragraph (d)(3) of this section, a debt is scheduled for sale only if it is scheduled to be sold under an established asset sales program within one year (or longer if approved by the Office of Management and Budget) from the time it is eligible for sale, that is, from the time the debt has been approved to be included in an asset sales program.

Under paragraph (d)(4) of this section, a debt is at a private collection contractor only if it has been referred to a private collection contractor in accordance with paragraph (e) of this section.

Under paragraph (d)(5) of this section, a debt is at a debt collection center only if it has been referred to a debt collection center in accordance with paragraph (f) of this section.

Under paragraph (d)(6) of this section, a debt is being collected by internal offset only if an internal offset has been initiated and the agency expects that the debt will be collected in full within three years from the date of delinquency. An internal offset will be considered to have been initiated if funds payable to the debtor by the creditor agency have been withheld or, in cases where prior notice to the debtor is required, if such notice has been issued.

Paragraph (d)(7) of this section sets forth the factors the Secretary of the Treasury will consider in granting exemptions for other classes of debts. Generally, the presumption is that an exemption will not be granted absent compelling circumstances.

(e) Schedule of Private Collection Contractors

The DCIA requires the Secretary of the Treasury to maintain a schedule of private collection contractors eligible to receive debts owed to Federal agencies. FMS and other debt collection centers must utilize this schedule of contractors when referring debts to a private collection contractor. Agencies which refer debts which are less than 180 days delinquent to private collection contractors may utilize this schedule of contractors provided they do so in accordance with procedures established by FMS. Agencies are not required to use this schedule of contractors for debts which are less than 180 days delinquent or for debts which are otherwise exempt from the mandatory transfer requirement described in paragraph (c) of this section.

(f) Debt Collection Centers

Paragraph (f) of this section explains that a debt collection center is a Federal agency designated by the Secretary of the Treasury, under standards and terms established by the Secretary, to collect debts owed to the United States. A debt collection center may be an agency, or a unit or subagency within a Federal agency. Debt collection centers will take action upon a debt in accordance with the statutory or regulatory requirements and other authorities that apply to the debt or to the particular action being taken. Debt collection centers are authorized, subject to the terms under which the debt collection center has been designated as such by the Secretary of the Treasury, to take any action on behalf of the creditor agency to collect, compromise, suspend or terminate collection action on debts, in accordance with the terms and conditions set forth, in writing, by the creditor agency. The action a debt collection center may take is intended to be interpreted broadly to include actions, such as reporting debts to credit bureaus and obtaining credit reports, which facilitate collection.

(g) Administrative Offset

This section explains the relationship between (1) the DCIA requirement that debts over 180 days delinquent be transferred to Treasury for collection action (i.e., cross-servicing) and (2) the DCIA requirement that agencies notify the Secretary of the Treasury of debts over 180 days delinquent for purposes of administrative offset. Debts which are transferred to FMS or a Treasury-designated debt collection center under this rule will, where appropriate, be referred for collection by administrative offset and agencies are not required to take any further action to comply with the DCIA requirement regarding administrative offset. Debts not transferred under this rule, for example, debts which fall within one of the exempt categories, may nevertheless be subject to the mandatory offset requirement.

(h) Voluntary Referral of Debts Less Than 180 Days Delinquent.

Although agencies are required to transfer debt to FMS which is more than 180 days delinquent, paragraph (h) of this section is intended to clarify that agencies may voluntarily refer debt less than 180 days delinquent to FMS, to a private collection contractor in accordance with paragraph (e) of this section and procedures established by FMS, or to a debt collection center in accordance with paragraph (f) of this section and procedures established by FMS. As noted above, the terms ''transfer'' and ''refer'' as used in this rule have the same meaning.

(i) Certification

Paragraph (i) of this section describes the requirement that the head of an agency or someone with authority to act on behalf of the head of the agency with regard to debt collection matters, must certify to FMS or to a debt collection center that debts transferred are valid, legally enforceable, that there are no legal bars to collection, and that all due process requirements have been met. This means that the agency must certify that it has made a final determination that the debt is due in the amount transferred, that there are no legal bars to collection such as bankruptcy, and that the agency has provided (or has arranged to provide) the debtor with notice and an opportunity to be heard where required as a prerequisite to a particular collection action. In addition, paragraph (i) explains that the creditor agency is responsible for notifying FMS of any changes to the status of the legal enforceability of the debt. For example, unless the creditor agency determines that the automatic stay imposed at the time of a bankruptcy filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately. Therefore, it is imperative that the creditor agency notify FMS immediately upon learning that a bankruptcy petition has been filed with respect to a debtor.

(j) Fees

Paragraph (j) of this section describes the DCIA authority for FMS and debt collection centers to charge fees, to retain fees from amounts collected, and to deposit and use fees. Paragraph (j) of this section also describes the authority for creditor agencies to add these fees to the amount of the debt.

Regulatory Analysis

This interim rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act do not apply.

Special Analyses

FMS is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the ''APA''), because FMS has determined, for the following reasons, that a comment period would be unnecessary, impracticable, and contrary to the public interest. The DCIA was effective immediately upon its enactment on April 26, 1996. In implementing the DCIA provision requiring Federal agencies to transfer debt over 180 days delinquent to Treasury for debt collection, FMS has identified the need to provide guidance to Federal agencies. To ensure that this guidance was provided in a consistent and meaningful manner, FMS has determined that a rule is desirable.

Nothing in this rule impacts the rights or obligations of debtors nor changes the authorities under which Federal agencies collect debt. This rule provides critical guidance needed to facilitate the ongoing transfer of debts to Treasury for debt collection. Thus, FMS believes that it is in the public interest to issue this interim rule without opportunity for prior public comment.

The public is invited to submit comments on the interim rule which will be taken into account before a final rule is issued.

FMS has determined that good cause exists to make this interim rule effective upon publication without providing the 30 day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. However, in this case, the requirement to transfer debt to Treasury for debt collection became effective on April 26, 1996. Inasmuch as this interim rule provides important guidance that is expected to facilitate full implementation of the authority contained in the law, FMS believes that good cause exists to make the rule effective upon publication.

List of Subjects in Part 285

Administrative Practice and Procedure, Credit, Debt, Loan Programs

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for Part 285 is revised to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A; E.O. 13019, 3 CFR, 1996 Comp., p. 216.

2. Subpart B is added to Part 285 to read as follows:

Subpart B—Authorities Other Than Offset

Subpart B—Authorities Other Than Offset

§ 285.11 [Reserved]

§ 285.12 Transfer of Debts to Treasury for debt collection.

(a) *Definitions.* For purposes of this section:

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person. As used in this rule, the term ''debt'' does not include debts arising under the Internal Revenue Code of 1986 or the tariff laws of the United States.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Secretary means the Secretary of the Treasury.

(b) *In general.* Cross-servicing means that FMS, a Federal agency, or a unit or subdivision within a Federal agency, under a designation by the Secretary of the Treasury, is taking appropriate debt collection action on behalf of one or more Federal agencies or unit or subdivision thereof. Agencies which provide such cross-servicing are known as debt collection centers.

(c) *Mandatory transfer of debts to FMS.* (1) Except as set forth in paragraph (d) of this section, a creditor agency shall transfer any debt that is more than 180 days delinquent to FMS for debt

collection services. For accounting and reporting purposes, the debt remains on the books and records of the agency which transferred the debt.

(2) On behalf of the creditor agency, FMS will take appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the action. Appropriate action to collect a debt may include referral to another debt collection center, a private collection contractor, or the Department of Justice for litigation. The creditor agency shall advise FMS, in writing, of any specific statutory or regulatory requirements pertaining to their debt and will agree, in writing, to a collection strategy which includes parameters for entering into compromise and repayments agreements with debtors.

(3) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to FMS and is not to be transferred even if the debt is more than 180 days past-due. Once there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action, however, any debt over 180 days delinquent must be immediately transferred to FMS. Nothing in this section is intended to impact the date of delinquency of a debt for other purposes such as for purposes of accruing interest and penalties.

(d) *Exceptions to mandatory transfer.* (1) A creditor agency is not required to transfer a debt to FMS pursuant to paragraph (c)(1) of this section only during such period of time that the debt:

(i) Is in litigation or foreclosure as described in paragraph (d)(2) of this section;

(ii) Is scheduled for sale as described in paragraph (d)(3) of this section;

(iii) Is at a private collection contractor if the debt has been referred to a private collection contractor in accordance with paragraph (e) of this section;

(iv) Is at a debt collection center if the debt has been referred to a Treasury-designated debt collection center in accordance with paragraph (f) of this section;

(v) Is being collected by internal offset as described in paragraph (d)(4) of this section; or

(vi) Is covered by an exemption granted by the Secretary as described in paragraph (d)(5) of this section.

(2)(i) A debt is in litigation if:

(A) The debt has been referred to the Attorney General for litigation by the creditor agency; or

(B) The debt is the subject of proceedings pending in a court of competent jurisdiction, including bankruptcy proceedings, whether initiated by the creditor agency, the debtor, or any other party.

(ii) A debt is in foreclosure if:

(A)(*1*) Collateral securing the debt is the subject of judicial foreclosure proceedings in a court of competent jurisdiction; or

(*2*) Notice has been issued that collateral securing the debt will be foreclosed upon, liquidated, sold, or otherwise transferred pursuant to applicable law in a nonjudicial proceeding; and

(B) The creditor agency anticipates that proceeds will be available from the liquidation of the collateral for application to the debt.

(3) A debt is scheduled for sale if:

(i) The debt will be disposed of under an asset sales program within one (1) year after becoming eligible for sale; or

(ii) The debt will be disposed of under an asset sales program and a schedule established by the creditor agency and approved by the Director of the Office of Management and Budget.

(4) A debt is being collected by internal offset if a creditor agency expects the debt to be collected in full within three (3) years from the date of delinquency through internal offset. ''Internal offset'' means withholding of funds payable by the creditor agency to the debtor to satisfy, in whole or part, the debt owed to the creditor agency by that debtor.

(5)(i) Upon the written request of the head of an agency, or as the Secretary may determine on his/her own initiative, the Secretary may exempt any class of debts from the application of the requirement described in paragraph (c)(1) of this section. In determining whether to exempt a class of debts, the Secretary will determine whether exemption is in the best interests of the Government after considering the following factors:

(A) Whether an exemption is the best means to protect the government's financial interest, taking into consideration the number, dollar amount, age and collection rates of the debts for which exemption is requested;

(B) Whether the nature of the program under which the delinquencies have arisen is such that the transfer of such debts would interfere with program goals; and

(C) Whether an exemption would be consistent with the purposes of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358 (April 26, 1996).

(ii) Requests for exemptions must clearly identify the class of debts for which an exemption is sought and must explain how application of the factors listed above to that class of debts warrants an exemption.

(e) *Schedule of private collection contractors.* FMS will maintain a schedule of private collection contractors eligible for referral of debts from FMS, other debt collection centers, and creditor agencies for collection action. An agency with debt which has not been transferred to FMS or referred to another debt collection center, for example, debt that is less than 180 days delinquent, may refer such debt to a private collection contractor listed on FMS' schedule of private collection contractors provided they do so in accordance with procedures established by FMS. Alternatively, an agency may refer debt that is less than 180 days delinquent to a private collection contractor pursuant to a contract between the creditor agency and the private collection contractor, as authorized by law.

(f) *Debt collection centers.* A debt collection center is a Federal agency or a unit or subagency within a Federal agency that has been designated by the Secretary of the Treasury to collect debt owed to the United States. FMS is a debt collection center. Debt collection centers will take action upon a debt in accordance with the statutory or regulatory requirements and other authorities that apply to the debt or to the particular action being taken. Debt collection centers may, on behalf of the creditor agency, subject to the terms under which the debt collection center has been designated as such by the Secretary, take any action to collect, compromise, suspend or terminate collection action on debts in accordance with terms and conditions agreed upon in writing by the creditor agency and the debt collection center or FMS.

(g) *Administrative offset.* As described in paragraph (c) of this section, under the DCIA agencies are required to transfer all debts over 180 days delinquent to FMS for purposes of debt collection (i.e., cross-servicing). Agencies are also required, under the

DCIA, to notify the Secretary of all debts over 180 days delinquent for purposes of administrative offset. Administrative offset is one type of collection tool used by FMS and Treasury-designated debt collection centers to collect debts transferred under this section. Thus, by transferring debt to FMS or to a Treasury-designated debt collection center under this section, Federal agencies will satisfy the requirement to notify the Secretary of debts for purposes of administrative offset and duplicate referrals are not required. A debt which is not transferred to FMS for purposes of debt collection, however, such as a debt which falls within one of the exempt categories listed in paragraph (d) of this section, nevertheless, may be subject to the DCIA requirement of notification to the Secretary for purposes of administrative offset.

(h) *Voluntary referral of debts less than 180 days delinquent.* A creditor agency may refer any debt that is less than 180 days delinquent to FMS or, with the consent of FMS, to a Treasury-designated debt collection center for debt collection services.

(i) *Certification.* Before a debt may be transferred to FMS or another debt collection center, the head of the creditor agency or his or her delegatee must certify, in writing, that the debts being transferred are valid, legally enforceable, and that there are no legal bars to collection. Creditor agencies must also certify that they have complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency unless the creditor agency has requested, and FMS has agreed, to do so on the creditor agency's behalf. The creditor agency shall notify FMS immediately of any change in the status of the legal enforceability of the debt, for example, if the creditor agency receives notice that the debtor has filed for bankruptcy protection.

(j) *Fees.* FMS and other debt collection centers may charge fees for debt collection services. Fees must be based on costs, however, fees paid to recover amounts owed may not exceed amounts collected. Nothing in this rule precludes a credit agency from agreeing to pay fees for debt collection services which are not based on amounts collected. FMS and debt collection centers are authorized to retain fees from amounts collected and may deposit and use such fees in accordance with 31 U.S.C. 3711(g). Fees charged by FMS and other debt collection centers may be added on to the debt as an administrative cost if authorized under 3717(e).

Dated: March 25, 1998.

Richard L. Gregg,

Commissioner.

[FR Doc. 98–8453 Filed 4–1–98; 8:45 am]

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Federal Register

Thursday
April 2, 1998

Part VI

Executive Office of the President

Office of National Drug Control Policy

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Drug-Free Communities Support Program; Notice

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Drug-Free Communities Support Program

AGENCY: Office of National Drug Control Policy, EOP, and the Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Funding Availability program announcement.

SUMMARY: Notice is hereby given that the Executive Office of the President, Office of National Drug Control Policy (ONDCP) and the Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of the Drug-Free Communities Act of 1997, enacted on June 27, 1997 (Pub. L. 105–20), are issuing a program announcement and solicitation for applications from community coalitions to increase citizen participation and strengthen community anti-drug coalition efforts to reduce substance abuse among youth in communities throughout the United States and, over time, to reduce substance abuse among adults.

This program is specifically designed to enable community coalitions to strengthen collaboration among communities, the Federal Government, and State, local, and tribal governments; enhance intergovernmental cooperation and coordination among all sectors and organizations of communities that demonstrate a long-term commitment to reducing substance abuse among youth; rechannel resources from the fiscal year (FY) 1998 Federal drug control budget to provide technical assistance, guidance, and financial support to communities that demonstrate a long-term commitment to reducing substance abuse among youth; and disseminate to communities timely information regarding state-of-the-art practices and initiatives that have proven to be effective in reducing substance abuse among youth.

Eligible applicants are community coalitions whose components have worked together on substance abuse reduction initiatives, for a period of not less than 6 months, which include initiatives that target illegal drugs, including narcotics, depressants, stimulants, hallucinogens, and cannabis; the abuse of inhalants; or the use of alcohol, tobacco, or other related products that are prohibited by State or local law, acting through entities such as task forces, subcommittees, or community boards with substantial participation from community volunteer leaders. Community coalitions shall implement comprehensive long-term plans to reduce substance abuse, including the use of alcohol and tobacco among youth and, over time, reduce substance abuse among adults. Coalition efforts should build on their ongoing efforts and plans.

Congress authorized the following amounts to be appropriated to the ONDCP for the Drug-Free Communities Support Program for the 5-year period beginning in FY 1998: FY 1998—$10 million; FY 1999—$20 million; FY 2000—$30 million; FY 2001—$40 million; and FY 2002—$43.5 million. In FY 1998, initial grant funds available for award to community coalitions total $8.7 million (of $10 million appropriated).

Approximately 100 to 200 grants of up to $100,000 will be made available through a competitive grant process in FY 1998, which will be administered by OJJDP through an interagency agreement with the ONDCP.

DATES: Applications under this program are due May 18, 1998.

ADDRESSES: The application kit is available through the ONDCP Clearinghouse at 1–800–666–3332 and the Juvenile Justice Clearinghouse at 1–800–638–8736. The application kit can also be obtained online at ONDCP's and OJJDP's homepages at http://www.whitehousedrugpolicy.gov and http://ncjrs.org/ojjhome.htm

FOR FURTHER INFORMATION CONTACT: Donna Bownes, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW, Room 8118, Washington, DC 20531, 202–307–5924; e-mail: Bownesd@ojp.usdoj.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Recent studies have confirmed that teen drug abuse is a national problem. Juveniles were involved in 14 percent of all drug arrests in 1996, and between 1992 and 1996, juvenile arrests for drug abuse violations increased 120 percent. Data from the National Parents Resource Institute for Drug Education (PRIDE) released in 1996 show one in four high school seniors use illicit drugs at least once a month and one in five use illicit drugs daily. The 1996 data on cocaine, hallucinogens, inhalants, and marijuana were the highest reported since PRIDE studies began in 1988.

The National Household Survey, conducted by the Substance Abuse and Mental Health Services Administration (SAMHSA), confirms that these alarming rates of usage are part of an increasing trend. During the years 1994 to 1996, illicit drug use by 12- to 17-year-olds rose 78 percent. LSD and other hallucinogen use increased by 183 percent, and cocaine use increased by 166 percent during those 3 years.

Teens are not perceiving the risks involved in drug use to the same extent they did just 5 years ago. The Monitoring the Future Study, conducted by Dr. Lloyd Johnson at the University of Michigan, indicates that the number of teens who perceive a great risk from using powder cocaine and crack cocaine have both dropped more than 10 percent among eighth graders, and 5 percent among tenth graders. Similar trends exist for the perception of risk in using LSD and marijuana. A National Center on Addiction and Substance Abuse (CASA) study reported that in just 1 year the number of 12- to 17-year-olds who said they would never try an illegal drug dropped 40 percent. The long-term trends presented in the Monitoring the Future Study show a strong inverse correlation between the perception of risk and rate of use, making these recent statistics particularly disturbing.

The risks of drug use are great despite the decreased perception of risk. The Drug Abuse Warning Network (DAWN), which reports on drug-related emergency room episodes, shows a 30 percent increase for 12- to 17-year-olds over the 3 years from 1994 to 1996. The consequences of drug use are putting more teens in hospitals.

On June 27, 1997, the Drug-Free Communities Act of 1997 (Act) was signed into law by President Clinton. This Act provides financial assistance and support to community coalitions to carry out their mission of reducing substance abuse among the Nation's youth. This Act responds to the doubling of substance abuse among youth in the 5-year period preceding 1996, with substantial increases in the use of marijuana, inhalants, cocaine, methamphetamine, LSD, and heroin.

Congressional findings included the following:

- The most dramatic increases in substance abuse have occurred among 13- and 14-year-olds.
- Casual or periodic substance abuse by youth today will contribute to hard core or chronic substance abuse by the next generation of adults.
- Substance abuse is related to other problems, such as rising violent teenage and violent gang crime, increasing

health care costs, HIV infections, teenage pregnancy, high school dropouts, and lower economic productivity.

- Increases in substance abuse among youth are due in large part to an erosion of understanding by youth of the high risks associated with substance abuse and to the softening of peer norms against use.

- Substance abuse is a preventable behavior and a treatable disease.

- Data suggest that if parents would simply talk to their children regularly about the dangers of substance abuse, use among youth could be expected to decline as much as 30 percent.

The General Accounting Office (GAO) found that research has identified promising programs that use multiple societal institutions, including schools, families, media, and the community, working together in collaboration, to achieve multicomponent approaches to substance abuse prevention involving school-age youth. GAO also found that common features of programs using a comprehensive approach included strategies to target multiple aspects of a youth's life. These common features include increasing the awareness of the social influences (i.e. culture, environment, etc.) that promote drug use; modifying societal and community-specific norms or expectations concerning drug use; and targeting aspects of a youth's life through the use of family, peer, school, and community factors.

The Drug-Free Communities Act builds upon the success of community anti-drug coalitions throughout the Nation in developing and implementing comprehensive, long-term strategies to reduce substance abuse among youth on a sustained basis. The Act recognizes the critical value of intergovernmental cooperation and coordination involving national, State, and local or tribal leadership and partnerships in facilitating the reduction of substance abuse among youth in communities throughout the United States. It creates a vehicle for these entities to work together to reduce substance abuse through the Drug-Free Communities Support Program.

II. Definitions

Definitions are contained in the Drug-Free Communities Act. (The Act is available online at ONDCP's and OJJDP's homepages at http://www.whitehousedrugpolicy.gov and http://ncjrs.org/ojjhome.htm respectively.)

III. Program Goals and Objectives

Goals

- Reduce substance abuse among youth by addressing the factors that put youth at risk of substance abuse, including tobacco, and inhalant use.
- Disseminate information about effective substance abuse reduction strategies and initiatives for youth that can be replicated in other communities.
- Assess the effectiveness of community substance abuse reduction initiatives directed toward youth.

Objectives

- Support the efforts of community coalitions to prevent and reduce substance abuse among youth and, over time, among adults.
- Strengthen collaboration among communities, the Federal Government, and State, local, and tribal governments and private nonprofit agencies.
- Enhance intergovernmental cooperation and coordination on the issue of substance abuse among youth.
- Serve as a catalyst for increased citizen participation and greater collaboration among all sectors and organizations of a community to reduce substance abuse among youth.

IV. Project Strategy

The application must include a description of how the applicant's proposed long-term strategic plan (a minimum of 5 years) meets the goals and objectives of the Drug-Free Communities Support Program. Applicants must describe how the Drug-Free Communities Support grant would enhance or augment the coalition's substance abuse reduction efforts. The discussion should include information on substance abuse reduction activities being conducted by the coalition, or members of the coalition, the coalition's plan to coordinate and leverage services to enhance substance abuse reduction efforts, and identify services and existing gaps in services and use this information to develop a strategy that minimizes duplication and inefficiencies and maximizes cooperation, coordination, and collaboration. The plan must include an articulated mission, timeline outlining the tasks associated with implementing the plan, and a strategy for ensuring that the coalition and the programs operated by the coalition will become self-sustaining within 5 years.

Tasks

- Establish a system to measure and report outcomes.
- Conduct an initial benchmark survey of drug use among youth in the community (or use local surveys or performance measures available or accessible in the community at the time of the grant application).
- Conduct biennial surveys (or incorporate local surveys in existence at the time of the evaluation) to measure the progress and effectiveness of the coalition.
- Implement prevention and treatment activities designed to reduce substance abuse by juveniles.

V. Dollar Amount and Duration

FY 1998 community coalition award amounts for initial 12-month grants will be available up to $100,000, with a dollar for dollar match of non-Federal funds, to be provided in cash or in-kind (defined as the value of something received or provided that does not have a cost associated with it, such as donated services), by the applicant in the amount of Federal funds requested.

It is anticipated that approximately 100 to 200 projects will be funded. In the event that there are insufficient funds to provide grants to all qualified applicants, ONDCP and OJJDP will consider, in the agencies discretion, use of FY 1999 funds to provide awards to such qualified applicants. Applicants funded with FY 1998 funds will be eligible for renewal grants for FY 1999–2002, based on availability of funds and grantee performance. Generally, no more than one coalition per community will be funded with FY 1998 funds. However, multiple coalitions serving a community may qualify for matching Federal grants if they independently meet the program criteria and demonstrate that they are collaborating with one another. Indian tribes will be limited to one grant per tribal entity.

VI. Eligibility Requirements

To be eligible to receive a grant, a coalition shall:

- Demonstrate a community coalition has been established and that the representatives of the community coalition have worked together, for a period of not less than 6 months, on substance abuse reduction initiatives, which must, at a minimum, include initiatives that target the illegal use or abuse of drugs, including narcotics, depressants, stimulants, hallucinogens, and cannabis; and which may target the abuse of inhalants and the use of alcohol, tobacco, or other related products where such use is prohibited by State or local law.
- Demonstrate that the coalition represents the community and include in the coalition at least one representative of each of the following: Youth; parents; and representatives

from the business community; the media; schools; youth-serving organizations; law enforcement agencies; religious or fraternal organizations; civic and volunteer groups; health care professionals; State, local, or tribal governmental agencies with expertise in the field of substance abuse (including, if applicable, the State authority with primary authority for substance abuse); and other organizations involved in reducing substance abuse.

- Coalitions should consider other representatives, such as: State, local, or Federal elected officials, representatives of Indian tribes (as that term is defined in section 4(e) of the Indian Self-Determination Act (25 U.S.C. 450b(e)); juvenile justice; or child welfare agencies.
- Ensure that a community coalition member is designated as a representative of no more than one of the required representation categories.
- Ensure that there is a substantial community volunteer effort.
- Ensure that the coalition is a nonprofit, charitable, educational organization, or unit of local government; or is part of, or affiliated with, an eligible organization or entity.
- Ensure that the coalition will receive and expend non-Federal cash or in-kind match equal to or above the amount of the Federal funds sought.
- Possess a strategy to solicit substantial financial support from non-Federal sources to ensure that the coalition and the programs operated by the coalition will be self-sustaining following the period of Federal financial support.
- Agree to participate in evaluating the coalition's program and possess the capability to gather and submit data related to substance abuse among youth and commit to working cooperatively with OJJDP, evaluation team, training and technical assistance providers, ONDCP, and the ONDCP Advisory Commission on Drug-Free Communities.

Mission and Strategies

Community coalitions must:

- Have as their principal mission the reduction of substance abuse among youth, and the illegal use or abuse of drugs. A secondary mission may be reducing the abuse of inhalants, alcohol, tobacco, or other related products where such use is prohibited by State or local law.
- Describe and document the risk factors, nature, and extent of the substance abuse problem in the targeted community.
- Provide a description of substance abuse prevention and treatment programs and activities.
- Identify substance abuse programs and service gaps relating to the use and abuse of drugs.
- Develop a, or enhance an existing, 5-year strategic plan to reduce substance abuse among youth.
- Work to develop a consensus regarding the priorities of the community in combating substance abuse among youth.
- Identify and establish a system to collect core process and outcome indicators, measure and report outcomes consistent with common coalition indicators, and follow evaluation protocols established by ONDCP and OJJDP.
- Agree to participate in a cross-site national evaluation study that will include the collection of indicators, using common instruments and protocols designed to demonstrate the coalition's effect on perceived risk, attitudes, and drug-abusing behavior.
- Identify the agencies, programs, projects, and initiatives (other than those represented by the coalition members) that the coalition will collaborate and coordinate with to leverage services, resources, and efforts in order to have the greatest impact on achieving the goal of the Drug-Free Communities Support Program.
- Address how culturally competent strategies and services will be provided to minority populations.
- Address how rural communities, where applicable, can reduce substance abuse among youth.
- Disseminate information about effective substance abuse reduction strategies and initiatives for youth.

VII. Selection Criteria

Applications will be screened and then evaluated by ONDCP and OJJDP staff using the general selection criteria below.

Applicants whose proposal meets all eligibility criteria and submission requirements, and which hold promise for a successful community coalition program, will then be evaluated and rated by a peer review panel according to the criteria outlined below.

The selection criteria will be used to determine the extent of each applicant's responsiveness to program application requirements, organizational capability, and thoroughness and innovation in responding to strategic issues related to project implementation.

Problems To Be Addressed (20 Points)

Applicants should describe in the narrative section how their coalition, through collaborative efforts, long-term (minimum of 5 years) strategic planning, and implementation efforts will reduce substance abuse among youth and, over time, also among adults. Applicants can use this opportunity to indicate their understanding of substance abuse among youth and its effects upon families and communities.

Applicants must provide a discussion of the substance abuse in the target community. This discussion must address:

(1) The nature, and extent of youth substance abuse, including use of inhalants, alcohol, and tobacco products, in the target community, and (2) factors in the community that put youth at risk of substance abuse. The discussion in this section should answer the questions, What is the level of substance abuse among youth in the target community? What are the major drugs of abuse among youth in the target community? and What are the underlying factors associated with substance abuse in the target community? If available, applicants should provide findings from a recent school-based survey of drug use among youth or other local surveys of drug use that document the extent of the substance abuse problems among the community's youth. If such survey data are not available, applicants must report other indicators or measures of the extent of the problem using local data such as crime, justice, health, economic, and school-related statistics. The information provided in this section will be used as the baseline against which the progress and effectiveness of the coalition's efforts to prevent and reduce substance abuse among youth will be measured.

As part of this narrative, applicants should indicate their knowledge of how and why coalitions can be effective in addressing alcohol and substance abuse issues in communities.

Goals and Objectives (20 Points)

Applicants must provide a clear discussion of the proposed project goals and objectives as they logically relate to the stated problems described in section I. In developing the proposed goals, applicants should consider this question: If we are successful, what will be the difference in the target community? The proposed project goals should state what the coalition hopes to accomplish with the Drug-Free Communities Support Program grant. In stating the goals, the applicant must be careful to describe the desired end result (the outcome) and not the means to the end. For example, if one of the goals is to ''reduce inhalant abuse

among youth in the target community,'' to accomplish it, the project objectives should describe, in concrete terms, who or what will change, by how much, and over what period of time. The project objectives should include measurable results associated with project goals. For example, one of the objectives related to the goal of reducing inhalant abuse among youth may be to ''gain commitment within 6 months from all merchants in the target community to keep inhalants behind the counter or in locked cases.'' Generally, the objectives should be tied to a timeline. Each of the goals and objectives must be addressed in this narrative section.

Program Design/Strategy (25 Points)

Applicants must provide a detailed description of the proposed program design that will achieve the project goals and objectives specified in section III and how those activities address the problems and associated risk factors described in section I. The description should address how the proposed activities will be culturally relevant.

The proposed activities should be practical, achievable, and measurable. The program design must describe the logical links between the project goals, objectives, and the proposed activities. In describing these links, applicants should consider which goals and objectives will be attained by which activity(ies) and how the goals and objectives will be attained. The plan should include a description of the specific steps the applicant will take to meet the project goals and objectives. For example, if an applicant intends to reduce inhalant abuse by gaining commitment from all merchants in the target community to keep inhalants behind the counter or in locked cases, the applicant should describe exactly what steps it will take to secure their commitment.

Applicants should provide a timeline outlining the steps that will be taken to implement the proposed activities as well as other tasks associated with implementing the Drug-Free Communities Support Program.

The program design must specifically describe how the applicant will monitor progress toward achieving the project goals and objectives, including the types of information that they will collect and how they will collect it, so that the applicant knows the program is on track and working. Applicants will be expected to collect information on what activities are/were undertaken with this grant (core process indicators) and what results were achieved (core outcome indicators).

Core process indicators allow grantees to answer these questions: What was done? How was it done? How much of it was done? and To whom/for whom was it done? While it is anticipated that tools to collect the core indicators will be developed as part of a national evaluation, applicants should discuss how they plan to collect the following core process indicators:

- A description of the project, service, or activity (what goes on?).
- Project, service, or activity location (where does it occur?).
- Hours of operation/days of the week and hours of the day the activity occurs (when does it occur?).
- Frequency of activity (how often does it occur—hourly, daily, weekly, monthly).
- Number of paid staff and volunteers (who carries out the activity?).
- Target population (for service delivery programs such as tutoring and mentoring) including ages and other defining characteristics (who receives the service?).
- Target audience or system (for nonservice delivery programs such as media campaigns and policy development).
- The number of youth served/reached.

For example, if one of the applicant's project objectives is to educate 100 youth per month on the dangers of substance use, the applicant must collect information on how often the activity occurred, how many youth participated in the activity, and how often each youth attended the activity.

Core outcome indicators help to determine if the program is achieving the results the applicant planned to achieve. These indicators allow the applicant to state what participants will understand more about or be able to do after completing or being involved in the program. Applicants must describe what the indicators of success will be and how these indicators will be collected.

In addition, coalitions will be required to provide information on the following core program outcome indicators:

- Improvements in the level of collaboration among communities, the Federal Government, and State, local, and tribal governments (e.g., increased number of interagency agreements).
- Enhancements in intergovernmental cooperation and coordination on youth substance abuse issues (e.g., adoption and use of an integrated management information system to share data on youth substance abuse).
- Increases in citizen participation in substance abuse prevention efforts.
- Changes in youth substance abuse measures as compared with the baseline measures described in section I.

Other outcome indicators will be detailed in the national evaluation.

Management and Organizational Capability (20 Points)

Applicants must describe who will develop and implement the strategic plan and its associated program activities and how it will be accomplished. The application must indicate all principal individuals and their positions in the project management design. A roster must be completed containing information on the composition requirements and representation of the coalition member individuals and pertinent associated information. Memorandums of understanding must be listed in this narrative outlining what agencies, initiatives, programs, and projects will be working collaboratively with the coalition to accomplish the overall program goals of the Drug-Free Communities Support Program.

Applicants must demonstrate that the individuals involved in the project have the experience and knowledge necessary to successfully complete the project within the 1-year project period. In assessing the coalition's capabilities and its collaborative partners, reviewers will give particular attention to the experience and capabilities of the overall staff. Additionally, how the coalition will manage this collaborative effort among coalition members and collaborative partners to meet the program goals. The applicant should also clearly indicate who will perform which function and by when (based on the timeline deliverable). Applicants should include a one-page organizational chart to graphically portray the management structure of the project.

The coalition must demonstrate that the individuals involved in the project will be able to work effectively with the community, its associated collaborative partners, OJJDP, ONDCP, the evaluation team, and the training and technical assistance providers involved in this program. Applicants must describe how the non-Federal resources brought to the project will be managed.

Budget (15 Points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken.

Staff and peer reviewer recommendations are advisory only and the final award decision will be made

by the ONDCP Director and Drug-Free Communities Support Program Administrator and the OJJDP Administrator. OJJDP will negotiate specific terms of the award with the selected applicants.

The ONDCP Director, Program Administrator, and Advisory Commission, in cooperation with the OJJDP Administrator, are committed to ensuring the likelihood of project success in urban, rural, and tribal communities. Therefore, in selecting applicants, consideration will be given to achieving representative demographic distribution (urban, rural, and tribal) of applications and to funding a variety of innovative program designs.

VIII. Application Requirements

Instructions are contained in the application kit available through the ONDCP Clearinghouse at 1–800–666–3332 and the Juvenile Justice Clearinghouse at 1–800–638–8736.

IX. Delivery Instructions and Due Date

Instructions are contained in the application kit available through the ONDCP Clearinghouse at 1–800–666–3332 and the Juvenile Justice Clearinghouse at 1–800–638–8736. Applications postmarked after May 18, 1998 will not be considered.

Barry R. McCaffrey,

Director, Office of National Drug Control Policy.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 98–8650 Filed 4–1–98; 8:45 am]

BILLING CODE 3180–02–P

Federal Register

Thursday
April 2, 1998

Part VII

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program

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

ACTION: Notice of request for proposals.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is giving notice that a competition for new graduate fellowship grants will not be held during Fiscal Year (FY) 1998. CSREES is also announcing the availability of supplemental grants for Special International Study or Thesis/Dissertation Research Travel Allowances for FY 1998. Applications for supplemental grants are invited from recipients of currently active Food and Agricultural Sciences National Needs Graduate Fellowship Grants to support special international study or thesis/dissertation research experiences for current Fellows.

DATES: Supplemental grant proposals must be received by February 16, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Howard Sandberg, USDA/Higher Education Programs, 202–720–2193, hsandberg@reeusda.gov

SUPPLEMENTARY INFORMATION:

I. Food and Agricultural Sciences National Needs Graduate Fellowships Grants/1998 Supplemental Grants for Special International Study or Thesis/Dissertation Research Travel Allowances Determination

On December 30, 1994, CSREES published in the **Federal Register** (59 FR 68072–68078) a Final Rule on the Administrative Provisions (7 CFR part 3402) for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program.

The Administrative Provisions (7 CFR part 3402) for this program specify that, based on the amount of funds appropriated in any fiscal year, CSREES will determine whether a new competition for special international study or thesis/dissertation research travel allowances will be held during that fiscal year, and publish that determination as part of the annual program announcement.

CSREES has determined that a new competition for special international study or thesis/dissertation research travel allowances will be held during FY 1998, and hereby solicits proposals for competitive supplemental grants.

Authority

Under the authority contained in Section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(6)), and in accordance with the Administrative Provisions for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program (7 CFR Part 3402.5(e)), CSREES will award supplemental grants, on a competitive basis, for special international study or thesis/dissertation research travel allowances for existing USDA Graduate Fellows. Institutions eligible to receive supplemental grants are those that have active National Needs Graduate Fellowship Grants (awarded in FY 1997 or earlier).

Eligibility

Eligibility for this opportunity is limited to any current Fellow with sufficient time to complete the international experience before the termination date of the fellowship grant under which he/she is supported. Before the international study or thesis/dissertation research travel may commence, a Fellow must have completed one academic year of full-time study, as defined by the institution, under the fellowship appointment and arrangements must have been formalized for the Fellow to study and/or conduct research in the foreign location(s). All national needs areas previously supported under the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program are eligible for the supplementary grants for special international study or thesis/dissertation research travel allowances.

Available Funding

CSREES has determined that no FY 1998 appropriations will be targeted to supplemental grants supporting special international study or thesis/dissertation research travel allowances; rather, no-year funds drawn from expired fellowship grants with unspent funds remaining will be used to support such supplemental grants. Estimated funds for supplemental grants in FY 1998 are approximately $60,000.

For each travel allowance, the institution may request up to $5,000. Travel allowance monies may be used only to pay travel and living expenses for the Fellow while the Fellow is on the specific international assignment as proposed in the application for the special international study or thesis/dissertation research travel allowance. No limitation is placed on the number of applications an institution may submit. Awards will be made to the extent possible based on availability of funds. To the extent possible, all applications associated with one CSREES grant number should be submitted at the same time in order to facilitate the award of these supplemental grants and minimize accounting activity at the grantee institution.

Application Information

A separate application must be submitted by a fellowship grant project director at an eligible institution on behalf of each Fellow for which a special international study or thesis/dissertation research travel allowance is requested. Applications for the special international study or thesis/dissertation research travel allowance supplemental awards may be submitted on or any time prior to February 16, 1999. However, to allow time for CSREES to process the applications, proposals should be submitted at least three months prior to the proposed beginning date of the international travel experience. Applicants are urged to submit their proposals early.

Each application must include an ''Application for Funding,'' Form CSREES–661, and a ''Budget,'' Form CSREES–55. To provide the office of Higher Education Programs (HEP) with sufficient information upon which to evaluate the merits of the requests for a special international study or thesis/dissertation research travel allowance, each application for a supplemental grant must contain a narrative which provides the following: (1) The specific destination(s) and duration of the travel; (2) the specific study or thesis/dissertation research activities in which the Fellow will be engaged; (3) how the international experience will contribute to the Fellow's program of study; (4) a budget narrative specifying and justifying the dollar amount requested for the travel; (5) summary credentials of both the U.S. and international faculty or other professionals with whom the Fellow will be working during the international experience (summary credentials must not exceed three pages per person; ''Summary Vita—Teaching Proposal,'' Form CSREES–708, may be used for this purpose); (6) a letter from the dean of the Fellow's college or equivalent administrative unit supporting the Fellow's travel request and certifying that the travel experience will not jeopardize the Fellow's satisfactory progress toward degree completion; and

(7) a letter from the fellowship grant project director certifying the Fellow's eligibility, the accuracy of the Fellow's travel request, and the relevance of the travel to the Fellow's advanced degree objectives.

The narrative portion of the application must not exceed 10 pages, excluding the summary vita/vitae. The narrative should be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch.

An application package containing the forms, instructions, and other relevant information needed by institutions to apply for the special international study or thesis/dissertation research travel allowances may be requested from the Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is 202–401–5048. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov which states that you want a copy of the application materials for the FY 1998 Special International Study or Thesis/Dissertation Travel Allowances Supplemental Grants under the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Evaluation of Applications

Applications for the special international travel allowances will be evaluated as they are received until available funds for the supplemental grants are exhausted. Upon receipt of an application, CSREES staff will first determine the eligibility of the Fellow for whom the application was submitted for an international travel experience. Eligible and complete requests then will be reviewed, using the criteria and weights indicated below, by professional staff from USDA or other Federal agencies, as appropriate. Proposals judged to be worthy of funding will be eligible for supplemental awards. Since awards for supplemental grants will be made as reviews are completed, there is no assurance funds will be available late in the application period for every acceptable proposal.

The evaluation criteria for special international study or thesis/dissertation research travel allowance applications are indicated below. The points are provided as a guide to the relative importance of each criterion, but all criteria must be addressed satisfactorily.

a. Destination and duration—the degree to which the destination and duration of the travel experience is appropriate for enhancing the Fellow's academic program—10 points.

b. Travel experience activities—the degree to which the specific international experiences contribute to the Fellow's program of study—30 points.

c. Advance preparations—the degree to which the proposed study or research activities are well-planned, including the likelihood that these activities will come to fruition and that the participation of identified personnel will materialize—20 points.

d. Budget—the degree to which the budget for the international experience is justified—10 points.

e. Personnel—the degree to which the personnel, both U.S. and international, involved with the travel experience have the appropriate credentials and experience to direct the Fellow's international experience, and the likelihood that their participation as mentors, trainers, advisors, or teachers will contribute to the educational value of the travel experiences—20 points.

f. Supporting documentation—the degree to which letters from the dean of the college (or equivalent administrative unit) and the fellowship grant project director support the application—10 points.

When and Where To Submit Applications

An original plus six copies of each application must be submitted. Each copy of the application should be stapled securely in the upper left-hand corner. Please do not bind the original or the copies of the application. All copies of the application must be mailed in one package. Applications transmitted via a facsimile (FAX) machine will not be accepted. Applications submitted through the U.S. mail should be sent to the following address for delivery on or prior to February 16, 1999: Special International Study; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. Hand-delivered proposals, including those submitted through an express mail or a courier service, should be brought to the following address on or any time prior to February 16, 1999: Special International Study; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. The telephone number is 202–401–5048. Applications may be submitted on or any time prior to February 16, 1999.

II. Applicable Regulations

This program is subject to the administrative provisions found at 7 CFR Part 3402, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants.

In addition, the USDA Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, 7 CFR Part 3019, as amended by 62 FR 45934, August 29, 1997, apply to this program. Other Federal statutes and regulations that apply to this program are identified in the administrative provisions.

III. Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210, Food and Agricultural Sciences National Needs Graduate Fellowship Grants. For the reasons set forth in the Final Rule-related notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

IV. Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the collection of information requirements for this program have been approved under OMB Document Nos. 0524–0022 and 0524-0024.

V. Program Contact

If you have questions concerning the submission of proposals for FY 1998 Special International Study or Thesis/Dissertation Research Travel Allowances under the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program, please contact Dr. Howard Sandberg, Higher Education Programs, Science and Education Resources Development,

CSREES, USDA, at 202–720–2193 (voice), 202–720–2030 (fax), or hsandberg@reeusda.gov (Internet).

Done at Washington, D.C., this 27th day of March, 1998.

Colien Hefferan,

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

[FR Doc. 98–8654 Filed 4–1–98; 8:45 am]

BILLING CODE 3410–22–P

Federal Register

Thursday
April 2, 1998

Part VIII

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 91, 93, and 96

Revision of Laboratory Service Fees; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 91, 93, and 96

[Docket Number S&TD–97–001]

Revision of Laboratory Service Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing current fees for laboratory testing services for agricultural commodities. Without the fee increase, anticipated revenue would not cover program costs. This rule includes additional tests for various commodity products and removes test time allotments. Time allotments serve no useful purpose since they no longer represent test times accurately because of the development of numerous new analytical procedures.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION CONTACT: James V. Falk, Docket Manager, USDA, AMS, Science and Technology, P.O. Box 96456, Room 3517-South, Washington, DC 20090–6456; telephone: (202) 690–4089.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Regulatory Impact Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

There are more than 300 users of the Science and Technology's laboratory testing services. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). The Administrator of AMS determined that this action would not have a significant economic impact on a substantial number of these small businesses because only minimal increases to user fees for laboratory tests for commodities are recommended. Laboratory tests and services of Science and Technology are provided to these businesses on a voluntary basis and any decision on their part to discontinue the use of the services and obtain new contracts with other governmental agency or private laboratories would not hinder the food processors from marketing their products. In fiscal year 1996, the Science and Technology laboratory revenues exceeded obligatory costs by only $101,000. The decline in revenue from the fiscal year 1995 level of $907,000 was due to a decrease in the requested dairy product testing at the Science and Technology Midwestern Laboratory in Chicago, Illinois. For fiscal year 1997 Science and Technology reported a $332,000 deficit at the current fee level because there were additional revenue declines with the analyzing of all other commodities at our laboratories. In 1997 Science and Technology incurred revenue losses from 1996 levels of $216,000 and $449,000 respectively from poultry and tobacco product testing. In addition, the aflatoxin testing program net governmental receipts available to cover administrative costs and authorized appropriation outlays declined from $79,000 in 1996 to $14,000 in 1997. This is a consequence of the increased number of Peanut Administrative Committee (PAC) approved private laboratories that handle required aflatoxin analyses of peanuts. In recent years Science and Technology has voluntarily closed aflatoxin testing facilities at Camilla and Ashburn, Georgia. This was a streamlining measure to reduce Federal program costs and to restructure the Laboratory Program to improve efficiency of operations and responsiveness of services. The Laboratory Program ended fiscal year 1997 with an operating reserve of $3,261,000 which provides a reserve balance below the 6 month reserve appropriate under normal operating conditions. The AMS estimates that overall this rule would yield additional laboratory testing program revenues of $694,000 during fiscal year (FY) 1998. Without the fee increase, anticipated revenue would not cover program costs. Projected FY 1998 laboratory revenues are $5,616,000 with obligatory costs projected at $6,276,000. Trust fund balances would be below the required 4 month reserve levels. With a fee increase, projected FY 1998 revenues would be $6,310,000 with obligatory costs projected at $6,276,000. The laboratory fees in the general schedules will increase by approximately 6 percent. These fees are competitive to the fees found in price lists distributed by private laboratories. Furthermore, users of Science and Technology testing services are under no obligation to use them. This final rule action updates lists of laboratory tests and services contained in certain sections of the regulations. In addition, the fees for the specialized and required aflatoxin testing of nuts and their products have increases ranging from 6 to 21 percent.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1980, as amended on May 22, 1995 (44 U.S.C. Chapter 35; Pub. L. 104–13 § 2), the information collection requirements contained in the provisions to be updated have been previously approved by the Office of Management and Budget.

No additional recordkeeping requirements are imposed as a result of this rule.

Background

On August 9, 1993, AMS published a rule in the **Federal Register** (58 FR 42408–42448) to combine all AMS regulations concerning laboratory services. The goal was to consolidate and to transfer existing laboratory testing programs operating independently under the various commodity programs (Cotton, Poultry, Fruit and Vegetable, Tobacco, Dairy, and Livestock and Seed) to its Science and Technology program, formerly the Science Division. The rule included fees charged for testing and related services under the diversified Science and Technology programs and set the hourly analytical testing rate at $34.20 per hour. On May 10, 1994, an interim final rule was published in the **Federal Register** (59 FR 24318–24325) which was finalized on September 30, 1994 (59 FR 50120–50122) and which reduced Science and Technology laboratory testing fees for certain dairy products and established additional tests with fees for dairy products for incorporation into existing schedules.

The Science and Technology laboratory testing programs are mainly voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended. However under certain programs such as those involving peanuts, aflatoxin testing is required. The Act authorizes the Secretary of Agriculture to provide Federal analytical testing services that facilitate marketing and allow products to obtain grade designations or meet marketing standards. In addition, the

laboratory tests establish quality standards for agricultural commodities. The Act also requires that reasonable fees be collected from the users of the services to cover as nearly as possible the costs of maintaining the programs.

Science and Technology is revising its list of testing services available due to changes in analytical methodologies and customer service needs. Under this rule, new laboratory tests are added to the tables in Part 91 as follows: (1) heavy metal screen, (2) niacin, (3) odor, (4) vitamin B–1 (thiamin), (5) vitamin B–2 (riboflavin), (6) capsaicin (hot sauce), (7) color (apparent-visual), (8) extractable color in spices, (9) hydroxymethylfurfural (honey), (10) linolenic acid, (11) overrun for whipping topping, (12) pH—quinhydrone (cheese), (13) serum drainage for whipped topping, (14) rate of wetting (nondairy creamer), (15) reducing sugars, (16) *Bacillus cereus*, (17) *Lactobacillus count*, (18) *Salmonella* enumeration (complete test), (19) *Salmonella typhi* (meat products), and (20) parasite identification. The direct microscopic clump count (DMCC) test is removed from Table 5 in Part 91 because it is analogous to the bacterial direct microscopic count test. Certain other laboratory tests are removed from the tables in Part 91 because there have been few, if any, requests for these tests in recent years. These outmoded laboratory tests are fat by specific gravity, moisture by Karl Fischer, and proteolytic count (dairy products). Four existing laboratory test fees in the tables of Part 91 are reduced corresponding to reduced analysis time and lowered equipment cost associated with utilizing revised methodology. The cholesterol test fee is lowered from $171.00 to $90.65. The available carbon dioxide test fee is reduced from $136.80 to $54.39. The jelly strength (bloom) test fee is reduced from $85.50 to $54.39. The water activity test is changed from $136.80 to $27.20.

In its analysis of projected costs for fiscal years 1997 and 1998, AMS has identified increases in the costs of providing laboratory testing services despite declining revenues. The total Laboratory Program obligations in FY 1996 were $5,963,000 while the program operating costs were $6,032,000 in FY 1997 with current fees. These cost increases are attributable mainly (65 percent of total operating budget or $3,684,000 in 1997) to national and locality pay raises and increased benefit costs for Federal employees. A general and locality salary increase for Federal employees, ranging from 3.09 to 6.25 percent depending on locality, effective January 1995, a general and locality salary increase for Federal employees, ranging from 2.39 to 2.89 percent depending on locality, effective January 1996, and an additional salary increase, ranging from 3.30 to 6.26 percent depending on localities, effective January 1997, has materially affected the costs of laboratory programs. Current and estimated demand for the laboratory services are also factored in the fee revisions. Since Science and Technology's last fee increase in August 1993 (58 FR 42408) total annual revenue of the laboratories has decreased from $6.2 million to $5.6 million. Major factors affecting these revenue losses include industry's implementation of plant and in-house testing, cutbacks in dairy support and procurement programs, and reduction in USDA food assistance programs due to re-engineering involving State and local governments. It is anticipated that during this fiscal year, at the current fee levels, the Science and Technology will not have sufficient revenue to sustain present staffing levels, to cover equipment and material cost increases, and to still maintain an adequate reserve balance of $2.7 million or a minimum 4 months reserve called for by Agency policy and prudent financial management.

The AMS laboratory testing programs are voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The Act requires that reasonable fees be collected from the users of these services to cover, as nearly as practicable, the costs of maintaining the programs. A recent review of the current fee schedules, effective since September 30, 1994 (59 FR 50120—50122), revealed that anticipated revenue would not adequately cover increasing program costs. Without a fee increase, projected FY 1998 revenues for laboratory services are $5,616,000 with obligatory costs projected at $6,276,000. Accordingly, Science and Technology is increasing by 6 percent the currently listed laboratory fees in Tables 1 through 5 and in Tables 7 through 8 in Part 91. The standard hourly rate will be increased from $34.20 to $36.26 (6 percent). In addition, the laboratory rate for appeals, holiday and overtime service will be raised from $51.30 to $54.39 per analysis hour.

The fees and charges in Part 96 involved with the official grading of any lot of cottonseed will also increase by 6 percent. These fee increases are needed because of a statistical based cottonseed lot size study by Science and Technology in 1992 and the consequential revision of rule 135, section 5 of the Trading Rules of the National Cottonseed Products Association. The trade association's rule allows licensed cottonseed samplers under AMS's supervision to increase the maximum cottonseed lot size from 150 to 300 tons to obtain a representative official cottonseed sample when prevailing environmental conditions during a period of 3 consecutive days do not compromise the quality of graded cottonseed. This resulted in a corresponding yearly reduction of the total number of official cottonseed samples subject to analytical chemical methods to derive a composite official grade designation. Even though the cottonseed chemist licensing program costs have been lowered in recent years, the loss of revenue resulting from the decreased issuance of the official cottonseed grading certificates has been substantial. Therefore, the Agency revises the certificate fee charged for official analysis and cottonseed grade determination from $3.00 per certificate, issued by the chemist, to $3.18. The application fee for a chemist's license will be raised from $1,100.00 to $1,166.00 for the examination, while the fee for renewal of the license will be increased from $275.00 to $292.00.

The laboratory fees for aflatoxin analyses in Table 6 in Part 91 will be increased or decreased depending on the commodity type or analytical method utilized. The cost of analyzing shelled peanuts by high performance liquid chromatography (HPLC) will be decreased from $50.00 to $31.00 per single analysis because automated HPLC equipment is being used now in the laboratory. Other aflatoxin test fees will increase by 6 to 21 percent because there are corresponding increased costs of the expendable supplies and materials to perform these analyses.

The rule will remove the time allotments for single tests in Tables 1 through 7 in Part 91. The time allotments stated in the prior rules and regulations of the Science and Technology (58 FR 42415, August 9, 1993 and 59 FR 50121, September 30, 1994) are no longer applicable because of the recent approval of automated equipment and rapid procedures for many of the listed tests. This new technology comes with increased expenses in specialized supplies and materials required to perform the requested analyses.

A proposed rule to make revisions to the current fee schedules was published in the **Federal Register** on October 28, 1997 (62 FR 56036–56043). Interested persons were given until November 28, 1997 to submit comments. During the

30-day comment period only one letter of comment was received. The letter came from a trade association which represents grain, feed and oilseed processing facilities throughout the United States. While the commenter recognized that fee increases may be necessary from time to time, it encouraged AMS to continue efforts to provide efficient service at a competitive price to its customers. The commenter went on to state such efforts should include new and innovative ways to deliver service without degrading quality. AMS has been and continues to look for innovative ways to improve our efficiency of administering our science and technology programs.

List of Subjects

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements

7 CFR Part 93

Agricultural commodities, Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetables

7 CFR Part 96

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, Chapter I of Title 7 of the Code of Federal Regulations is amended as follows:

PART 91—SERVICES AND GENERAL INFORMATION

1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

Subpart I—Fees and Charges

2. In § 91.37, paragraph (a) is amended by revising Tables 1 through 8, paragraph (b) is revised, and paragraph (d) is added to read as follows:

§ 91.37 Fees for laboratory testing, analysis, and other services.

* * * * *

(a) * * *

TABLE 1—SINGLE TEST LABORATORY FEES FOR PROXIMATE ANALYSES

Type of analysis	List fee
Ammonia, Ion Selective Electrode	$81.59
Ash, Total	36.26
Ash, Acid Insoluble	54.39
Chloride, Salt Titration (Dairy)	18.13
Fat, Acid Hydrolysis	36.26
Fat, Acid Hydrolysis (Cheese)	36.26
Fat (Dairy Products except Cheese)	18.13
Fat, Ether Extraction	36.26
Fat, Microwave—Solvent Extraction	36.26
Fiber, Crude	72.52
Moisture, Distillation	36.26
Moisture, Oven	18.13
Protein, Kjeldahl	72.52
Protein, Combustion	72.52
Salt, Back Titration	27.20
Salt, Potentiometric	18.13

TABLE 2.—SINGLE TEST LABORATORY FEES FOR LIPID RELATED ANALYSES

Type of analysis	List fee
Acid Degree Value (Dairy)	$36.26
Acidity, Titratable	9.07
Carotene, Spectrophotometric	90.65
Catalase Test	18.13
Cholesterol [1]	90.65
Color (Honey)	18.13
Color, NEPA (Eggs)	36.26
Consistency, Bostwick (Cooked)	18.13
Consistency, Bostwick (Uncooked)	18.13
Density (Specific Gravity)	9.07
Dispersibility (Moates-Dabbah method)	18.13
Fat Stability,[2] AOM	36.26
Fatty Acid Profile (AOAC–GC method)	145.04
Flash Point Test only	72.52
Free Fatty Acids	18.13
Meltability (Process Cheese)	18.13
Peroxidase Test	18.13
Peroxide Value	27.20
Smoke Point Test only	72.52
Smoke Point and Flash Point	126.91
Solids, Total (Oven Drying)	18.13
Soluble Solids, Refractometer	18.13

[1] Moisture and fat analyses are required to be analyzed at an additional cost as prerequisites to the cholesterol test.

[2] Peroxide value analysis is required as a prerequisite to the fat stability test at the additional fee.

TABLE 3.—SINGLE TEST LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)

Type of analysis	List fee
Aflatoxin, (Dairy, Eggs)	$126.91
Alar or Daminozide Residue	217.56
Amitraz Residue, GLC	217.56
Alcohol (Qualitative)	72.52
Alkalinity of Ash	54.39
Antibiotic, Qualitative (Dairy)	18.13
Antibiotic, Quantitative [1]	398.86
Ascorbates (Qualitative—Meats)	18.13
Ascorbic Acid, Titration	36.26
Ascorbic Acid, Spectrophotometric	36.26
Benzene, Residual	72.52
Brix, Direct Percent Sucrose	18.13
Brix, Dilution	18.13
Butylated Hydroxyanisole (BHA)	54.39
Butylated Hydroxytoluene (BHT)	54.39
Caffeine, Micro Bailey-Andrew	54.39
Caffeine, Spectrophotometric	36.26
Calcium	54.39
Citric Acid, GLC or HPLC	54.39
Chlorinated Hydrocarbons:	
Pesticides and Industrial Chemicals—	
Initial Screen	145.04
Second Column Confirmation of Analyte	36.26
Confirmation on Mass Spectrometer (Per Residue)	72.52
Dextrin (Qualitative)	18.13
Dextrin (Quantitative)	108.78
Filth, Heavy (Dairy)	90.65
Filth, Heavy (Eggs)	145.04
Filth, Light (Eggs)	90.65
Filth, Light & Heavy (Eggs Extraneous)	217.56
Flavor (Dairy)	9.07
Flavor (Products except Dairy)	27.20
Fumigants:	
Initial Screen—	
Dibromochloropropane (DBCP)	36.26
Ethylene Dibromide	36.26
Methyl Bromide	36.26
Confirmation on Mass Spectrometer—	
Each individual fumigant residue	72.52
Glucose (Qualitative)	27.20
Glucose (Quantitative)	63.46
Glycerol (Quantitative)	108.78
Gums	108.78
Heavy Metal Screen [2]	317.28
High Sucrose Content or Avasucrol—	
Percent Sucrose (Holland Eggs)	145.04
Hydrogen Ion Activity, pH	18.13
Mercury, Cold Vapor AA	90.65
Metals—Other Than Heavy, Each Metal	72.52
Monosodium Dihydrogen Phosphate	145.04
Monosodium Glutamate	145.04
Niacin	72.52
Nitrites (Qualitative)	18.13
Nitrites (Quantitative)	108.78
Oxygen	18.13
Odor	9.07
Palatability and Odor:	
First Sample	27.20
Each Additional Sample	18.13
Phosphatase, Residual	36.26
Phosphorus	72.52
Propylene Glycol, Codistillation: (Qualitative)	72.52

TABLE 3.—SINGLE TEST LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

Type of analysis	List fee
Pyrethrin Residue (Dairy)	145.04
Scorched Particles	9.07
Sodium, Potentiometric	36.26
Sodium Benzoate, HPLC	54.39
Sodium Lauryl Sulfate (SLS)	290.08
Sodium Silicoaluminate (Zeolex)	72.52
Solubility Index	18.13
Starch, Direct Acid Hydrolysis	108.78
Sugar, Polarimetric Methods	36.26
Sugar Profile, HPLC—[3]	
One type sugar from HPLC profile	108.78
Each additional type sugar	18.13
Sugars, Non-Reducing	108.78
Sugars, Total as Invert	72.52
Sulfites (Qualitative)	27.20
Sulfur Dioxide, Direct Titration	36.26
Sulfur Dioxide, Monier-Williams	54.39
Toluene, Residual	72.52
Triethyl Citrate, GC (Quantitative)	36.26
Vitamin A	90.65
Vitamin A, Carr-Price (Dry Milk)	45.33
Vitamin B–1 (Thiamin)	72.52
Vitamin B–2 (Riboflavin)	72.52
Vitamin D, HPLC (Vitamins D_2 and D_3)	308.21
Whey Protein Nitrogen	27.20
Xanthydrol Test For Urea	54.39
This is an optional test to the extraneous materials isolation test.	

[1] Antibiotic testing includes tests for chlorotetracycline, oxytetracycline, and tetracycline.

[2] Heavy metal screen includes tests for cadmium, lead, and mercury.

[3] This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose.

TABLE 4.—SINGLE TEST LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES

Type of analysis	List fee
Available Carbon Dioxide (Baking Powders)	$54.39
Capsaicin (Hot Sauce)	72.52
Color, Apparent-Visual	9.07
Complete Kohman Analysis (Dairy)	36.26
Extractable Color in Spices	18.13
Grape Juice Absorbancy Ratio	18.13
Hydroxymethylfurfural (Honey)	36.26
Jelly Strength (Bloom)	54.39
Linolenic Acid	72.52
Methyl Anthranilate	36.26
Net Weight (Per Can)	9.07
Non-Volatile Methylene Chloride Extract	90.65
Overrun for Whipped Topping	27.20
Particle Size (Ether Wash)	18.13
pH—Quinhydrone (Cheese)	18.13
Potassium Iodide (Table Salt)	54.39
Quinic Acid (Cranberry Juice)	63.46

TABLE 4.—SINGLE TEST LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES—Continued

Type of analysis	List fee
Serum Drainage for Whipped Topping	18.13
Sieve or Particle Size	18.13
Rate of Wetting (Nondairy Creamer)	18.13
Reducing Sugars	72.52
Water Activity	27.20
Water Insoluble Inorganic Residues (WIIR)	72.52
Yellow Onion Test	27.20

TABLE 5.—SINGLE TEST LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES

Type of analysis	List fee
Aerobic (Standard) Plate Count	$18.13
Anaerobic Bacterial Plate Count	27.20
Bacillus cereus	72.52
Bacterial Direct Microscopic Count	36.26
Campylobacter jejuni	145.04
Coliform Plate Count (Dairy Products)	18.13
Coliform Plate Count, Violet Red Bile Agar (Presumptive Coliform Plate Count)	27.20
Coliforms, Most Probable Number (MPN): [1]	
Step 1	27.20
Step 2	27.20
E. coli, Presumptive MPN (Additional) [2]	54.39
Enterococci Count	108.78
Lactobacillus Count [3]	45.33
Listeria monocytogenes Confirmation Analysis: [4]	
Step 1	54.39
Step 2	54.39
Step 3 (Confirmation)	90.65
Parasite Identification	145.04
Psychrotrophic Bacterial Plate Count	27.20
Salmonella (USDA Culture Method): [5]	
Step 1 (Dairy Products)	36.26
Step 1	54.39
Step 2	27.20
Step 3 (Confirmation)	54.39
Serological Typing (Optional)	90.65
Salmonella Enumeration (Complete Test)	108.78
Salmonella (Rapid Methods): [6]	
Step 1	72.52
Step 2	27.20
Step 3 (Confirmation)	54.39
Salmonella typhi (Meat Products) [7]	36.26
Staphylococcus aureus, MPN: With Coagulase Positive Confirmation	63.46
Thermoduric Bacterial Plate Count	27.20
Yeast and Mold Count	18.13

TABLE 5.—SINGLE TEST LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES—Continued

Type of analysis	List fee
Yeast and Mold Differential Plate Count	27.20

[1] Coliform MPN analysis may be in two steps as follows:

Step 1—presumptive test through lauryl sulfate tryptose broth;

Step 2—confirmatory test through brilliant green lactose bile broth.

[2] Step 1 of the coliform MPN analysis is a prerequisite for the performance of the presumptive *E. coli* test. Prior enrichment in lauryl sulfate tryptose broth is required for optimal recovery of *E. coli* from inoculated and incubated EC broth (*Escherichia coli* broth). The *E. coli* test is performed through growth on eosin methylene blue agar. The fee stated for *E. coli* analysis is a supplementary charge to step 1 of coliform test.

[3] Determination of bacterial plate count of different species of *Lactobacillus.*

[4] *Listeria monocytogenes* test using the USDA method may be in three steps as follows: Step 1—isolation by University of Vermont modified (UVM) broth and Fraser's broth enrichments and selective plating with Modified Oxford (MOX) agar; Presumptive Step 2—typical colonies inoculated from Horse Blood into brain heart infusion (BHI) broth and check for characteristic motility; Confirmatory Step 3—culture from BHI broth with typical motility is inoculated into the seven biochemical medias, BHI agar for oxidase and catalase tests, Motility test medium, and Christie-Atkins-Munch-Peterson (CAMP) test.

Listeria monocytogenes test using the FDA method may be in three steps as follows: Step 1—isolation by trypticase soy broth with 0.6% yeast extract (TSB–YE) broth enrichment and selective plating with Modified McBrides agar and Lithium chloride Phenylethanol Moxalactam (LPM) agar; Presumptive Step 2—typical colonies inoculated to trypticase soy agar with yeast extract (TSA–YE) with sheep blood plates to check for hemolysis followed by inoculations to BHI broth and TSA–YE plates to check for characteristic motility, gram stain and catalase test; Confirmatory Step 3—culture from BHI broth with typical motility for wet mount is inoculated into the required 10 biochemical medias, Sulfide-Indole-Motility (SIM) medium, and the CAMP test Serology is checked using growth from TSA–YE plates.

Both methods for *Listeria* determination have the equivalent time needed for each step.

[5] *Salmonella* test may be in three steps as follows: Step 1—growth through differential agars; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly ''O'' and Poly ''H'' antiserums. The serological typing of *Salmonella* is requested on occasion.

[6] *Salmonella* test may be in three steps as follows: Step 1—growth in enrichment broths and ELISA test or DNA hybridization system assay; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly ''O'' and Poly ''H'' antiserums.

[7] *Salmonella typhi* determination in mechanically deboned meat.

TABLE 6.—LABORATORY FEES FOR AFLATOXIN ANALYSES

Aflatoxin test by commodity	Fee per single analysis	Fee per pair analyses [1]
Peanut Butter (TLC—CB—Affinity Column)	$ 36.26	[2]NA
Corn (TLC—CB—Affinity Column)	36.26	NA
Roasted Peanuts (TLC—BF)	36.26	NA
Brazil Nuts (TLC—BF)	72.52	NA
Pistachio Nuts (TLC—BF)	72.52	NA
Shelled Peanuts (TLC—Affinity Column)	17.00	34
Shelled Peanuts (HPLC)	31.00	62
Tree Nuts (TLC)	36.26	NA
Oilseed Meals (TLC)	36.26	NA
Edible Seeds (TLC)	36.26	NA
Dried Fruit (TLC)	36.26	NA
Small Grains (TLC)	36.26	NA
In-Shell Peanuts (TLC)	17.00	34
Silage; Other Grains (TLC)	36.26	NA
Submitted Samples (TLC—Affinity Column)	36.26	NA

[1] Aflatoxin testing of raw peanuts under Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD is $34.00 per pair of analyses using Thin-Layer Chromatography (TLC) and Best Foods (BF) extraction or immunoaffinity column chromatography method. The BF method has been modified to incorporate a water slurry extraction procedure. The Contaminants Branch (CB) method is used on occasion as an alternative method for peanuts and peanut meal when doubt exists as to the effectiveness of the Best Foods method in extracting aflatoxin from the sample or when background interferences exist that might mask TLC quantitation of aflatoxin. The cost per single or pair of analyses using High Pressure Liquid Chromatography (HPLC) is $31.00 and $62.00, respectively. Other aflatoxin analyses for fruits and vegetables are listed at Science and Technology Division's current hourly rate of $36.26.

[2] NA denotes not applicable.

TABLE 7.—MISCELLANEOUS CHARGES SUPPLEMENTAL TO THE SCIENCE AND TECHNOLOGY DIVISION'S LABORATORY ANALYSIS FEES

Laboratory service description	List fee
Sample Grinding Raw Peanuts by Vertical Cutter Mixer (VCM)	$ 18.13
Sample Grinding Canned Boned Poultry (VCM)	36.26
Sample Grinding (Meats, Meat Products, Meals, Ready-to-Eat):	
per pouch or raw sample	9.07
per tray pack	18.13
Compositing Multiple Subsamples for an Individual Test Sample Unit per subsample	9.07

TABLE 8—ADDITIONAL CHARGES APPLICABLE TO THE SAMPLE RECEIPT AND ANALYSIS REPORT

Service description	List charge
Established Courier Expense at Albany, Georgia S&TD Laboratory	$2.15.
Courier Expense at Other AMS Laboratories: Mileage Charge Set at $0.31 Per Mile Roundtrip from Laboratory to Delivery Site.	Varies.
Facsimile Charge (Per Analysis Report)	$3.20 minimum up to first 3 pages, then $1.10 per page.
Additional Analysis Report or Extra Certificate (½ hour charge)	$18.13 per report or certificate reissued.

(b) The fee charge for any laboratory analysis not listed in paragraph (a) of this section, or for any other applicable services rendered in the laboratory, shall be based on the time required to perform such analysis or render such service. The standard hourly rate shall be $36.26.

* * * * *

(d) When Science and Technology Division provides applied and developmental research and training activities for microbiological and chemical analyses on agricultural commodities the applicant will be charged a fee on a reimbursable cost basis.

3. Section 91.38 is revised to read as follows:

§ 91.38 Additional fees for appeal of analysis.

(a) The appellant will be charged an additional fee at a rate of 1.5 times the standard rate stated in paragraph (a) of § 91.37 if, as a result of an authorized appeal analysis, it is determined that the original test results are correct. The appeal laboratory rate is $54.39 per analysis hour.

(b) The appeal fee will be waived if the appeal laboratory test discloses that an inadvertent error was made in the original analysis.

4. In § 91.39, paragraph (a) is revised to read as follows:

§ 91.39 Special request fees for overtime and legal holiday service.

(a) Laboratory analyses initiated at the special request of the applicant to be rendered on Saturdays, Sundays, Federal holidays, and on an overtime basis will be charged at a rate of 1.5 times the standard rate stated in § 91.37 (a). The premium laboratory rate for holiday and overtime service will be $54.39 per analysis hour.

* * * * *

5. In § 91.40, paragraph (a) is revised to read as follows:

§ 91.40 Fees for courier service and facsimile of the analysis report.

(a) The AMS peanut aflatoxin laboratory at Albany, Georgia, has a set courier charge of $2.15 per trip to retrieve the sample package. The mileage charge specified in Table 8 of § 91.37 for courier service at other AMS laboratories is based on the shortest roundtrip route from laboratory to sample retrieval site.

* * * * *

PART 93—PROCESSED FRUITS AND VEGETABLES

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

Authority: 7 U.S.C. 1622, 1624.

2. In § 93.11, the definition for aflatoxin is revised to read as follows:

§ 93.11 Definitions.

* * * * *

Aflatoxin. A toxic metabolite produced by the molds *Aspergillus flavus, Aspergillus parasiticus,* and *Aspergillus nomius.* The aflatoxin compounds fluoresce when viewed under UV light as follows: aflatoxin B_1 and derivatives with a blue fluorescence, aflatoxin B_2 with a blue-violet fluorescence, aflatoxin G_1 with a green fluorescence, aflatoxin G_2 with a green-blue fluorescence, aflatoxin M_1 with a blue-violet fluorescence, and aflatoxin M_2 with a violet fluorescence. These closely related molecular structures are referred to as aflatoxin B_1, B_2, G_1, G_2, M_1, M_2, GM_1, B_{2a}, G_{2a}, R_0, B_3, 1–OCH_3B_2, and 1–CH_3G_2.

* * * * *

3. In § 93.12, paragraph (b)(1) is revised to read as follows:

§ 93.12 Analyses available and locations of laboratories.

* * * * *

(b) * * * (1) The Science and Technology Division Aflatoxin Laboratories at Albany and Blakely, Georgia will perform other analyses for peanuts, peanut products, and a variety of oilseeds. The analyses for oilseeds include testing for free fatty acids, ammonia, nitrogen or protein, moisture and volatile matter, foreign matter, and oil (fat) content.

* * * * *

PART 96—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (CHEMICAL ANALYSIS AND UNITED STATES OFFICIAL GRADE CERTIFICATION)

1. The authority citation for part 96 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. Section 96.20 is revised to read as follows:

§ 96.20 Fee for chemist's license.

(a) The fee for the examination of an applicant for a license as a chemist to analyze and certify the grade of cottonseed shall be $1,166.00.

(b) The examination fee shall be paid at the time the application is filed or at a time prior to the administration of the examinations. This fee shall be paid regardless of the outcome of the licensing examinations. The examination fee shall be nonrefundable to the applicant; however, in the event of death of the applicant prior to the examination, full payment of the fee may be returned to the applicant's beneficiary. If an application is filed with an insufficient fee, the application and fee submitted will be returned to the applicant.

(c) For each renewal of a chemist's license, the fee shall be $292.00.

3. In § 96.21, paragraph (a) is revised to read as follows:

§ 96.21 Fee for certificates to be paid by licensee to Service.

(a) To cover the cost of administering the regulations in this part, each licensed cottonseed chemist shall pay to the Service $3.18 for each certificate of the grade of cottonseed issued by the licensee.

* * * * *

Dated: March 27, 1998.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 98–8645 Filed 4–1–98; 8:45 am]

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Thursday
April 2, 1998

Part IX

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 4

Federal Reserve System

12 CFR Part 208

Federal Deposit Insurance Corporation

12 CFR Part 337

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 563

Expanded Examination Cycle for Certain Small Insured Institutions; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. 97–02]

RIN 1557–AB56

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0957]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

RIN 3064-AB90

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[Docket No. 98–12]

RIN 1550–AB02

Expanded Examination Cycle for Certain Small Insured Institutions

AGENCIES: Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are adopting as a final rule their joint interim rule implementing section 306 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI) and section 2221 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Together, section 306 of CDRI and section 2221 of EGRPRA authorize the Agencies to increase the asset size of certain financial institutions that may be examined once in every 18-month period, rather than once in every 12-month period, from $100 million to a revised limit of $250 million. This final rule makes certain institutions that have $250 million or less in assets eligible for the 18-month examination schedule.

EFFECTIVE DATE: April 2, 1998.

FOR FURTHER INFORMATION CONTACT: *OCC:* Lawrence W. Morris, National Bank Examiner, Examination Process (202) 874–4915; Ronald Schneck, Director, Special Supervision, (202) 874–4450; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities, (202) 874–5090.

Board: Molly Wassom, Deputy Associate Director, (202) 452–2305, or William H. Tiernay, Senior Financial Analyst, (202) 872–7579, Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202) 452–3544.

FDIC: Mark A. Mellon, Counsel, Regulation and Legislation section (202) 898–3854, Legal Division, or Robert W. Walsh, Manager, Planning and Program Development section (202) 898–6911, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

OTS: Scott M. Albinson, Special Assistant to the Executive Director, Supervision, (202) 906–7984; or Ellen J. Sazzman, Counsel (Banking and Finance), Regulations and Legislation Division, Office of the Chief Counsel, (202) 906–7133.

SUPPLEMENTARY INFORMATION:

Background

Section 10(d) of the Federal Deposit Insurance Act (the FDI Act),[1] which was added by section 111 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA),[2] requires that each appropriate Federal banking agency conduct a full-scope, on-site examination at least once during each 12-month period of every insured depository institution that the agency supervises. However, section 10(d) permits the Agencies to examine certain small insured depository institutions once during every 18-month period. As initially established by FDICIA, section 10(d) required an institution to have $100 million or less in total assets and its composite condition must have been found to be outstanding (rated 1 under the Uniform Financial Institutions Rating System (UFIRS)) at its most recent examination in order to qualify for an extended exam cycle. In addition, a qualifying institution (a) must not have undergone a change in control during the previous 12-month period in which a full-scope examination otherwise would have been required by section 10 of the FDI Act; (b) be well capitalized; and (c) be found by the appropriate agency to be well managed.

Section 306 of CDRI, which was enacted into law in 1994,[3] made several amendments to section 10(d) that, taken together, expand the availability of the 18-month examination cycle to a larger number of small institutions. First, section 306 of CDRI increased to $250 million the asset size of institutions rated outstanding (UFIRS 1) that could be examined on an 18-month cycle. Second, section 306 added a provision permitting an 18-month cycle for institutions rated satisfactory (UFIRS 2) at their most recent examination, provided they did not exceed $100 million in total assets. Third, section 306 authorized the Agencies to increase this $100 million threshold to $175 million beginning on September 23, 1996, if the Agencies first determined that the increased amount is consistent with the principles of safety and soundness for insured depository institutions. Finally, section 306 required that, to qualify for the expanded examination cycle, an insured institution must not be subject to a formal enforcement proceeding or order. The remaining provisions of section 10(d) of the FDI Act were unchanged.

Section 2221 of EGRPRA[4] further amended section 10(d) of the FDI Act. Pursuant to section 2221, the Agencies were authorized to increase to $250 million the maximum asset size of UFIRS 2-rated institutions eligible for examination on an 18-month cycle. EGRPRA also made the expanded examination cycle available to qualified Federal branches and agencies of foreign banks. The International Banking Act of 1978 (the IBA),[5] as amended by the Foreign Bank Supervision Enhancement Act of 1991,[6] requires an examination of each U.S. branch or agency of a foreign bank once during each 12-month period. Section 2214 of EGRPRA[7] amended the IBA to provide, among other things, that each Federal or State branch or agency of a foreign bank will be subject to on-site examination by the appropriate Federal or State banking agency as frequently as would a national or state bank, respectively. Consequently, U.S. branches or agencies of foreign banks are eligible for the 18-month cycle provided that they meet the qualifying criteria outlined above.

In 1997, the Federal banking agencies issued a joint rule that was immediately

[1] Section 10(d) of the FDI Act is codified at 12 U.S.C. 1820(d).

[2] Pub. L. 102–242, 105 Stat. 2236.

[3] Pub. L. 103–325, 108 Stat. 2160.

[4] Pub. L. 104–208, 110 Stat. 3009 (section 2221 is codified at 12 U.S.C. 1820(d)(10)).

[5] Pub. L. 95–369, 92 Stat. 607 (codified at 12 U.S.C. 3101, *et seq.*).

[6] Pub. L. 102–242, 105 Stat. 2286, 2291, 2304 (amending, *inter alia*, 12 U.S.C. 3105(c)(1)(C)).

[7] Section 2214(a)(3) of EGRPRA is codified at 12 U.S.C. 3105(c)(1)(C).

effective upon the date of publication implementing section 306 of CDRI and section 2221 of EGRPRA. *See* 62 FR 6449 (Feb. 12, 1997). The interim rule was published with a request for public comment. As discussed in greater detail below, the public comments generally favored adoption of the expanded examination cycle rule as set forth in the interim rule. Accordingly, the Agencies hereby adopt the interim rule with only minor stylistic changes.

Comments Received

In response to the interim rule request for comment, the Agencies received a total of 16 comments, including six from banking institutions, six from Federal Reserve Banks, and four from trade associations. Most agreed that the expansion of the 18-month examination cycle should be applied to UFIRS 1-and 2-rated domestic institutions with assets of $250 million or less. Commenters favoring the proposed changes agreed that the application of an 18-month cycle would reduce regulatory burden on smaller, well run institutions that do not pose significant supervisory concerns. Commenters also noted that the rule is consistent with the Agencies' respective approaches to performance-based regulation and supervision.

One commenter suggested that a financial institution with a UFIRS rating of 1 or 2 should be allowed to elect either a 12-month or an 18-month exam cycle, and that each examination should cover, among other things, compliance issues and an examination of the financial institution's fiduciary and data processing operations. In response, the Agencies note that the examination cycle adopted in the interim rule and finalized by this rulemaking creates the generally applicable schedule. The primary regulator will have the option, however, to examine an institution as frequently as the regulator deems appropriate. The Agencies believe that this approach is an efficient and effective use of both financial institution and examiner resources. Should a financial institution wish to discuss particular issues with its primary regulator at a time other than when an examination is ongoing, the financial institution is encouraged to contact its regulator for assistance at any time.

Final Rule

Based upon further deliberations by the Agencies and the comments received, the Agencies are adopting the interim rule in final form, with only minor stylistic changes. Pursuant to the final rule, a domestic national or state financial institution will be eligible for an 18-month examination schedule if the institution: (1) has total assets of $250 million or less; (2) is well capitalized as defined in section 38(b)(1)(A) of the FDI Act (12 U.S.C. 1831o(b)(1)(A)); (3) is well managed; (4) received a UFIRS rating of 1 or 2 at its most recent examination; (5) is not subject to a formal enforcement proceeding or order; and (6) has not undergone a change in control during the previous 12-month period.

The Agencies have determined that increasing the size limitation of UFIRS 2-rated institutions that are eligible for an 18-month cycle is consistent with the safety and soundness of insured depository institutions. A longer examination cycle permits the Agencies to focus their resources on those segments of the banking and thrift industry that present the most immediate supervisory concern, while concomitantly reducing the regulatory burden on smaller, well run institutions that do not pose an equivalent level of supervisory concern. In lieu of the more frequent annual examinations that would otherwise be conducted for these institutions, the agencies rely upon off-site monitoring tools to identify potential problems in smaller, well managed institutions that present low levels of risk. Moreover, neither the statute nor the regulation limits, and the Agencies therefore retain, the authority to examine an insured depository institution more frequently. The Agencies that supervise state-chartered insured institutions also recognize that flexibility must be made available in the implementation of this regulation to accommodate requirements for annual examinations by various states.

The FDIC, Board, and OCC, which have jurisdiction over U.S. branches and agencies of foreign banks, are reviewing the issue of how to apply the qualifying criteria to these entities. Upon development of a method under which the 18-month examination cycle qualifying criteria can be applied to Federal branches and agencies, a separate rule will be issued for comment.

Effective Date of Final Rule

The Agencies have determined that there is good cause to dispense with a 30-day delayed effective date pursuant to 5 U.S.C. 553(d)(3). The expanded exam cycle was immediately effective upon publication of the interim rule in February, 1997. This final rule adopts the interim rule without any substantive change. While the Agencies invited interested parties to comment on the rule at that time, each agency already has implemented the expanded exam cycle, and insured depository institutions already have been complying with the new rule for approximately a year. Accordingly, depository institutions will not require any additional time to adjust their policies or practices in order to comply with the rule. Delaying the effective date simply would create confusion on the part of the banking industry concerning the applicability of the expanded exam cycle during the time between publication and some later effective date.

The Agencies also have determined, for the reasons stated in the preceding paragraph, that good cause exists to adopt an effective date that is before the first day of the calendar quarter that begins on or after the date on which the regulation is published, as would otherwise be required by section 302 of the CDRI.

Regulatory Flexibility Act

The Regulatory Flexibility Act (the Act) (5 U.S.C. 601–612) does not apply to a rulemaking where a general notice of proposed rulemaking is not required, as is the case with the 18-month examination cycle rulemaking. See 5 U.S.C. 603 and 604. Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

Even if the Act were to apply, the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will reduce regulatory burdens on eligible banks and thrifts with assets of $250 million or less. In addition, those depository institutions that are not eligible for the exemption from the statutorily prescribed 12-month examination cycle are not adversely affected by the final rule.

Small Business Regulatory Enforcement Fairness Act

Title II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)[8] provides generally for agencies to report rules to Congress and the General Accounting Office (GAO) for review. The reporting requirement is triggered when a Federal agency issues a final rule. The Agencies will file the appropriate reports with Congress and the GAO as required by SBREFA. The Office of Management and Budget has determined that the uniform rule promulgated by the Agencies does not constitute a ''major rule'' as defined by SBREFA.

[8] Pub. L. 104–121.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Agencies have determined that no collections of information pursuant to the Paperwork Reduction Act are contained in this final rule.

OCC and OTS Executive Order 12866 Statement

The OCC and OTS each independently has determined that this final rule is not a significant regulatory action under Executive Order 12866.

OCC and OTS Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (March 22, 1995) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC and OTS have each independently determined that this final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, this final rule will have the effect of reducing regulatory burden on certain institutions.

List of Subjects

12 CFR Part 4

Banks, banking, Freedom of information, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Safety and soundness, Securities.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part 563

Accounting, Advertising, Conflicts of interest, Corporate opportunity, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, part 4 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM

1. The authority citation for part 4 continues to read as follows:

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; 12 U.S.C. 481, 1820(d). Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR, 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 481, 482, 1821(o), 1821(t); 18 U.S.C. 641, 1905, 1906; 31 U.S.C. 9701. Subpart D also issued under 12 U.S.C. 1833e.

2. In Subpart A, § 4.6 is revised to read as follows:

§ 4.6 Frequency of examination.

(a) *General.* The OCC examines national banks pursuant to authority conferred by 12 U.S.C. 481 and the requirements of 12 U.S.C. 1820(d). The OCC is required to conduct a full-scope, on-site examination of every national bank at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The OCC may conduct a full-scope, on-site examination of a national bank at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The bank has total assets of $250 million or less;

(2) The bank is well capitalized as defined in part 6 of this chapter;

(3) At the most recent examination, the OCC found the bank to be well managed;

(4) At the most recent examination, the OCC assigned the bank a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (copies are available at the addresses specified in § 4.14);

(5) The bank currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC, or Federal Reserve System; and

(6) No person acquired control of the bank during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the OCC to examine any national bank as frequently as the agency deems necessary.

Dated: February 25, 1998.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board amends part 208 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92(a), 93(a), 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835(a), 1882, 2901–2907, 3105, 3310,3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. In Subpart A, § 208.26 is revised to read as follows:

§ 208.26 Frequency of examination.

(a) *General.* The Federal Reserve examines insured member banks pursuant to authority conferred by 12 U.S.C. 325 and the requirements of 12 U.S.C. 1820(d). The Federal Reserve is required to conduct a full-scope, on-site examination of every insured member bank at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The Federal Reserve may conduct a full-scope, on-site examination of an insured member bank at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The bank has total assets of $250 million or less;

(2) The bank is well capitalized as defined in subpart B of this part (§ 208.33);

(3) At the most recent examination conducted by either the Federal Reserve

or applicable State banking agency, the Federal Reserve found the bank to be well managed;

(4) At the most recent examination conducted by either the Federal Reserve or applicable State banking agency, the Federal Reserve assigned the bank a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (copies are available at the address specified in § 216.6 of this chapter);

(5) The bank currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC, or Federal Reserve System; and

(6) No person acquired control of the bank during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the Federal Reserve to examine any insured member bank as frequently as the agency deems necessary.

By order of the Board of Governors of the Federal Reserve System, March 27, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends part 337 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831f, 1831f-1.

2. Section 337.12 is revised to read as follows:

§ 337.12 Frequency of examination.

(a) *General.* The Federal Deposit Insurance Corporation examines insured state nonmember banks pursuant to authority conferred by section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820). The FDIC is required to conduct a full-scope, on-site examination of every insured state nonmember bank at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The FDIC may conduct a full-scope, on-site examination of an insured state nonmember bank at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The bank has total assets of $250 million or less;

(2) The bank is well capitalized as defined in § 325.103(b)(1) of this chapter;

(3) At the most recent FDIC or applicable State banking agency examination, the FDIC found the bank to be well managed;

(4) At the most recent FDIC or applicable State banking agency examination, the FDIC assigned the insured state nonmember bank a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (copies are available at the addresses specified in § 309.4 of this chapter);

(5) The bank currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC, or Federal Reserve System; and

(6) No person acquired control of the bank during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the FDIC to examine any insured state nonmember bank as frequently as the agency deems necessary.

By order of the Board of Directors.

Dated at Washington, DC, this 24th day of March 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

Authority and Issuance

For the reasons set forth in the joint preamble, the OTS amends part 563 of Chapter V of title 12 of the Code of Federal Regulations as follows:

PART 563—OPERATIONS

1. The authority citation for part 563 continues read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 3806; 42 U.S.C. 4106.

2. Section 563.171 is revised to read as follows:

§ 563.171 Frequency of examination.

(a) *General.* The OTS examines savings associations pursuant to authority conferred by 12 U.S.C. 1463 and the requirements of 12 U.S.C. 1820(d). The OTS is required to conduct a full-scope, on-site examination of every savings association at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The OTS may conduct a full-scope, on-site examination of a savings association at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The savings association has total assets of $250 million or less;

(2) The savings association is well capitalized as defined in § 565.4 of this chapter;

(3) At its most recent examination, the OTS found the savings association to be well managed;

(4) At its most recent examination, the OTS assigned the savings association a composite rating of 1 or 2, as defined in § 516.3(c) of this chapter;

(5) The savings association currently is not subject to a formal enforcement proceeding or order; and

(6) No person acquired control of the savings association during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the OTS to examine any savings association as frequently as the agency deems necessary.

Dated: February 10, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–8605 Filed 4–1–98; 8:45 am]

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Federal Register

Thursday
April 2, 1998

Part X

The President

Proclamation 7075—Cancer Control Month, 1998

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7075 of March 31, 1998

Cancer Control Month, 1998

By the President of the United States of America

A Proclamation

While cancer still casts a shadow over the lives of millions of Americans and their families, we can rightfully look back over the 1990s as the decade in which we measurably began to turn the tide against this deadly disease. From 1990 to 1995, the annual number of new cancer cases for every 100,000 Americans dropped slightly but continuously. Perhaps more important, the overall cancer death rate, which rose throughout the 1970s and 1980s, declined between 1991 and 1995, a trend that continues today and that we hope will be sustained into the next century. Thanks to years of dedicated, rigorous scientific study, people with cancer are now leading longer, healthier lives. More than eight million Americans living today have had cancer at some time, and these survivors are a powerful reminder of the importance of maintaining our progress in cancer research, prevention, and control.

My Administration's new cancer initiative proposes an unprecedented $4.7 billion investment in cancer research through the National Institutes of Health (NIH) over the next 5 years. This significant increase in research funding has great potential to enhance early detection and diagnoses of cancer, to speed the discovery and development of new treatments, and to provide all cancer patients and their caregivers with improved access to the latest information about their disease. Part of these increased funds will go to NIH's Human Genome Project, which is helping to advance our knowledge in the promising field of cancer genetics. The National Cancer Institute's (NCI) recently unveiled Cancer Genome Anatomy Project website is connecting researchers to information on genetic factors that determine how a particular cancer behaves—how fast it grows, whether it will spread, and whether it will respond to treatment—as they work to develop new ways to prevent, diagnose, and treat cancer.

We are also continuing our aggressive cancer prevention efforts. The Centers for Disease Control and Prevention is entering the eighth year of its landmark National Breast and Cervical Cancer Early Detection program. This program brings critical breast and cervical cancer screening services to previously underserved women, including older women, uninsured or underinsured women, women with low incomes, and women of racial and ethnic minority groups. Medicare now provides coverage for annual mammography screening and for Pap tests, pelvic exams, and colorectal cancer screening. By January 2000, Medicare will also cover the costs of prostate cancer screening tests.

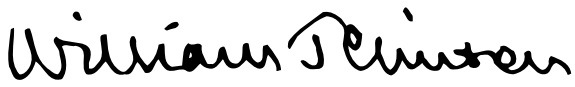
We are taking other important steps toward cancer control as well. The NCI and the Food and Drug Administration are working in partnership to ensure that potentially effective drugs are expedited through the development process so that new anticancer therapies can be made available more rapidly to the patients who need them. We are also proposing, as part of our new cancer initiative, that Medicare beneficiaries have the opportunity to participate in certain cancer clinical trials. This will allow patients to benefit from cutting-edge research and provide scientists with a larger pool of participants in their studies, helping to make the results more statistically meaningful and scientifically sound.

If we follow our present course—investing in research, translating research findings into medical practice, and increasing access to improved diagnostic and treatment programs—we can continue to make significant progress in our crusade against cancer. We must not slacken our efforts until we can fully control this devastating disease and ultimately eradicate it.

In 1938, the Congress of the United States passed a joint resolution requesting the President to issue an annual proclamation declaring April as ''Cancer Control Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim April 1998 as Cancer Control Month. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other areas under the American flag to issue similar proclamations. I also call upon health care professionals, private industry, community groups, insurance companies, and all interested organizations and individuals to unite in reaffirming our Nation's continuing commitment to controlling cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



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