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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 213a

[INS No. 1913–98]

Additional Information on the Affidavit of Support Under Section 213a of the Act, Form I–864

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Clarification of policy.

SUMMARY: On October 20, 1997, the Immigration and Naturalization Service (Service) published an interim rule in **Federal Register** establishing the provisions for sponsorship of family and certain employment-based immigrants under the new legally enforceable affidavit of support. The Form I–864, Affidavit of Support Under Section 213A of the Act, was released on that same date. This document provides information on four issues: reduction of required supporting documentation; preferred order of documentation; form revision dates; and 1998 poverty guidelines.

First, the document clarifies the Service policy concerning whether the sponsor must submit a separate copy of all supporting documentation for each dependent. This clarification is necessary to reduce the amount of paperwork being submitted by the sponsor. Second, this document provides information on the order in which the Service would like to have affidavits of support and accompanying documentation submitted. Third, this document explains that the Service has corrected minor errors in the first edition of Forms I–864, I–864A, and I–865. Finally, the document lists the new 1998 poverty guidelines.

DATES: This document is effective May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Miriam Hetfield, Immigration and Naturalization Service, Benefits Division, 425 I Street, NW., Room 3214, Washington, DC 20536, Telephone 202–514–5014 or Lisa Roney, Immigration and Naturalization Service, Office of Policy and Planning, Room 6052, Washington, DC 20536, Telephone 202–353–0249.

SUPPLEMENTARY INFORMATION:

Reduction in Required Supporting Documentation

This document clarifies Service policy concerning the documentary evidence that must be provided with an affidavit of support (Form I–864) that is filed by an applicant for an immigrant visa or for adjustment of status. According to 8 CFR 213a.2(c)(2), the sponsor is required to provide considerable documentation, including copies of his or her Federal individual income tax returns for the most recent 3 tax years, evidence of current employment, and other documentation as evidence that the sponsor's income is sufficient to meet the income requirement that applies in the case. The sponsor must file a separate Form I–864 and I–864A, if used, for each dependent family member who accompanies the principal beneficiary of the visa petition, although these forms may be photocopies so long as the signature and notary information is original. 8 CFR 213.2(a)(1).

The question has arisen whether the sponsor must also submit a separate copy of all the supporting documentation with each separate Form I–864 and any Forms I–864A for each dependent. To avoid unnecessarily increasing the amount of paperwork for the sponsor, the sponsored immigrant, and the Government, the Service has determined the following. A sponsor must submit a separate Form I–864 and, if used, any separate Forms I–864A, for the principal sponsored immigrant and for each accompanying family member. However, the sponsor needs to submit only one copy of his or her Federal income tax returns for the 3 most recent tax years and one copy of any other supporting documentation even if there are accompanying family members. The sponsor **does not** need to submit duplicate copies of tax returns or other supporting documents for accompanying family members. In those cases where there are accompanying family members, the consular officer or immigration officer will write the A-number of the principal beneficiary in the ''agency use'' box of the Form I–864 for each family member accompanying the principal beneficiary. This annotation will make it possible to retrieve the documentary evidence from the principal beneficiary's A-file, should it become necessary to do so.

The Service has also determined that it should clarify what the Service will consider to be sufficient compliance with the requirement in 8 CFR 213a.2(a)(1) that the Forms I–864 and I–864A submitted on behalf of accompanying family members must bear original signatures and notarizations. Under rule 1003 of the Federal Rules of Evidence, a photocopy has the same evidentiary value as an original document, unless the authenticity of the photocopy is disputed. While the Federal Rules of Evidence do not govern sponsorship determinations, the Service believes that following the principle set forth in rule 1003 in this context will serve to benefit potential sponsors by reducing burdensome replication of paperwork. Accordingly, the Service will consider a sponsor to have complied with 8 CFR 213.2(a)(1) if the sponsored immigrant(s) submit(s) to the consular officer, immigration officer, or immigration judge, (a) on behalf of the principal beneficiary, the original Forms I–864 and I–864A, bearing the sponsor's original signature and an original notarization, and (b) on behalf of each of the accompanying family members included in the original Forms I–864 and I–864A, clear and true photocopies of the signed and notarized Forms I–864 and I–864A filed on behalf of the principal beneficiary. The Service will make the necessary change to 8 CFR 213a.2(a)(1) in the final rule, but considers strict enforcement of the requirement in the meantime to be unduly burdensome. Since the requirement that the Forms I–864 and I–864A for the accompanying family members must bear original signatures and notarizations is a rule of agency practice, and this new approach to enforcement of the requirement is a general statement of policy, 5 U.S.C. 553 permits the Service to modify its enforcement of the requirement without prior notice and comment.

This policy on reduction in required supporting documentation applies for derivative beneficiaries applying for immigrant visas or adjustment of status with the principal beneficiary. If two related aliens are the beneficiaries of separate visa petitions, so that neither is a derivative beneficiary, separate documentary evidence in support of each Form I–864 and any Forms I–864A must be provided, and the Forms I–864 and I–864A for each principal beneficiary must bear the sponsor's original notarized signature. For family members who are following to join rather than accompanying a principal beneficiary, a separate Form I–864 and any Forms I–864A, with the sponsor's original notarized signature and supporting documentation, must be provided when the alien applies for an immigrant visa or for adjustment of status, in order to follow to join the principal beneficiary. 8 CFR 213a.2(d). This policy on reduction in required supporting documentation also applies when there is more than one alien following to join the principal beneficiary; only one set of supporting documents is required in support of all derivative beneficiaries following to join at that time. If more than one family member follows to join at the same time, moreover, only one family member needs to submit Forms I–864 and I–864A with original signatures and notarizations; the other family members may submit true and clear photocopies of that signed and notarized original. The immigration of consular officer will note in the ''agency use'' box the visa number or A-number of the file where the supporting documentation will be located.

Preferred Order of Documentation

The Service is providing notice on the order in which it would like to have aliens seeking adjustment of status to package affidavits of support and supporting documentation for submission to the Service. Documents for the principal intending immigrant should be placed on top and in the following order: first, the petitioner's I–864 with the signature notarized; second, copies of the petitioner's Federal tax returns for the 3 most recent tax years; third, evidence of the petitioner's employment; fourth, evidence of the petitioner's assets (if used to qualify); fifth, any Forms I–864A submitted by the petitioner's household members with all original signatures notarized, copies of the household members' Federal tax returns for the 3 most recent tax years, household members' evidence of employment, and evidence of assets (if used to qualify). Next should be documentation for dependents. This will include, for each dependent, a photocopy of the signed and notarized Forms I–864 and I–864A filed on behalf of the principal immigrant. Documentation for any joint sponsor(s) should follow subsequently in the same order as provided above for the petitioner.

Form Revision Dates

The first edition of Forms I–864, I–864A, and I–865 were dated October 6, 1997. The Service subsequently corrected two minor errors and released an updated version of each form with a revision date of January 21, 1998. The minor errors and released an updated version of each form with a revision date of January 21, 1998. The minor errors were a technical correction made in Part 1 of Form I–864A, and the new address of the Texas Service Center on Form I–865. Both the October 6, 1997 and the January 21, 1998, versions of these forms may be used.

New 1998 Poverty Guidelines

The October 20, 1997, interim rule establishing the provisions for sponsorship under the new affidavit of support, provided that immigration and consular officers will begin using the new poverty guidelines on the first day of the second month after the Department of Health and Human Services (HHS) published them in the **Federal Register.** This year HHS published the new guidelines on February 24. Thus, officers will use the new poverty guidelines to evaluate cases adjudicated as of April 1, 1998, regardless of when the application for an immigrant visa or adjustment of status was submitted to the Government. Applicants are not required to submit new Forms I–864 to reflect the new poverty guidelines. The following are the poverty guidelines for 1998.

Sponsor's household size	100% of poverty line	125% of poverty line
For the 48 Contiguous States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam		
2	$10,850	$13,562
3	13,650	17,062
4	16,450	20,562
5	19,250	24,062
6	22,050	27,562
7	24,850	31,062
8	27,650	34,562
	Add $2,800 for each additional person.	Add $3,500 for each additional person.
For Alaska		
2	13,570	16,962
3	17,070	21,337
4	20,570	25,712
5	24,070	30,087
6	27,570	34,462
7	31,070	38,837
8	34,570	43,212
	Add $3,500 for each additional person.	Add $4,375 for each additional person.
For Hawaii		
2	12,480	15,600
3	15,700	19,625

Sponsor's household size	100% of poverty line	125% of poverty line
4	18,920	23,650
5	22,140	27,675
6	25,360	31,700
7	28,580	35,725
8	31,800	39,750
	Add $3,220 for each additional person.	Add $4,025 for each additional person.

Dated: April 30, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–12952 Filed 5–15–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–21–AD; Amendment 39–10425; AD 97–25–11R1]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B16 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule published on March 27, 1998 which revised an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B16 series airplanes, that currently requires disabling the remote fuel/defuel panel in the cockpit; and provides for an optional modification of the remote fuel/defuel panel, which would terminate the requirement to disable the panel. The direct final rule amendment reduces the applicability of the existing AD. The direct final rule amendment was prompted by reports of in-flight failure of the panel that resulted when a circuit breaker on a battery bus opened due to insufficient current flow capacity. The actions specified in this AD are intended to prevent the circuit breakers from opening during flight, which could result in irreversible loss of engine indicating and fuel quantity systems in the cockpit.

DATES: The direct final rule published at 63 FR 14804 is effective on June 25, 1998.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with request for comments in the **Federal Register** on March 27, 1998 (63 FR 14804). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates that there will be no adverse public comment. The direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on June 25, 1998. No adverse comments were received, and thus this document confirms that this final rule will become effective on that date, with the airworthiness directive (AD) number shown at the beginning of this document.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–12513 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–40–AD; Amendment 39–10528; AD 98–11–01]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 97–23–04, which currently requires replacing the fuel tank vent valves with modified fuel tank vent valves on certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD retains the fuel tank vent valves replacement required by AD 97–23–04, and requires drilling a 4.8 millimeter (0.1875 inch) hole in each fuel filler cap. This AD also requires inserting a temporary revision in the Pilot's Operating Handbook (POH) that specifies checking to assure that the fuel filler cap hole is clear of ice and foreign objects. This AD is the result of mandatory continued airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent the fuel tank inward vent valve from freezing, which, if followed by a cold soak at altitude, could result in wing airfoil distortion and structural damage with consequent degradation of the airplane's handling qualities.

DATES: Effective June 7, 1998.

The incorporation by reference of Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997, as listed in the regulations, was previously approved by the Director of the Federal Register as of December 1, 1997 (62 FR 59993, November 6, 1997).

The incorporation by reference of Pilatus Service Bulletin No. 28–004, dated March 27, 1998, is approved by the Director of the Federal Register as of June 7, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 13, 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–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the

Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile:
(816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

AD 97–23–04, Amendment 39–10192 (62 FR 5993, ovember 6, 1997), currently requires replacing the fuel tank vent valves with modified fuel tank vent valves on certain Pilatus Models PC–12 and PC–12/45 airplanes. AD 97–23–04 was the result of a report from the Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, of an instance of abnormal automatic engagement of the fuel booster pumps during normal operation of a Pilatus Model PC–12 airplane. The FOCA's investigation revealed that the fuel tank inward vent valves may fail in the closed position under certain conditions. Moisture ingestion, followed by cold soak, can lead to the fuel tank inward vent valve freezing.

This condition, if not corrected, could result in wing airfoil distortion and structural damage with consequent degradation of the airplane's handling qualities.

Actions Since Issuance of Previous Rule

The FOCA recently notified the FAA that an unsafe condition may still exist on certain Pilatus Models PC–12 and PC–12/45 airplanes, even after compliance with AD 97–23–04. The FOCA reports that the inward vent valve of the fuel tank froze closed on one of the affected airplanes that was in compliance with the fuel tank vent valves replacement requirement of AD 97–23–04. This resulted in permanent structural damage to the wing skins and ribs.

Relevant Service Information

Pilatus has issued Service Bulletin No. 28–004, dated March 27, 1998, which specifies procedures for drilling a 4.8 millimeter (0.1875 inch) hole in each fuel filler cap. This service bulletin also references a temporary revision to the POH that specifies checking to assure that the fuel filler cap hole is clear of ice and foreign objects. This document is entitled ''PC–12 Pilot's Operating Handbook, Pilatus Report No. 01973–001, Temporary Revision, Fuel Filler Cap, dated March 27, 1998.''

The FOCA of Switzerland classified this service bulletin as mandatory and issued Swiss AD HB 98–086, dated March 31, 1998, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland 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 FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the service bulletin referenced in this document; 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 This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design registered for operation in the United States, the FAA is issuing an AD to supersede AD 97–23–04. This AD retains the fuel tank vent valves replacement required by AD 97–23–04, and requires drilling a 4.8 millimeter (0.1875 inch) hole in each fuel filler cap. This AD also requires inserting the following temporary revision to the POH that specifies checking to assure that the fuel filler cap hole is clear of ice and foreign objects:

PC–12 Pilot's Operating Handbook, Pilatus Report No. 01973–001, Temporary Revision, Fuel Filler Cap, dated March 27, 1998.

Accomplishment of the actions specified in this AD is required in accordance with the instructions in Pilatus Service Bulletin No. 28–004, dated March 27, 1998.

Determination of the Effective Date of the AD

Since a situation exists (possible wing airfoil distortion and structural damage with consequent degradation of the airplane's handling qualities) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to 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 above. 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. 98–CE–40–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 an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, 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 Airworthiness Directive (AD) 97–23–04, Amendment No. 39–10192 (62 FR 59993, November 6, 1997), and by adding a new AD to read as follows:

98–11–01 Pilatus Aircraft, Ltd.: Amendment 39–10528; Docket No. 98–CE–40–AD; Supersedes AD 97–23–04, Amendment No. 39–10192.

Applicability: Models PC–12 and PC–12/45 airplanes; serial numbers 101 through 230, certificated in any category.

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

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

To prevent the fuel tank inward vent valve from freezing, which, if followed by a cold soak at altitude, could result in wing airfoil distortion and structural damage with consequent degradation of the airplane's handling qualities, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after December 1, 1997 (the effective date of AD 97–23–04), replace the fuel tank vent valves with modified fuel tank vent valves in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997.

(b) Within the next 10 hours TIS after the effective date of this AD, accomplish the following:

(1) Drill a 4.8 millimeter (0.1875 inch) hole in each fuel filler cap in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 28–004, dated March 27, 1998.

(2) Insert a temporary revision (as referenced in Pilatus Service Bulletin 28–004, dated March 27, 1998) into the Pilot's Operating Handbook (POH) that specifies checking to assure that the fuel filler cap hole is clear of ice and foreign objects. This document is entitled ''PC–12 Pilot's Operating Handbook, Pilatus Report No. 01973–001, Temporary Revision, Fuel Filler Cap, dated March 27, 1998.''

(c) Inserting the POH revision, as required by paragraph (b)(2) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

(e) An alternative method of compliance or adjustment of the compliance time 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.

(1) 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.

(2) Alternative methods of compliance approved in accordance with AD 97–23–04 (superseded by this action) are considered approved as alternative methods of compliance for this AD.

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.

(f) Questions or technical information related to Pilatus Service Bulletin No. 28–004, dated March 27, 1998, should be directed to Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. 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.

(g) The replacement required by this AD shall be done in accordance with Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997. The drilling required by this AD shall be done in accordance with Pilatus Service Bulletin No. 28–004, dated March 27, 1998.

(1) The incorporation by reference of Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997, was previously approved by the Director of the Federal Register as of December 1, 1997 (62 FR 59993, November 6, 1997).

(2) The incorporation by reference of Pilatus Service Bulletin No. 28–004, dated March 27, 1998, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) Copies of these service bulletins may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swiss AD HB 97–432A, dated October 3, 1997, and Swiss AD HB 98–086, dated March 31, 1998.

(h) This amendment supersedes AD 97–23–04, Amendment No. 39–10192.

(i) This amendment becomes effective on June 7, 1998.

Issued in Kansas City, Missouri, on May 8, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13060 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–153–AD; Amendment 39–10529; AD 98–11–02]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to provide the flightcrew with instructions not to arm the liftdumper system prior to commanding the landing gear to extend. 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 inadvertent deployment of the liftdumpers during approach for landing, and consequent

reduced controllability and performance of the airplane.

DATES: Effective June 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be obtained from or 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: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. The RLD advises that an inadvertent in-flight liftdumper (spoiler) deployment occurred on an airplane that was on approach for landing. The flightcrew had no indication of a malfunction in the liftdumper system; however, the liftdumper system was armed and the engine throttle levers were set at or close to IDLE. When the flightcrew selected the DOWN position for landing gear, the liftdumpers deployed. Within approximately eleven seconds the liftdumpers retracted, as a result of automatic forward throttle movement and/or flightcrew action to switch off the liftdumper system.

A preliminary investigation of the incident has indicated the cause to be a combination of the following:

—Electro-magnetic interference (EMI) in the outboard wheel speed channels caused by a faulty Flight Control Computer (FCC);

—Voltage spikes in the inboard wheelspeed channels during skid control box power-up on landing gear DOWN selection; and

—Liftdumper arming prior to landing gear DOWN selection.

Fokker and the RLD are continuing to investigate the cause of the incident.

Such inadvertent deployment of the liftdumpers during approach for landing, if not corrected, could result in reduced controllability and performance of the airplane.

Explanation of Relevant Service Information

Fokker has issued All Operator Message (AOM) AOF100.044, dated April 8, 1998, which provides procedures to revise the Airplane Flight Manual (AFM) to provide the flightcrew with instructions not to arm the liftdumper system before commanding the landing gear to extend. The RLD issued Dutch airworthiness directive 1998–042 (A), dated April 10, 1998, mandating these instructions into the AFM, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are 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 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 inadvertent deployment of the liftdumpers during approach for landing, and consequent reduced controllability and performance of the airplane. This AD requires revising the Limitations and Normal Procedures sections of the FAA-approved AFM to provide the flightcrew with instructions not to arm the liftdumper system prior to commanding the landing gear to extend.

Differences Between This AD and the Dutch Airworthiness Directive

This AD differs from the parallel Dutch airworthiness directive in that the AFM revision is reworded to include a more specific statement of the consequence of arming the liftdumper before commanding the landing gear to extend. The FAA has determined that the Limitations and Normal Procedures sections of the AFM must be revised to inform the flightcrew that arming the liftdumper before commanding the landing gear to extend may result in inadvertent deployment of the liftdumper.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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.

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 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–153–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 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 the following new airworthiness directive:

98–11–02 Fokker: Amendment 39–10529. Docket 98–NM–153–AD.

Applicability: All Model F28 Mark 0070 and Mark 0100 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 inadvertent deployment of the liftdumpers during approach for landing, and consequent reduced controllability and performance of the airplane, accomplish the following:

(a) Within 5 days after the effective date of this AD, revise the Limitations and Normal Procedures sections of the FAA-approved Airplane Flight Manual (AFM) in accordance with paragraphs (a)(1) and (a)(2) of this AD. This may be accomplished by inserting a copy of this AD in the AFM.

(1) Add the following information to section 5—NORMAL PROCEDURES, sub-Section APPROACH AND LANDING, after the subject APPROACH:

''BEFORE LANDING

WARNING: DO NOT ARM THE LIFTDUMPER SYSTEM BEFORE LANDING GEAR DOWN SELECTION.

Selecting Landing Gear DOWN after arming the liftdumper system may result in inadvertent deployment of the liftdumpers, because the liftdumper arming test may be partially ineffective.''

(2) Add the following information to the LIMITATIONS section:

''LIFTDUMPER SYSTEM

DO NOT ARM THE LIFTDUMPER SYSTEM BEFORE LANDING GEAR DOWN SELECTION.''

(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, 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.

(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 Dutch airworthiness directive 1998–042 (A), dated April 10, 1998.

(d) This amendment becomes effective on June 2, 1998.

Issued in Renton, Washington, on May 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13062 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–13–V

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–10]

RIN 2120–AA66

Establishment of Class C Airspace and Revocation of Class D Airspace, Springfield-Branson Regional Airport; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class C airspace area and revokes the existing Class D airspace area at the Springfield-Branson Regional Airport, Springfield, MO. The Springfield-Branson Regional Airport is a public-use facility with an operating control tower served by a Level III Terminal Radar Approach Control Facility (TRACON). The establishment of this Class C airspace area will require pilots to maintain two-way radio communications with air traffic control (ATC) while in Class C airspace. The FAA is taking this action to promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area. Additionally, this action corrects several inadvertent editorial errors.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that Terminal Radar Service Areas (TRSA's) should be replaced. Four types of airspace configurations were considered as replacement candidates, and Model B, the Airport Radar Service Area (ARSA) configuration, was recommended by a consensus of the task group.

The FAA published NAR Recommendation 1–2.2.1, ''Replace

Terminal Radar Service Areas with Model B Airspace and Service'' in Notice 83–9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by Special Federal Aviation Regulation No. 45 (48 FR 50038; October 28, 1983) to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining ARSA airspace and establishing air traffic rules for operation within such an area.

Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, Columbus, OH, and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA stated that it would propose ARSA's for other airports at which TRSA procedures were in effect in future notices.

The NAR Task Group also recommended that the FAA develop quantitative criteria for establishing ARSA's at locations other than those which were included in the TRSA replacement program. The task group recommended that these criteria include, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are published via the FAA directives system (Order 7400.2, Procedures for Handling Airspace Matters).

The FAA adopted the NAR Task Group recommendation that each Class C airspace area be of the same airspace configuration insofar as is practicable. The standard Class C airspace area consists of that airspace within 5 nautical miles (NM) of the primary airport, extending from the surface to an altitude of 4,000 feet above airport elevation (AAE), and that airspace between 5 and 10 NM from the primary airport from 1,200 feet above ground level to an altitude of 4,000 feet AAE. Proposed deviations from this standard have been necessary at some airports because of adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Related Rulemaking Actions

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65638). This rule, in part, discontinued the use of the term ''airport radar service area'' and replaced it with the designation ''Class C airspace area.'' This change in terminology is reflected in the remainder of this final rule.

Public Input

As announced in the **Federal Register** on July 21, 1994 (59 FR 37282), a pre-NPRM airspace meeting was held on September 7, 1994, in Springfield, MO. This meeting provided local airspace users an opportunity to present input on the design of the planned establishment of the Springfield, MO, Class C airspace area.

On December 9, 1996, the FAA published an NPRM (61 FR 237, Notice 95–AWA–10) that proposed to establish a Class C airspace area at the Springfield-Branson Regional Airport, MO. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal to the FAA. In response to this NPRM, the FAA received twelve written comments. All comments were considered before making any final determination on this final rule. The comments received are analyzed below.

Analysis of Comments

The FAA received several comments from the Air Line Pilots Association and local business operators, which were in support of establishing Class C airspace at Springfield-Branson Regional Airport.

The FAA also received several comments from local businesses recommending the installation of an instrument landing system (ILS) precision approach to runway 20, and lengthening the primary runway at Springfield-Branson Regional Airport. While the FAA appreciates these comments, they are outside of the scope of the Notice, and should be directed to the operator of the Springfield-Branson Regional Airport.

The FAA received several comments stating that the FAA has not used alternate nonrulemaking solutions to address safety issues concerning Springfield-Branson Regional Airport, and disagreed with the use of enplanement numbers as the only criteria to determine the need for Class C airspace.

The FAA does not agree with these commenters. The FAA has exhausted all nonrulemaking alternatives to provide for an acceptable level of safety at Springfield-Branson Regional Airport. For example, over the past several years, the FAA has updated its equipment and improved its radar services. In addition, the FAA has routinely conducted user meetings and safety seminars to address local issues and safety concerns. The FAA held meetings in the Springfield area concerning: (1) potential conflicts between en route visual flight rules (VFR) aircraft using the Springfield Very High Frequency Omnidirectional Range (VOR) navigational aid and arriving traffic; (2) conflicts between aircraft on instrument approach to Runway 20 and the VFR flyway [area] to the southeast; (3) conflicts between aircraft using the localizer procedure and transiting aircraft operating to and from the Springfield Downtown Airport; and, (4) congestion caused by military aircraft operating to and from the Springfield-Branson Regional Airport for practice approaches and training. In addition, Springfield-Branson Regional Airport is the only airport in southwest Missouri that has a radar facility. This capability attracts several aviation flight training schools, thus adding to a mixed traffic environment.

Regarding the criteria used to determine candidacy for Class C airspace areas, an airport must have an operational airport traffic control tower (ATCT) that is serviced by a radar approach control and meet one of the following: (1) 75,000 annual instrument operations count at the primary airport; (2) 100,000 annual instrument operations count at the primary and secondary airport in the terminal area hub; or (3) 250,000 annual enplaned passengers at the primary airport. The Springfield-Branson Regional Airport meets two of the FAA criteria and qualifies as a candidate for a Class C airspace area based on passenger enplanements (326,038 for calendar year 1996), and instrument operations (149,356 for calendar year 1997).

The Aircraft Owners and Pilots Association commented that the FAA should delay establishing a Class C airspace at Springfield-Branson Regional Airport based on: (1) a proposal to establish commercial air service at M. Graham Clark Airport, located approximately 2 miles from Springfield-Branson Regional Airport; and, (2) the potential establishment of a new airport in close proximity to Springfield-Branson Regional Airport.

The FAA does not agree with this commenter, or that the establishment of the Class C airspace area should be delayed. Currently, there are no new airport proposals, private or public, for the Springfield-Branson area.

The FAA is aware that commercial air service at M. Graham Clark is proposed to begin during the summer of 1998. If this operation commences, the FAA will monitor the situation to assess any impact on operations at Springfield-

Branson Regional Airport. Further, the FAA believes that timely establishment of a Class C airspace area will promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area.

The Manager of Mountain Grove Memorial Airport commented that only one public meeting had taken place, and another individual said they had not been informed of any public meetings.

The FAA does not agree with these commenters. Prior to issuing the NPRM the FAA held seven public meetings (meeting dates: January 30, February 27, March 17, April 24, June 23, August 25 and September 22, 1997) in the Springfield area to inform the public of its growing safety concerns and the need to change the designation of the airspace area. Further, a Notice of Informal Airspace Meeting was published in the **Federal Register** on July 21, 1994. Also, notices of meetings were sent to pilots with Class 2 medical certificates within a 70-mile radius of Springfield-Branson Regional Airport. The FAA believes that every effort was made to inform and involve the public of this rulemaking effort.

The Manager of Mountain Grove Airport also objected to the establishment of Class C airspace, because it would require pilots to maintain two-way radio communications with ATC.

The FAA does not agree with this objection. The requirement to maintain two-way radio communications with ATC exists in the current Class D airspace, and the establishment of Class C airspace will continue this requirement.

One commenter stated that safety concerns would be mitigated by extending the Class D airspace area to the VOR where it is currently Class E airspace.

The FAA does not agree. In Class D airspace areas there are no separation services provided to VFR aircraft. In contrast, a Class C airspace area will provide a controlled environment where separation services are provided to both VFR and IFR aircraft.

Several commenters expressed a belief that the economic impact of establishing Class C airspace will be greater than the FAA's estimate of $575.00 as stated in the NPRM, and will warrant the establishment of a clearance delivery position.

The FAA does not agree with these commenters. The FAA is confident that it can accommodate any additional increase in air operations caused by the establishment of this Class C airspace area at current authorized staffing levels. There are two positions already in place at the Springfield ATCT that could deliver clearances without an increase of personnel or equipment.

Several individuals suggested that the establishment of Class C airspace would result in a pay raise for the controllers at Springfield ATCT.

The FAA does not agree with these commenters. The purpose of establishing a Class C airspace area at this airport is to promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area.

One commenter believes that many of the aircraft based at airports within 20 miles of Springfield-Branson Regional Airport have no electrical systems, and it would be financially difficult to equip them with radios and transponders required to enter Class C airspace.

Another commenter believes that the cost of circumnavigating the Class C airspace will not be negligible.

The FAA does not agree with this comment. Currently, Title 14 CFR section 91.215 sets out requirements for ATC transponder and altitude reporting equipment and use. This regulation includes procedures whereby aircraft not equipped with the required transponder equipment may get relief from the stipulated requirements. Additionally, those aircraft transiting the area that do not want to establish radio communication with ATC may also choose to circumnavigate the Class C airspace area. As set out in the associated Regulatory Evaluation Summary for this regulatory effort, the FAA believes that any costs associated with circumnavigation will be negligible.

The Rule

This amendment to part 71 of 14 CFR part 71 establishes a Class C airspace area and revokes the Class D airspace area at Springfield-Branson Regional Airport located in Springfield, MO. Springfield-Branson Regional Airport is a public-use facility with an operating control tower served by a Level III TRACON. The establishment of this Class C airspace area will require pilots to establish two-way radio communications with the ATC facility providing air traffic services prior to entering the airspace and thereafter maintain those communications while within the Class C airspace area. Implementation of the Class C airspace area will promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area.

Additionally, this action correctly identifies this Class C airport as the Springfield-Branson Regional Airport. The notice inadvertently listed the airport name incorrectly. This rule also corrects the coordinates for the Springfield-Branson Regional Airport, the Bird Field Airport, and also deletes the reference to the Springfield VORTAC coordinates. Further, this final rule correctly identifies the Class C airspace area as a continuous operation.

Definitions and operating requirements applicable to Class C airspace can be found in section 71.51 of part 71 and sections 91.1 and 91.130 of part 91 of the FAR. The coordinates for this airspace docket are based on North American Datum 83. Class C and Class D airspace designations are published, respectively, in paragraphs 4000 and 5000 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area listed in this document will be published subsequently in the Order and the Class D airspace area listed in this document will be removed subsequently from the Order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule is not ''a significant regulatory action'' as defined in the Executive Order and by the Department of Transportation Regulatory Policies and Procedures. This rule will not have a significant impact on a substantial number of small entities; will not constitute a barrier to international trade and does not contain any Federal intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

The FAA has determined that the establishment of the Springfield, MO, Class C airspace area at the Springfield-Branson Regional Airport will impose a one-time FAA administrative cost of $600 (1997 dollars). The FAA has also determined that this rule will impose a negligible cost on the aviation community (aircraft operators and fixed based operators).

The FAA will distribute a ''Letter To Airmen'' to all pilots residing within 50 miles of the Class C airspace site that

will explain the operation and airspace configuration of the Class C airspace area. The ''Letter to Airmen'' costs will be about $600 (1997 dollars). This one-time negligible cost will be incurred upon the establishment of the Class C airspace area.

To establish a Class C airspace area at Springfield-Branson Regional Airport, MO, the FAA does not expect to incur any additional costs for ATC staffing, training, or facility equipment. The FAA can accommodate participating traffic with current staffing levels. The FAA will train its controller force in Class C airspace procedures during regularly scheduled briefing sessions routinely held at the airport. Thus, no additional training costs or equipment requirements are anticipated.

The establishment of Class C airspace throughout the country has required sectional charts to be revised by removing existing airspace configurations and incorporating the new Class C airspace boundaries. The FAA currently revises sectional charts every 6 months to reflect changes to the airspace environment. Those changes required to depict Class C airspace are made routinely during these charting cycles. The periodic changes to these charts are considered routine operating expenses of the FAA. Thus, the FAA does not expect to incur any additional charting costs as the result of the Springfield-Branson Regional Airport Class C airspace area.

Most aircraft operating in the vicinity of the Springfield-Branson Regional Airport Class C airspace area already have an altitude encoding transponder and two-way radio communications capability. Therefore, there will be no equipment costs to aircraft operators as a result of this rule.

The FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications may choose to circumnavigate the Springfield-Branson Regional Airport Class C airspace area. However, the FAA contends that these operators could circumnavigate the Class C airspace area without significantly deviating from their regular flight paths. The operators who choose to fly beyond the lateral boundaries will be required to navigate an additional 1 to 6 nautical miles, adding an additional 2 to 12 minutes of flight time per trip. For aircraft costing approximately $75 per hour to operate, the circumnavigation cost amounts to an additional $2.50 to $15.00 per flight. Operators could remain clear of the Class C airspace area by flying above the ceiling of 5,300 feet mean sea level (MSL), beneath the outer floor of 2,500 feet MSL, or beyond the lateral boundaries. Thus, the FAA believes that any circumnavigation costs due to this rulemaking will be negligible.

The establishment of the Springfield-Branson Regional Airport Class C airspace area is not expected to have any adverse impacts on the operations at Bird Field. Bird Field is a satellite airport, approximately 5 nautical miles north of Springfield-Branson Regional Airport. The Class C airspace area will exclude the airspace encompassing a 1-mile radius around Bird Field. Most pilots using this airport will probably circumnavigate the Class C airspace area.

The benefits of the Springfield-Branson Regional Airport, MO, lass C airspace area are enhanced aviation safety and improved operational efficiency. The Springfield-Branson Regional Airport Class C airspace area will lower the risk of midair collisions as a result of increased positive control of airspace around the Springfield-Branson Regional Airport.

The establishment of the Springfield-Branson Regional Airport Class C airspace area will impose a negligible, if any, cost on the aviation community and a cost of about $600 on the FAA. The FAA has determined that in view of the negligible cost of compliance, enhanced aviation safety and operational efficiency, establishment of the Springfield-Branson Regional Airport Class C airspace area will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small businesses and other small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility analysis if a rule will have a significant economic impact on a substantial number of small entities.

The FAA certifies that this final rule will impose negligible additional costs upon some operators in the Springfield-Branson Regional Airport Class C airspace area, therefore, the rule will not have a significant economic impact on a substantial number of small entities.

Initial Trade Impact Assessment

The rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandate Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million adjusted annually for inflation in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the

Federal Aviation Administration Order 7400.9E, Airspace Designations

and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 4000 Subpart C—Class C Airspace.

* * * * *

ACE MO C Springfield-Branson Regional Airport, MO [New]

Springfield-Branson Regional Airport, MO
(Lat. 37°14′40″ N., long. 93°23′13″ W.)
Bird Field Airport
(Lat. 37°19′12″ N., long. 93°25′12″ W.)

That airspace extending upward from the surface to, and including, 5,300 feet MSL within a 5-mile radius of Springfield-Branson Regional Airport, excluding that airspace within a 1-mile radius of the Bird Field Airport and that airspace extending upward from 2,500 feet MSL to, and including, 5,300 feet MSL within a 10-mile radius of Springfield-Branson Regional Airport.

* * * * *

Paragraph 5000 Subpart D-Class D Airspace.

* * * * *

ACE MO D Springfield, MO [Removed]

* * * * *

Issued in Washington, DC, on May 13, 1998.

John S. Walker,

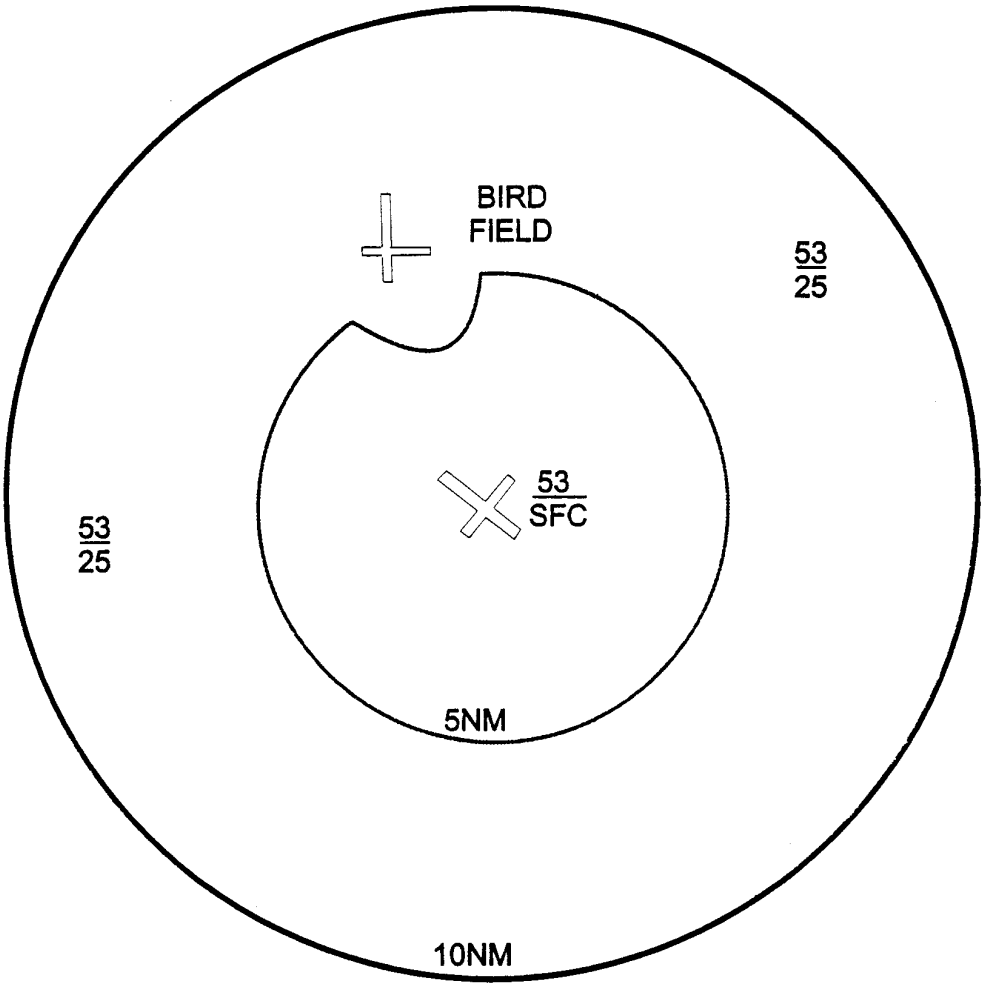
Program Director for Air Traffic Airspace Management.

BILLING CODE 4910–13–P

SPRINGFIELD-BRANSON REGIONAL

CLASS C AIRSPACE AREA

(NOT TO BE USED FOR NAVIGATION)



Prepared by the

FEDERAL AVIATION ADMINISTRATION

Air Traffic Publications

ATA-10

[FR Doc. 98–13139 Filed 5–15–98; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29221; Amdt. No. 409]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting its amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on May 8, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, June 18, 1998.

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

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

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 409 effective date, June 18, 1998]

From	To	MEA
§ 95.1001 Direct Routes, U.S. 95.101 Amber Federal Airway 1 is Amended to Read in Part		
Campbell Lake, AK NDB	Takotna River, AK NDB	*10000
*9500–MOCA		
Takotna River, AK NDB	North River, AK NDB	6000

From To	Total distance	Changeover point		Track angle	MEA	MAA
		Distance	From			
§ 95.5000 HIgh Altitude RNAV Routes J888R is Amended to Read in Part						
Mousy, AK W/P	196				28000	45000
Ozzie, AK W/P				230/045 to Ozzie		

From	To	MEA
§ 95.6002 VOR Federal Airway 2 is Amended to Read in Part		
Bismarck, ND VOR/DME	Jamestown, ND VOR/DME	4000

From	To	MEA
§ 95.6004 VOR Federal Airway 4 is Amended to Read in Part		
Lexington, KY Vortac	Cicke, KY FIX	3000
§ 95.6009 VOR Federal Airway 9 is Amended to Read in Part		
Janesville, WI VORTAC	Madison, WI VORTAC	3000
§ 95.6012 VOR Federal Airway 12 is Amended to Read in Part		
Wichita, KS VORTAC *4500–MRA	*Indic, KS FIX	3600
§ 95.6013 VOR Federal Airway 13 is Amended to Read in Part		
Fort Smith, AR VORTAC *5000–MRA	*Cheso, AR FIX	3400
§ 95.6054 VOR Federal Airway 54 is Amended to Read in Part		
Texarkana, AR VORTAC *4000–MRA	*Washo, AR FIX	2200
Washo, AR FIX *1800–MOCA	Caney, AR FIX	*3500
Caney, AR FIX *1900–MOCA	Malve, AR FIX	*3000
Malva, AR FIX	Little Rock, AR VORTAC	2000
§ 95.6055 VOR Federal Airway 55 is Amended to Read in Part		
Siren, WI VOR/DME	Brainerd, MN VORTAC	6000
Grand Forks, ND VOR/DME *12000–MRA **3600–MOCA	*Lakes, ND FIX	**8000
§ 95.6097 VOR Federal Airway 97 is Amended to Read in Part		
Lexington, KY VORTAC	Darks, KY FIX	3000
Janesville, WI VORTAC	Thebo, WI FIX	3000
§ 95.6139 VOR Federal Airway 139 is Amended to Read in Part		
Wilmington, NC VORTAC *4000–MRA	*Kobby, NC FIX	2000
§ 95.6171 VOR Federal Airway 171 is Amended to Read in Part		
Lexington, KY, VORTAC	McFee, KY FIX	3000
§ 95.6177 VOR Federal Airway 177 is Amended to Read in Part		
Janesville, WI VORTAC	Madison, WI VORTAC	3000
§ 95.6178 VOR Federal Airway 178 is Amended to Read in Part		
McFee, KY FIX	Lexington, KY VORTAC	3000
Lexington, KY VORTAC	Trent, KY FIX	3000
§ 95.6310 VOR Federal Airway 310 is Amended to Read in Part		
Burch, NC FIX *2400–MOCA	Greensboro, NC VORTAC	*3500
§ 95.6339 VOR Federal Airway 339 is Amended to Read in Part		
Hazard, KY VOR/DME	Trent, KY FIX	4000
Trent, KY FIX	Masse, KY FIX	3000
Masse, KY FIX	Sprow, KY FIX	3000
§ 95.6493 VOR Federal Airway 493 is Amended to Read in Part		
Lexington, KY VORTAC	York, KY VORTAC	3000
§ 95.6510 VOR Federal Airway 510 is Amended to Read in Part		
Bismarck, ND VOR/DME	*Lakes, ND FIX	3900

From	To	MEA
*1200–MRA Lakes, ND FIX	Jamestown, ND VOR/DME	3900
§ 95.6517 VOR Federal Airway 517 is Amended to Read in Part		
London, KY VORTAC Logic, KY FIX	Logic, KY FIX Falmouth, KY VOR/DME	3300 2800
§ 95.6607 VOR Federal Airway 607 is Added to Read		
Mendocino, CA VORTAC Yager, CA FIX	Yager, CA FIX Arcata, CA VOR/DME	9000 8000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airways Changeover Points V–4 is Amended to Delete			
Lexington, KY VORTAC	Newcombe, KY VORTAC	37	Lexington.
V–124 is Amended by Adding			
Hot Springs, AR VOR/DME	Little Rock, AR VORTAC	14	Hot Springs.
V–430 is Amended by Adding			
. Devils Lake, ND VOR/DME	Minot, ND VORTAC	40	Devils Lake.
V–493 is Amended to Delete			
Lexington, Ky VORTAC	York, KY VORTAC	41	Lexington.

[FR Doc. 98–12997 Filed 5–15–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to reflect a new delegation that authorizes the Division Directors, Office of Device Evaluation (ODE), Center for Devices and Radiological Health (CDRH) to approve, disapprove, or withdraw approval of product development protocols and applications for premarket approval for medical devices.

EFFECTIVE DATE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT:
Debra A. Baclawski, Center for Devices and Radiological Health (HFZ–026), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–1060, or
Donna G. Page, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority regulation in subpart B of part 5 (21 CFR part 5) by adding authorities to additional officials within CDRH under § 5.53 *Approval, disapproval, or withdrawal of approval of product development protocols and applications for premarket approval for medical devices.* As a result of reengineering initiatives within CDRH, for the Premarket Approval and Product Development Protocol Programs, this delegation will improve the efficiency of operations for these programs.

These authorities will not be further redelegated at this time.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. Section 5.53 is amended by revising paragraphs (a)(1) and (b)(1)(i) to read as follows:

§ 5.53 Approval, disapproval, or withdrawal of approval of product development protocols and applications for premarket approval for medical devices.

(a) * * *

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), the Director and Deputy Directors, Office of Device Evaluation (ODE), CDRH, and the Division Directors, ODE, CDRH.

* * * * *

(b)(1) * * *

(i) The Director and Deputy Directors, CDRH, the Director and Deputy Directors, ODE, CDRH, and the Division Directors, ODE, CDRH.

* * * * *

Dated: May 7, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–13046 Filed 5–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 507

Manufacture, Sale, Wear, Commercial Use and Quality Control of Heraldic Items

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: This revision authorizes the manufacture and sale of full size military medals and decorations. In the past the manufacture and sale of these items was prohibited except under Government contract through the Defense Personnel Support Center. In coordination with all the Services, the Office of the Secretary of Defense approved the manufacture and sale of full size military medals and decorations with the provision that no version of the Medal of Honor can be manufactured except under Government contract with the Defense Personnel Support Center. This rule also revises the Department of the Army policy (Army Regulation 672–8) governing the manufacture, sale, reproduction, possession, and wearing of military decorations, medals, badges, and insignia. This revision establishes responsibility for authorizing the incorporation of insignia designs in commercial articles; adds procedures for processing a request to use Army insignia and the Army emblem design in advertisement or promotional materials; clarifies insignia items that are controlled heraldic items; and defines the certification process for heraldic items. This revision has a direct affect on Departments of the Army and Air Force personnel who design, procure from private industry and who wear military insignia.

EFFECTIVE DATE: May 18, 1998.

ADDRESSES: Director, The Institute of Heraldry, 9325 Gunston Road, Room S–112, Fort Belvoir, Virginia 22060–5579.

FOR FURTHER INFORMATION CONTACT: Stanley W. Haas, Chief, Technical and Production Division, telephone (703) 806–4984.

SUPPLEMENTARY INFORMATION:

a. Background

The wear, manufacture, and sale of decorations, medals, badges, and insignia is restricted by 18 U.S.C. 701 and 704. The Institute of Heraldry, U.S. Army has been designated to act in behalf of the Department of Defense, Department of the Army and Department of the Air Force in establishing regulations governing control in manufacturing and quality. The revision was previously announced in the proposed rule section of the **Federal Register**, Vol. 63, No. 47, Pages 11858–11862,Wednesday, March 11, 1998 for public comment.

b. Comments and Responses

No comments were received on the proposed rule.

Executive Order 12866

This rule is not a major rule as defined by Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act has no bearing on this rule.

Paperwork Reduction Act

This rule does not contain reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 507

Decorations, Medals, Awards.

Accordingly, 32 CFR Part 507 is revised to read as follows:

PART 507—MANUFACTURE AND SALE OF DECORATIONS, MEDALS, BADGES, INSIGNIA, COMMERCIAL USE OF HERALDIC DESIGNS AND HERALDIC QUALITY CONTROL PROGRAM

Subpart A—Introduction

Sec.
507.1 Purpose.
507.2 References.
507.3 Explanation of abbreviations and terms.
507.4 Responsibilities.
507.5 Statutory authority.

Subpart B—Manufacture and sale of Decorations, Medals, Badges, and Insignia

507.6 Authority to manufacture.
507.7 Authority to sell.
507.8 Articles authorized for manufacture and sale.
507.9 Articles not authorized for manufacture or sale.

Subpart C—Commercial Use of Heraldic Designs

507.10 Incorporation of designs or likenesses of approved designs in commercial articles.
507.11 Reproduction of designs.
507.12 Possession and wearing.

Subpart D—Heraldic Quality Control Program

507.13 General.
507.14 Controlled heraldic items.
507.15 Certification of heraldic items.
507.16 Violations and penalties.
507.17 Procurement and wear of heraldic items.
507.18 Processing complaints of alleged breach of policies.

Authority: 10 U.S.C. 3012, 18 U.S.C. 701, 18 U.S.C. 702

Subpart A—Introduction

§ 507.1 Purpose.

This part prescribes the Department of the Army and the Air Force policy governing the manufacture, sale, reproduction, possession, and wearing of military decorations, medals, badges, and insignia. It also establishes the Heraldic Item Quality Control Program to improve the appearance of the Army and Air Force by controlling the quality of heraldic items purchased from commercial sources.

§ 507.2 References.

Related publications are listed in paragraphs (a) through (f) of this section. (A related publication is merely a source of additional information. The user does not have to read it to understand this part). Copies of referenced publications may be reviewed at Army and Air Force Libraries or may be purchased from the National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

(a) AFI 36–2903, Dress and Personal Appearance of Air Force Personnel.

(b) AR 360–5, Public Information.

(c) AR 670–1, Wear and Appearance of Army Uniforms and Insignia.

(d) AR 840–1, Department of the Army Seal, and Department of the Army Emblem and Branch of Service Plaques.

(e) AR 840–10, Heraldic Activities, Flags, Guidons, Streamers, Tabards and Automobile Plates.

(f) AFR 900–3, Department of the Air Force Seal, Organizational Emblems, Use and Display of Flags, Guidons, Streamers, and Automobile and Aircraft Plates.

§ 507.3 Explanation of abbreviations and terms.

(a) *Abbreviations.*

(1) AFB—Air Force Base.

(2) DA—Department of the Army.

(3) DCSPER—Deputy Chief of Staff for Personnel.
(4) DSCP—Defense Supply Center Philadelphia.
(5) DUI—distinctive unit insignia.
(6) ROTC—Reserve Officers' Training Corps.
(7) SSI—shoulder sleeve insignia.
(8) TIOH—The Institute of Heraldry.
(9) USAF—United States Air Force.
(b) *Terms.*—(1) *Cartoon.* A drawing six times actual size, showing placement of stitches, color and size of yarn and number of stitches.
(2) *Certificate of authority to manufacture.* A certificate assigning manufacturers a hallmark and authorizing manufacture of heraldic items.
(3) *Hallmark.* A distinguishing mark consisting of a letter and numbers assigned to certified manufacturers for use in identifying manufacturers of insignia.
(4) *Heraldic items.* All items worn on the uniform to indicate unit, skill, branch, award or identification and a design has been established by TIOH on an official drawing.
(5) *Letter of agreement.* A form signed by manufacturers before certification, stating that the manufacturer agrees to produce heraldic items in accordance with specific requirements
(6) *Letter of authorization.* A letter issued by TIOH that authorizes the manufacture of a specific heraldic item after quality assurance inspection of a preproduction sample.
(7) *Tools.* Hubs, dies, cartoons, and drawings used in the manufacture of heraldic items.

§ 507.4 Responsibilities.

(a) *Deputy Chief of Staff for Personnel (DCSPER), Army.* The DCSPER has staff responsibility for heraldic activities in the Army.
(b) *The Director, The Institute of Heraldry (TIOH).* The Director, TIOH, will—
(1) Monitor the overall operation of the Heraldic Quality Control Program.
(2) Authorize the use of insignia designs in commercial items.
(3) Certify insignia manufacturers.
(4) Inspect the quality of heraldic items.
(c) *The Commander, Air Force Personnel Center, Randolph AFB, TX 78150–4739.* The Commander has staff responsibility for heraldic activities in the Air Force.
(d) *The Chief, Air Force Personnel Center Commander's Programs Branch (HQ AFPC/DPSFC), 550 C Street West, Suite 37, Randolph AFB, TX 78150–4739.* The Chief, Commander's Programs Branch is responsible for granting permission for the incorporation of certain Air Force badges and rank insignia designs in commercial items.
(e) *Commander, Air Force Historical Research Agency (AFHRA/RSO), Maxwell AFB, AL 36112–6424.* The Commander, AFHRA/RSO, is responsible for granting permission for use of the Air Force seal, coat of arms, and crest.
(f) *Commanders.* Commanders are responsible for purchasing heraldic items that have been produced by manufacturers certified by TIOH. Commanders will ensure that only those heraldic items that are of quality and design covered in the specification and that have been produced by certified manufacturers are worn by personnel under their command.

§ 507.5 Statutory authority.

(a) The wear, manufacture, and sale of military decorations, medals, badges, their components and appurtenances, or colorable imitations of them, are governed by section 704, title 18, United States Code (18 U.S.C. 704).
(b) The manufacture, sale, possession, and reproduction of badges, identification cards, insignia, or other designs, prescribed by the head of a U.S. department or agency, or colorable imitations of them, are governed by Title 18, United States Code, Section 701 (18 U.S.C. 701).
(c) This part incorporates the statutory provisions.

Subpart B—Manufacture and Sale of Decorations, Medals, Badges, and Insignia.

§ 507.6 Authority to manufacture.

(a) A certificate of authority to manufacture heraldic articles may be granted by the Institute of Heraldry.
(1) Certificates of authority will be issued only to companies who have manufacturing capability and agree to manufacture heraldic items according to applicable specifications or purchase descriptions.
(2) The certificate of authority is valid only for the individual or corporation indicated.
(3) A hallmark will be assigned to each certified manufacturer. All insignia manufactured will bear the manufacturer's hallmark.
(b) A certificate of authority may be revoked or suspended under the procedures prescribed in subpart D of this part.
(c) Manufacturers will submit a preproduction sample to TIOH of each item they manufacture for certification under the Heraldic Quality Control Program. A letter of certification authorizing manufacture of each specific item will be issued provided the sample meets quality assurance standards.
(d) A copy of the certified manufactures list will be furnished to the Army and Air Force Exchange Service and, upon request, to Army and Air Force commanders.

§ 507.7 Authority to sell.

No certificate of authority to manufacture is required to sell articles listed in § 507.8 of this part; however, sellers are responsible for insuring that any article they sell is manufactured in accordance with Government specifications using government furnished tools, bears a hallmark assigned by TIOH, and that the manufacturer has received a certification to manufacture that specific item prior to sale.

§ 507.8 Articles authorized for manufacture and sale.

(a) The articles listed in paragraphs (a)(1) through (10) of this section are authorized for manufacture and sale when made in accordance with approved specifications, purchase descriptions or drawings.
(1) All authorized insignia (AR 670–1 and AFI 36–2903).
(2) Appurtenances and devices for decorations, medals, and ribbons such as oak leaf clusters, service stars, arrowheads, V-devices, and clasps.
(3) Combat, special skill, occupational and qualification badges and bars.
(4) Identification badges.
(5) Fourrageres and lanyards.
(6) Lapel buttons.
(7) Decorations, service medals, and ribbons, except for the Medal of Honor.
(8) Replicas of decorations and service medals for grave markers. Replicas are to be at least twice the size prescribed for decorations and service medals.
(9) Service ribbons for decorations, service medals, and unit awards.
(10) Rosettes.
(11) Army emblem and branch of service plaques.
(b) Variations from the prescribed specifications for the items listed in paragraph (a) of this section are not permitted without prior approval, in writing, by TIOH.

§ 507.9 Articles not authorized for manufacture or sale.

The following articles are not authorized for manufacture and sale, except under contract with DSCP:
(a) The Medal of Honor.
(b) Service ribbon for the Medal of Honor.

(c) Rosette for the Medal of Honor.
(d) Service flags (prescribed in AR 840–10 or AFR 900–3).
(e) Army seal.
(f) Commercial articles for public sale that incorporate designs or likenesses of decorations, service medals, and service ribbons.
(g) Commercial articles for public sale that incorporate designs or likenesses of designs of insignia listed in § 507.8 of this part, except when authorized by the Service concerned.

Subpart C—Commercial Use of Heraldic Designs

§ 507.10 Incorporation of designs or likenesses of approved designs in commercial articles.

The policy of the Department of the Army and the Department of the Air Force is to restrict the use of military designs for the needs or the benefit of personnel of their Services.

(a) Except as authorized in writing by the Department of the Army or the Department of the Air Force, as applicable, the manufacture of commercial articles incorporating designs or likenesses of official Army/Air Force heraldic items is prohibited. However, certain designs or likenesses of insignia such as badges or organizational insignia may be incorporated in articles manufactured for sale provided that permission has been granted as specified in paragraphs (a) (1) and (2) of this section.

(1) *Designs approved for use of the Army.* The Director, The Institute of Heraldry, 9325 Gunston Road, Room S–112, Fort Belvoir, VA 22060–5579, is responsible for granting permission for the incorporation of certain Army insignia designs and the Army emblem in commercial articles manufactured for sale. Permission for such use will be in writing. Commanders of units authorized a SSI or DUI may authorize the reproduction of their SSI or DUI on commercial articles such as shirts, tie tacks, cups, or plaques. Permission for use of a SSI or DUI will be submitted in writing to the commander concerned. Authorization for incorporation of designs or likenesses of designs in commercial items will be granted only to those manufacturers who agree to offer these items for sale only to Army and Air Force Exchange Service and outlets that sell primarily to military personnel and their dependents.

(2) *Designs approved for use of the Air Force.* Headquarters, Air Force Personnel Center, Chief, Commander's Programs Branch (HQ AFPC/DPSFC), 550 C Street West, Suite 37, Randolph AFB, TX 78150–4739, is responsible for granting permission for the incorporation of certain Air Force designs for commercial articles manufactured for sale. The Commander, Air Force Historical Research Agency, AFHRA/RSO, Maxwell AFB, AL 36112–6678, is responsible for granting permission for the incorporation of the coat of arms, crest, seal and organizational emblems. Such permission will be in writing. Authorization for incorporation of designs or likenesses of designs in commercial items will be granted only to those manufacturers who agree to offer these items for sale only to the Army and Air Force Exchange Service, or to those outlets that sell primarily to military personnel and their dependents.

(b) In the case of the Honorable Service lapel button, a general exception is made to permit the incorporation of that design in articles manufactured for public sale provided that such articles are not suitable for wear as lapel buttons or pins.

§ 507.11 Reproduction of designs.

(a) The photographing, printing, or, in any manner making or executing any engraving, photograph, print, or impression in the likeness of any decoration, service medal, service ribbon, badge, lapel button, insignia, or other device, or the colorable imitation thereof, of a design prescribed by the Secretary of the Army or the Secretary of the Air Force for use by members of the Army or the Air Force is authorized provided that such reproduction does not bring discredit upon the military service and is not used to defraud or to misrepresent the identification or status of an individual, organization, society, or other group of persons.

(b) The use for advertising purposes of any engraving, photograph, print, or impression of the likeness of any Department of the Army or Department of the Air Force decoration, service medal, service ribbon, badge, lapel button, insignia, or other device (except the Honorable Service lapel button) is prohibited without prior approval, in writing, by the Secretary of the Army or the Secretary of the Air Force except when used to illustrate a particular article that is offered for sale. Request for use of Army insignia in advertisements or promotional materials will be processed through public affairs channels in accordance with AR 360–5, paragraph 3–37.

(c) The reproduction in any manner of the likeness of any identification card prescribed by Department of the Army or Department of the Air Force is prohibited without prior approval in writing by the Secretary of the Army or Secretary of the Air Force.

§ 507.12 Possession and wearing.

(a) The wearing of any decoration, service medal, badge, service ribbon, lapel button, or insignia prescribed or authorized by the Department of the Army and the Department of the Air Force by any person not properly authorized to wear such device, or the use of any decoration, service medal, badge, service ribbon, lapel button, or insignia to misrepresent the identification or status of the person by whom such is worn is prohibited. Any person who violates the provision of this section is subject to punishment as prescribed in the statutes referred to in § 507.5 of this part.

(b) Mere possession by a person of any of the articles prescribed in § 507.8 of this part is authorized provided that such possession is not used to defraud or misrepresent the identification or status of the individual concerned.

(c) Articles specified in § 507.8 of this part, or any distinctive parts including suspension ribbons and service ribbons) or colorable imitations thereof, will not be used by any organization, society, or other group of persons without prior approval in writing by the Secretary of the Army or the Secretary of the Air Force.

Subpart D—Heraldic Quality Control Program

§ 507.13 General.

The heraldic quality control program provides a method of ensuring that insignia items are manufactured with tools and specifications provided by TIOH.

§ 507.14 Controlled heraldic items.

The articles listed in § 507.8 of this part are controlled heraldic items and will be manufactured in accordance with Government specifications using Government furnished tools or cartoons. Tools and cartoons are not provided to manufacturers for the items in paragraphs (a) through (e) of this section. However, manufacture will be in accordance with the Government furnished drawings.

(a) Shoulder loop insignia, ROTC, U.S. Army.
(b) Institutional SSI, ROTC, U.S. Army.
(c) Background trimming/flashes, U.S. Army.
(d) U.S. Air Force organizational emblems for other than major commands.
(e) Hand embroidered bullion insignia.

§ 507.15 Certification of heraldic items.

A letter of certification to manufacture each heraldic item, except those listed in § 507.14 (a) through (e) of this part, will be provided to the manufacturer upon submission of a preproduction sample. Manufacture and sale of these items is not authorized until the manufacturer receives a certification letter from TIOH.

§ 507.16 Violations and penalties.

A certificate of authority to manufacture will be revoked by TIOH upon intentional violation by the holder thereof of any of the provisions of this part, or as a result of not complying with the agreement signed by the manufacturer in order to receive a certificate. Such violations are also subject to penalties prescribed in the Acts of Congress (§ 507.5 of this part). A repetition or continuation of violations after official notice thereof will be deemed prima facie evidence of intentional violation.

§ 507.17 Procurement and wear of heraldic items.

(a) The provisions of this part do not apply to contracts awarded by the Defense Personnel Support Center for manufacture and sale to the U.S. Government.

(b) All Army and Air Force service personnel who wear quality controlled heraldic items that were purchased from commercial sources will be responsible for ensuring that the items were produced by a certified manufacturer. Items manufactured by certified manufacturers will be identified by a hallmark and/or a certificate label certifying the item was produced in accordance with specifications.

(c) Commanders will ensure that only those heraldic items that are of the quality and design covered in the specifications and that have been produced by certified manufacturers are worn by personnel under their command. Controlled heraldic items will be procured only from manufacturers certified by TIOH. Commanders procuring controlled heraldic items, when authorized by local procurement procedures, may forward a sample insignia to TIOH for quality assurance inspection if the commander feels the quality does not meet standards.

§ 507.18 Processing complaints of alleged breach of policies.

The Institute of Heraldry may revoke or suspend the certificate of authority to manufacture if there are breaches of quality control policies by the manufacturer. As used in this paragraph, the term quality control policies include the obligation of a manufacturer under his or her ''Agreement to Manufacture,'' the quality control provisions of this part, and other applicable instructions provided by TIOH.

(a) *Initial processing.* (1) Complaints and reports of an alleged breach of quality control policies will be forwarded to the Director, The Institute of Heraldry, 9325 Gunston Road, Room S–112, Fort Belvoir, VA 22060–5579 (hereinafter referred to as Director).

(2) The Director may direct that an informal investigation of the complaint or report be conducted.

(3) If such investigation is initiated, it will be the duty of the investigator to ascertain the facts in an impartial manner. Upon conclusion of the investigation, the investigator will submit a report to the appointing authority containing a summarized record of the investigation together with such findings and recommendations as may be appropriate and warranted by the facts.

(4) The report of investigation will be forwarded to the Director for review. If it is determined that a possible breach of quality control policies has occurred, the Director will follow the procedures outlined in paragraphs (b) through (g) of this section.

(b) *Voluntary performance.* The Director will transmit a registered letter to the manufacturer advising of the detailed allegations of breach and requesting assurances of voluntary compliance with quality control policies. No further action is taken if the manufacturer voluntarily complies with the quality control policies; however, any further reoccurrence of the same breach will be considered refusal to perform.

(c) *Refusal to perform.* (1) If the manufacturer fails to reply within a reasonable time to the letter authorized by paragraph (b) of this section, or refuses to give adequate assurances that future performance will conform to quality control policies, or indicates by subsequent conduct that the breach is continuous or repetitive, or disputes the allegations of breach, the Director will direct that a public hearing be conducted on the allegations.

(2) A hearing examiner will be appointed by appropriate orders. The examiner may be either a commissioned officer or a civilian employee above the grade of GS–7.

(3) The specific written allegations, together with other pertinent material, will be transmitted to the hearing examiner for introduction as evidence at the hearing.

(4) Manufacturers may be suspended for failure to return a loaned tool without referral to a hearing specified in paragraph (c)(1) of this section; however, the manufacturer will be advised, in writing, that tools are overdue and suspension will take effect if not returned within the specified time.

(d) *Notification to the manufacturer by examiner.* Within a 7 day period following receipt by the examiner of the allegations and other pertinent material, the examiner will transmit a registered letter of notification to the manufacturer informing him or her of the following:

(1) Specific allegations.

(2) Directive of the Director requiring the holding of a public hearing on the allegations.

(3) Examiner's decision to hold the public hearing at a specific time, date, and place that will be not earlier than 30 days from the date of the letter of notification.

(4) Ultimate authority of the Director to suspend or revoke the certificate of authority should the record developed at the hearing so warrant.

(5) Right to—

(i) A full and fair public hearing.

(ii) Be represented by counsel at the hearing.

(iii) Request a change in the date, time, or place of the hearing for purposes of having reasonable time in which to prepare the case.

(iv) Submit evidence and present witnesses in his or her own behalf.

(v) Obtain, upon written request filed before the commencement of the hearing, at no cost, a verbatim transcript of the proceedings.

(e) *Public hearing by examiner.* (1) At the time, date, and place designated in accordance with paragraph (d) (3) of this section, the examiner will conduct the public hearing.

(i) A verbatim record of the proceeding will be maintained.

(ii) All previous material received by the examiner will be introduced into evidence and made part of the record.

(iii) The Government may be represented by counsel at the hearing.

(2) Subsequent to the conclusion of the hearing, the examiner will make specific findings on the record before him or her concerning each allegation.

(3) The complete record of the case will be forwarded to the Director.

(f) *Action by the Director.* (1) The Director will review the record of the hearing and either approve or disapprove the findings.

(2) Upon arrival of a finding of breach of quality control policies, the manufacturer will be so advised.

(3) After review of the findings, the certificate of authority may be revoked

or suspended. If the certificate of authority is revoked or suspended, the Director will—

(i) Notify the manufacturer of the revocation or suspension.

(ii) Remove the manufacturer from the list of certified manufacturers.

(iii) Inform the Army and Air Force Exchange Service of the action.

(g) *Reinstatement of certificate of authority.* The Director may, upon receipt of adequate assurance that the manufacturer will comply with quality control policies, reinstate a certificate of authority that has been suspended or revoked.

Thomas B. Proffitt,

Director.

[FR Doc. 98–13115 Filed 5–15–98; 8:45 am]

BILLING CODE 3710–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6015–1]

RIN 2060–A100

Withdrawal of Direct Final Rule for Monitoring, Recordkeeping and Reporting Requirement Revisions to the Petroleum Refineries NESHAP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule for monitoring, recordkeeping and reporting requirement revisions to the Petroleum Refineries NESHAP. The EPA published the direct final rule on March 20, 1998 at 63 FR 13533–13541. As stated in that **Federal Register** document, if significant adverse comments were received by April 20, 1998, the rule would not become effective and notice would be published in the **Federal Register**. The EPA subsequently received adverse comments on that final rule. The EPA will address the comments received in a subsequent final action based on a companion proposed rule (63 FR 13587–13589). The EPA will not institute a second comment period on this document.

DATES: The direct final rule published at 63 FR 13533–13541 is withdrawn as of May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James Durham, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5672.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the March 20, 1998 **Federal Register** and in the informational document located in the proposed rule section of the March 20, 1998 **Federal Register**.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Petroleum refineries, Reporting and recordkeeping requirements, Storage vessels.

Dated: May 12, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–13123 Filed 5–15–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–204; RM–9143; RM–9158]

Radio Broadcasting Services; McFarland and Coalinga, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 247A to McFarland, California, as that community's second local FM transmission service in response to a petition filed on behalf of Kerner Broadcasting Company (RM–9143). Additionally, FM Channel 247A is allotted to Coalinga, California, as that community's second local commercial FM transmission service in response to a petition filed on behalf of James K. Zahn (RM–9158). Although the proposals were mutually-exclusive initially, the placement of a site restriction on the Coalinga request enables Channel 247A to be allotted to each community consistent with the technical requirements of the Commission's Rules. Coordinates used for Channel 247A at McFarland, California, are 35–40–16 and 119–20–30. Coordinates used for Channel 247A at Coalinga, California, are 36–12–37 and 120–25–35. With this action, the proceeding is terminated.

EFFECTIVE DATE: June 15, 1998. A filing window for Channel 247A at McFarland, Califorina, and for Channel 247A at Coalinga, California, will not be opened at this time. Instead, the issue of opening a filing window for that channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–204, adopted April 22, 1998, and released May 1, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

47 CFR Part 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 247A at Coalinga.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 247A at McFarland.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–12906 Filed 5–15–98; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[FRA Docket No. PB–9, Notice No. 12]

RIN 2130–AB22

Two-Way End-of-Train Telemetry Devices and Certain Passenger Train Operations; Correction

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Correction to final rule preamble.

SUMMARY: This document contains a correction to the preamble of the final rule on two-way end-of-train telemetry devices (two-way EOTs) and certain passenger train operations, which was published on Friday, May 1, 1998 (63 FR 24130). The final rule specifically addressed and clarified the applicability of the existing two-way EOT requirements to certain passenger train operations where multiple units of freight-type equipment, material handling cars, or express cars are part of a passenger train's consist.

FOR FURTHER INFORMATION CONTACT: James Wilson, Motive Power and Equipment Division, Office of Safety, RRS–14, FRA, 400 Seventh Street, SW, Stop 25, Washington, DC 20590 (telephone 202–632–3367); or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–12, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590 (telephone 202–632–3178).

SUPPLEMENTARY INFORMATION:

Background

The ''Regulatory Impact'' portion of the preamble to the final rule addressing Executive Order 12866 and DOT regulatory policies and procedures stated that because the requirements contained in the final rule clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA concluded that the final rule did not constitute a significant rule under either Executive Order 12866 or DOT's policies and procedures. However, FRA inadvertently omitted a statement that the impact of the rule would be so minimal that any further analysis was not warranted.

Need for Correction

As published, the ''Regulatory Impact'' portion of the preamble failed to inform the public of FRA's determination that the impact of the rule would be so minimal that any further analysis was not warranted. Thus, that portion of the preamble is in need of clarification.

Correction

Accordingly, the publication on May 1, 1998 of the final rule on two-way EOTs and certain passenger train operations, which was contained in FR Doc. 98–11408, is corrected as follows:

On page 24134 in the first column, at the end of the paragraph headed ''Executive Order 12866 and DOT Regulatory Policies and Procedures,'' the following sentence is added:

Furthermore, as the final rule is intended to clarify the applicability of the two-way EOT regulations and affects a very limited number of passenger train operations, FRA has determined that the impact of the rule would be so minimal that any further analysis was not warranted.

Issued in Washington, D.C., on May 12, 1998.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 98–13127 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970829214–8090–02; I.D. 082097B]

RIN 0648–AJ76

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Observer Health and Safety

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

ACTION: Final rule.

SUMMARY: NMFS amends the regulations that pertain to fishery observers and the vessels that carry them. This regulatory amendment implements measures to ensure the adequacy and safety of fishing vessels that carry observers. Owners and operators of fishing vessels that carry observers are required to comply with guidelines, regulations, and conditions in order to ensure that their vessels are adequate and safe for the purposes of carrying an observer and allowing normal observer functions.

DATES: Effective June 17, 1998.

ADDRESSES: Copies of the Regulatory Impact Review prepared for this action may be obtained from NMFS, SF3, 1315 East-West Highway, Silver Spring, MD 20910, Attn: William J. Bellows.

FOR FURTHER INFORMATION CONTACT: William J. Bellows, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended (16 U.S.C. 1801 *et seq.*), the Marine Mammal Protection Act, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Atlantic Tunas Convention Act, as amended (ATCA; 16 U.S.C. 971 *et seq.*) authorize the Secretary of Commerce (Secretary) to station observers aboard commercial fishing vessels to collect scientific data required for fishery and protected species conservation and management, to monitor incidental mortality and serious injury to marine mammals and to other species listed under the Endangered Species Act (ESA), and to monitor compliance with existing Federal regulations. In addition, pursuant to the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*) observers may be required in the South Pacific Tuna Fishery.

The Magnuson-Stevens Act directs that—

> ...the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—
>
> (1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and
>
> (2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

A proposed rule to implement the required measures was published in the **Federal Register** on September 22, 1997 (62 FR 49463), and invited public comment through October 22, 1997. Several comments were received late in the comment period requesting that the comment period be extended. NMFS extended the comment period 30 days (62 FR 55774, October 28, 1997).

Eleven letters of comment were received concerning the proposed rule. Of these 11, eight expressed opposition to the rule or to specific provisions in the rule, and one letter was signed by eight individuals who represented different industry organizations. Two letters expressed strong support for the rule, one of which was from an observer organization with approximately 200 members. One letter expressed neither opposition nor support but listed many problems that observers face on the job.

Comment 1: The publication of the rule was inadequately advertised/announced. It was not on any of the following notice mediums: NMFS bulletin boards, NMFS press release, NMFS homepage, or Alaska Region homepage. The commenter requested an extension of the 30-day comment period.

Response: The proposed rule was published in the **Federal Register** on September 22, 1997 (62 FR 49463). The comment period was extended for 30 days and was announced by publication in the **Federal Register** on October 28, 1997 (62 FR 55774). In addition to the October 28 publication of the extension of the comment period, both the proposed rule and the extension of the comment period were posted on the NMFS homepage and on the Alaska Region homepage during the extended comment period.

Comment 2: The 30-day extension of the comment period is grossly inadequate.

Response: NMFS disagrees. By extending the public comment period by an additional 30 days, NMFS doubled the length of the original comment period. NMFS believes that a 60-day public comment period is adequate.

Comment 3: Observers are not qualified to make a judgement regarding vessel safety.

Response: It is true that observers do not receive the same vessel safety examination training that U.S. Coast Guard (USCG) personnel do. However, NMFS observers are provided training that addresses vessel safety. For example, in the North Pacific observer training, observers are taught to look for obvious areas of non-compliance that may jeopardize their safety. In addition to viewing several safety videos, the observers are shown a set of ''safety tour'' slides in which they are asked to look for items on a safety check list. Section 600.746(c)(3) has been added to the rule; this section encourages the observer to check major safety items (as identified by the USCG) and to briefly check the vessel's major spaces for especially hazardous conditions. The intent of this rule is not to empower an observer as a USCG enforcement official. Its purpose is to encourage an observer to check the major safety items identified in § 600.746(c)(3); if these items are absent or unserviceable, the rule empowers the observer not to sail with the vessel until those deficiencies are corrected. The observer's pre-trip safety check will be made in accordance with published USCG guidance on some of the most important items that would be required in the event of an at-sea emergency.

Comment 4: The rule's evaluation that there will be no significant impact on a substantial number of small entities is wrong. If an observer refuses to board a vessel that is safe in accordance with USCG standards, the vessel could be delayed in departing long enough to miss an important part of a short season, resulting in significant lost opportunity to fish. The observer's refusal could be the result of poor judgement, lack of expertise or training, or vindictiveness.

Response: NMFS has added language to the rule in § 600.746(c)(3) that is intended to minimize, if not eliminate, the possibility of an observer making a decision, for whatever reason, regarding a safe vessel that would delay its beginning legal fishing at the optimum time. The above-mentioned section was added to the regulations in order to give the observer detailed guidance regarding the pre-trip safety check. In addition, this document makes it clear that the observer's safety check is to confirm that the USCG safety decal is current and to spot-check other safety items by conducting a brief walk through the vessel's major spaces to check for obviously hazardous conditions. NMFS believes that the training observers now receive is adequate to enable an observer to conduct the pre-trip safety check as discussed in the response to comment 3.

Comment 5: There are no provisions for redress and appeal in the event that a vessel is unnecessarily detained or impacted.

Response: There are no specific procedures for redress or appeal in these regulations. It would be redundant to include those legal procedures here because they are available to anyone who considers that he or she has experienced wrongful negative impact of any regulations. As is suggested in the response to comment 17, when a vessel operator disputes the observer's decision and is unable to reach a resolution, the vessel operator should call the USCG and request reexamination of the issue in dispute.

Comment 6: If the regulations were approved in the absence of USCG regulations, they would be inadequate.

Response: They are not being approved in the absence of USCG regulations. The intent of this rule is to build upon the USCG and other safety regulations. The regulations intend to insure the safety of observers at sea without duplicating USCG regulations, which are designed to insure the safety of all persons on board fishing vessels.

Comment 7: All vessels carrying observers are required to have a current safety decal; consequently, there is no basis for an observer refusing to board a vessel.

Response: If the decal is valid (current) and if no safety equipment has been lost, damaged, or is otherwise unserviceable, there should be no safety-related reasons for an observer to refuse boarding. If, on the other hand, the decal is current, but safety equipment is missing or unserviceable, the observer is authorized not to board the vessel.

Comment 8: The style of referring to other sections of the CFR is difficult to read and understand. Furthermore, some of the sections cited have not been written.

Response: This rule cites other sections of the CFR rather than duplicating those sections in order to make the regulations published in the **Federal Register** as concise as possible. NMFS wants the regulations to refer to the most recent versions of the regulations cited. If other agencies' regulations were repeated in NMFS' regulations, it would be nearly impossible for NMFS to keep the regulations current. By citing the other agencies' regulations, the reference is always to the most recently amended regulation. All cited sections have been written and published before they are incorporated into the CFR except for citations to the rule being enacted through this action. The regulatory text for this rule follows after this preamble. Some changes may have been too recent to appear in the CFR dated October 1996, which was the last-published CFR at the time that the proposed rule was published.

Comment 9: USCG no longer performs no-cost inspections of processor vessels.

Response: The commenter is correct. Processing vessels examined by private organizations comprise the only category of fishing vessels that pays to have inspections done. These for-fee inspections are in lieu of USCG dock-side examinations but do not preclude at-sea examinations by USCG. The inspections of processing vessels are required whether observer safety rules are in effect or not.

Comment 10: This rulemaking is premature; ''neither the industry nor NMFS is ready at this time to begin discussions on such rules. Before that discussion can begin, NMFS first needs to develop appropriate rules regarding onboard observers in all the other fisheries in which they have been deemed necessary.''

Response: This rule is required by the Magnuson-Stevens Act.

Comment 11: It is unrealistically generous to require that accommodations be equivalent to those of the vessel's officers. Observers do not warrant treatment as officers.

Response: This rule requires nothing specific regarding accommodations for observers. It merely refers to regulations already in place.

Comment 12: Under the regulations that would be put in place by this rule, if all vessels were required to carry

observers, all vessels would have to undergo safety inspections. This would mean the end of uninspected fishing vessels.

Response: Under the assumptions made by the commenter, it is true that if all vessels were required to carry observers, all of them would have to be examined. At the present time, however, not all vessels are required to carry observers. NMFS wants fishing vessels carrying observers to fish safely, and undergoing USCG safety examinations promotes safety.

Comment 13: What is the authority under which regional requirements governing observer accommodations might be developed? It is possible that these regional requirements could have unintended effects. For example, if the regional requirement deals with an issue that is judged subjectively, such as the adequacy of accommodations or food, the observer in applying that subjective judgement could keep a safe vessel from fishing.

Response: The authorities under which regional requirements are developed are the Magnuson-Stevens Act, the Marine Mammal Protection Act, and the ESA. The addition of § 600.746(c)(3) to the rule should eliminate the problem of subjective judgement in conducting the vessel's pre-trip safety check. It is not the intent of this rule to develop regional requirements.

Comment 14: If a vessel has a valid USCG safety decal, there should be no question concerning the vessel's safety. To then have an observer, who has the authority to refuse to board the vessel because of a safety deficiency, is double jeopardy.

Response: If a vessel has passed a USCG dock-side safety examination, the regulations indicate that such vessel would be considered safe with respect to the USCG regulations. However, it is possible that some requirements with which the vessel was in compliance at the time of the USCG safety examination may not be met at the time of boarding by an observer for a specific trip. NMFS has added language at § 600.746(c)(3) that encourages the observer to examine some of the most important items that would be required in the case of an emergency at sea. This approach is consistent with that applied by USCG in recognizing that changes in vessel safety may occur between the time when a USCG safety decal is issued and the beginning of subsequent fishing. NMFS notes that this rule gives an observer authority not to board an unsafe or inadequate vessel. If such a vessel is operating in a fishery with mandatory observer coverage, the result of the observer's refusing to board might be that the vessel would not be authorized to conduct fishing.

Comment 15: This rule cites other regulations already in place, which suggests that regulations to effect safety are already in place. That being the case, this rule will not change anything.

Response: This rule applies safety standards to all fisheries, including those for which no other observer regulations are in place. In fisheries with mandatory observer programs in place now, and for those in which mandatory programs may be established, this rule makes it a violation to fish without an observer aboard. This rule also requires vessels to submit to an otherwise voluntary inspection program to provide evidence of compliance with safety standards.

Comment 16: This rule is an attempt to exceed the authority conveyed by the Magnuson-Stevens Act in that it goes beyond USCG regulations by authorizing an observer to refuse to board an unsafe vessel, thereby keeping the vessel from fishing legally. It goes beyond what is necessary to provide a safe environment for an observer, and it gives an observer authority that Congress gave to USCG.

Response: NMFS believes that the rule does not go beyond what is required to provide a safe environment for observers and for other persons aboard fishing vessels. The intent of the rule is not to empower an observer with USCG enforcement official status; its intent is to provide a safe vessel for an assigned observer. The NMFS rule does not encroach on USCG authority to terminate a voyage. Rather, it conditions a vessel's ability to fish safely by requiring compliance with existing regulations enforced by the USCG. The authority to regulate fishing activities properly rests with NMFS.

Comment 17: If NMFS wants to require more than vessel-provided personal flotation devices (PFDs) and safety briefings, it should specifically identify the requirements that relate to observer safety rather than to such other safety concerns as the environment. NMFS should also consider which safety requirements warrant giving observers ''the extraordinary authority to prevent a vessel from undertaking a fishing trip.''

Response: NMFS is not giving greater significance to some USCG regulations than to others. NMFS is encouraging observers to check for compliance with existing regulations. A safety decal is considered to be evidence of compliance, but if there is other obvious non-compliance, the observer has the option of not boarding the vessel. If the vessel operator disputes the observer's decision, which should be based upon published USCG guidance on some of the most important items that would be required in the event of an at-sea emergency, and no resolution is reached, the vessel operator should call the USCG to request reexamination of the issue in dispute. The addition of § 600.746(c)(3) clarifies which items the observer should check at the time of boarding. The observer's pre-trip safety check will be made in accordance with published Coast Guard Guidance on some of the most important items that would be required in the event of an at-sea emergency. NMFS recognizes that, in some circumstances, an observer may raise a safety question that requires a vessel to wait for a USCG boarding before fishing. It is true that this could result in a loss of fishing days. In structuring the rule this way, NMFS had to weigh the impacts of this approach versus the impacts of alternative approaches. Just as there is a potential for a vindictive observer declining to board and thereby delaying a vessel's departure, other approaches would have raised the possibility of an observer being coerced into boarding a vessel that he or she believes is unsafe. Given the safety risks at issue and the probability that most safety violations will be easily remedied, e.g., replacing PFDs, NMFS determined that placing the presumptions in the selected manner was preferable.

Whenever possible, vessel owners/operators are encouraged to arrange for the observer to make the pre-trip safety check in advance of the beginning of the planned fishing trip. In that way, there would be time to correct problems without delaying the trip's departure time.

Comment 18: There are alternatives that would accomplish NMFS' objectives that were not considered by NMFS. One alternative is to provide an automatic waiver for those situations in which an observer refused to board a vessel for safety reasons. The waiver would be valid until the vessel had undergone a USCG inspection either at sea or in port. Alternative two would be to require that the safety determination be made by a NMFS enforcement agent who had completed the USCG training program for vessel safety inspections. Alternative three would be to determine which classes of vessels have consistently failed to provide safe working conditions for observers. Only those classes of vessels would be required to comply with the rule. Vessels with proven safety records would be exempt from the provisions of this rule.

Response: Alternative one would void the intent of the rule. It would not make the vessel safe for the observer on the fishing trip that the observer was assigned to observe. Furthermore, it could provide an opportunity for vessel operators to avoid taking observers by incurring safety violations, such as no PFD for the observer. By authorizing an observer to refuse to board an unsafe vessel and by making it illegal to fish without an observer in a mandatory observer fishery, there is a strong incentive for the vessel to meet all USCG safety regulations. Alternative two was considered and rejected. It is equally possible that a NMFS enforcement agent, like an observer, would discover a safety violation that would delay a vessel's fishing trip. This option would also create the risk of an observer having to board a vessel that he or she believes is unsafe. In addition, from a practical standpoint, the current work load for NMFS enforcement agents makes it impossible for them to undertake this responsibility and continue to perform other enforcement functions/duties. Alternative three is not feasible because vessel safety is an individual vessel issue not one that can be addressed by classes of vessels.

Comment 19: The rule does not analyze measures taken by regions.

Response: It is not the intent of this rule to analyze measures taken by regions. That analysis is done at the time those measures are developed and proposed in the rulemaking process.

Comment 20: One commenter believes that, should an observer refuse to board a vessel because of safety deficiencies, there could be legal implications beyond the simple issue of the USCG safety requirement and the vessel's fishing. ''After an observer has determined a vessel to be unsafe, a crew member injures themself [sic] in the factory. Considering the Jones Act, the lawyers would have a field day.''

Response: NMFS believes this comment refers to the possible use of an observer's safety determinations as evidence in a law suit. As stated in the responses to comments 3 and 16, this rule is not intended to give observers the authority to make actual determinations as to a vessel's compliance with USCG regulations. Rather, it simply requires that a vessel, if its safety has been called into question, rectify the shortcoming or submit to a new USCG safety examination or inspection. If anything, this rule is likely to reduce the number of negligence claims because vessels with questionable safety issues will correct them or be reexamined by USCG before fishing.

Comment 21: The USCG should be consulted.

Response: The USCG was involved at every stage of development of this rule.

Comment 22: One commenter raised specific issues about an observer who was terminated and who subsequently filed suit.

Response: Because the case is before the court, it would be inappropriate for NMFS to respond at this time.

Changes From the Proposed Rule

Four changes were made from the proposed rule. One was made in response to comments: A provision was added at § 600.746(c)(3) to provide guidance on the scope of the observer's pre-trip safety check.

Another change was made to clarify that USCG performs either an inspection or an examination: The words ''examination or inspection'' replaced ''inspection'' in §§ 600.725(p), 600.746(c)(1), and 600.746(d)(1) so that it is clear that either an examination or an inspection can be performed.

The word ''Examination'' was inserted in § 600.746(c)(1) in order to more clearly identify the Commercial Fishing Vessel Safety Examination decal.

The word ''examine'' replaced ''inspect'' in § 600.746(c)(2) in order to avoid confusion with USCG inspection.

The observer's pre-trip safety check of a vessel that displays a current Commercial Fishing Vessel Safety Examination decal will normally consist of no more than a spot check of the equipment identified in § 600.746(c)(3), i.e., PFDs/immersion suits; ring buoys; distress signals; fire extinguishing equipment; emergency position indicating radio beacon, when required; survival craft, when required; and a walk through major spaces. This walk-through is not intended to broaden the scope of the safety check. The safety check should be done expeditiously because the decal indicates that the vessel has already undergone an extensive dockside inspection.

Classification

At the proposed rule stage, NMFS certified to the Assistant General Counsel for Legislation and Regulation, Department of Commerce and to the Chief Counsel for Advocacy, Small Business Administration that this action would not result in a significant economic impact on a substantial number of small entities. Comments received on the proposed rule suggested that small entities might experience a significant economic impact as a result of the rule. Based on this new information, NMFS decided to prepare a Final Regulatory Flexibility Analysis (FRFA). The FRFA concludes that the rule's authorization for an observer to refuse to board a vessel that the observer believes to be unsafe and the rule's requirement that a vessel required to carry an observer cannot legally fish without the observer make it possible that implementation of this rule could delay a vessel's departure for a fishing trip. Because of variations in the structures of different fisheries' mandatory observer programs and in the structures of the different fishery management regimes, the fact that an observer refused to board would not necessarily mean that the vessel would lose fishing time as might be the case in those fisheries where vessels are allowed a limited number of days fishing per year. It is not possible to estimate accurately how many, if any, vessels would lose days at sea as a result of this rule. Therefore, there is at least a theoretical possibility that 20 percent of the affected small entities could experience a significant economic impact.

In addition to the preferred alternative, which is the alternative that is implemented by this rule, NMFS considered several other alternatives. One of them would have been to take no action. Under this approach, vessels that carry observers would be required to comply with the same safety standards that would be applicable under the preferred alternative, but there would be no guidance to interested parties as to how to conduct a pre-trip safety check nor would there be any means by which an observer could quickly ascertain whether the vessel was in compliance with applicable USCG regulations. If the agency were to adopt the no-action alternative, the Congressional mandate in the Magnuson-Stevens Act would not be effected. In addition, there would be continued risk of unsafe conditions on board vessels to which observers were assigned.

Another alternative would have prescribed new national standards for a wide range of safety and accommodations issues. Basic standards for determining a vessel's safety and adequacy would be based on USCG safety requirements and NMFS regional observer requirements as is the case in the first alternative. In addition to those basic USCG standards, this alternative would result in new regulations addressing a wide range of accommodation issues, such as quality of food, which, if not met, would authorize an observer not to board a fishing vessel. The observer would be authorized to make the pre-trip safety check to determine whether or not he/

she would board the vessel. In mandatory observer programs, a fishing vessel would not be permitted to fish legally without an observer. This alternative is not the preferred alternative because of the degree to which an observer would be authorized to make subjective, qualitative determinations. Furthermore, because of the variability of working conditions on fishing vessels, some vessels could not reasonably or economically meet the expectations of all observers. Therefore, the risk of this alternative resulting in delays of fishing trips is greater than that of the preferred alternative.

The last alternative that NMFS considered would have prescribed basic standards for determining safety and adequacy as described in the preferred alternative, but either the National Marine Fisheries Service or an authorized observer contractor would have been authorized to make the pre-trip safety check to determine whether or not the observer would board the vessel. In mandatory observer programs, a fishing vessel would not be permitted to fish legally without an observer. This alternative would have used the same evaluation criteria (USCG dockside safety examination, pre-trip safety check, presence of a current Commercial Fishing Vessel Safety Decal, etc.) as the preferred alternative but would give NMFS and/or an authorized observer contractor the authority to decide whether a vessel is safe and adequate. The rationale for this approach is that it would avoid putting the observer into a situation where vessel owner, operator, and crew might exert pressure to coerce the observer to declare the vessel safe despite conditions that the observer believed to be unsafe. It would also avoid the potential for a ''vindictive'' observer to abuse discretion in making safety checks. The benefit of having NMFS or an authorized observer contractor make the safety and adequacy decision is that it would avoid putting the additional pressure on an observer of potentially having to tell a captain and crew with whom he/she would be spending time at sea that a fishing trip would be delayed. However, this alternative would also have the potential to delay a fishing voyage pending safety resolution. It is just as possible that a NMFS employee or observer contractor would discover safety issues in need of attention as an observer would. In addition, under this alternative, an observer who believes a vessel to be unsafe may be instructed to board because NMFS or the observer contractor believes the vessel to be safe. There would also be costs to NMFS and/or the observer contractor in the form of having a representative on site each time an observer boarded a vessel. NMFS and/or the observer contractor would also experience the cost of training employees to make the pre-trip safety check. This alternative is not preferred because it would put a third party in a position of judging a vessel's safety and perhaps of forcing an observer aboard an unsafe vessel.

In addition to these alternatives, one commenter suggested two additional alternatives: The first would have provided an automatic waiver for those situations in which an observer refused to board a vessel for safety reasons. The waiver would be valid until the vessel had undergone a USCG inspection either at sea or in port. This alternative would have voided the intent of the rule. It would not make the vessel safe for the observer on the fishing trip that the observer was assigned to observe. Furthermore, it could provide an opportunity for vessel operators to avoid taking observers by incurring safety violations, such as no PFD for the observer. The other suggested alternative would be to determine which classes of vessels have consistently failed to provide safe working conditions for observers. Only those classes of vessels would be required to comply with the rule. Vessels with proven safety records would be exempt from the provisions of this rule. This approach is not feasible because vessel safety is an individual vessel issue not one that can be addressed by classes of vessels.

NMFS tried to mitigate the potential impact of the rule by using objective standards for the observer's pre-trip safety check in the form of the published USCG guidance about the most important items that would be required in the event of an at-sea emergency. This particular alternative was chosen because it seemed to be an appropriate balance between the objectives of increasing observer safety and minimizing the risk of negative economic impact on vessels.

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

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: May 12, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. Section 600.725 is amended by redesignating paragraph (p) as paragraph (t), adding paragraphs (p), (q), (r), (s), and (u), and revising newly redesignated paragraph (t) to read as follows:

§ 600.725 General prohibitions.

* * * * *

(p) Fail to submit to a USCG safety examination when required by NMFS pursuant to § 600.746.

(q) Fail to display a Commercial Fishing Vessel Safety Examination decal or a valid certificate of compliance or inspection pursuant to § 600.746.

(r) Fail to provide to an observer, a NMFS employee, or a designated observer provider information that has been requested pursuant to § 600.746, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at § 600.746.

(s) Fish without an observer when the vessel is required to carry an observer.

(t) Assault, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(u) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

3. In subpart H, § 600.746 is added to read as follows:

§ 600.746 Observers.

(a) *Applicability*. This section applies to any fishing vessel required to carry an observer as part of a mandatory observer program or carrying an observer as part of a voluntary observer program under the Magnuson-Stevens Act, MMPA (16 U.S.C. 1361 *et seq.*), the ATCA (16 U.S.C. 971 *et seq.*), the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), or any other U.S. law.

(b) *Observer requirement.* An observer is not required to board, or stay aboard, a vessel that is unsafe or inadequate as described in paragraph (c) of this section.

(c) *Inadequate or unsafe vessels.* (1) A vessel is inadequate or unsafe for

purposes of carrying an observer and allowing operation of normal observer functions if it does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 285, 300, 600, 622, 648, 660, 678, and 679) or if it has not passed a USCG safety examination or inspection. A vessel that has passed a USCG safety examination or inspection must display one of the following:

(i) A current Commercial Fishing Vessel Safety Examination decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR, chapter I and 46 CFR, chapter I;

(ii) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(iii) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(2) Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner/operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item.

(3) *Pre-trip safety check*. Prior to each observed trip, the observer is encouraged to briefly walk through the vessel's major spaces to ensure that no obviously hazardous conditions exist. In addition, the observer is encouraged to spot check the following major items for compliance with applicable USCG regulations:

(i) Personal flotation devices/immersion suits;

(ii) Ring buoys;

(iii) Distress signals;

(iv) Fire extinguishing equipment;

(v) Emergency position indicating radio beacon (EPIRB), when required; and

(vi) Survival craft, when required.

(d) *Corrective measures*. If a vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions, NMFS may require the vessel owner or operator either to:

(1) Submit to and pass a USCG safety examination or inspection; or

(2) Correct the deficiency that is rendering the vessel inadequate or unsafe (e.g., if the vessel is missing one personal flotation device, the owner or operator could be required to obtain an additional one), before the vessel is boarded by the observer.

(e) *Timing*. The requirements of this section apply both at the time of the observer's boarding, at all times the observer is aboard, and at the time the observer is disembarking from the vessel.

(f) *Effect of inadequate or unsafe status*. A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage.

[FR Doc. 98–13131 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 95
Monday, May 18, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Programs

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The U.S. Small Business Administration (SBA) proposes a rule to allow all participating Lenders to sell, securitize, sell a participating interest in, or pledge the unguaranteed portion of 7(a) loans. The proposal has two components: securitizations; and pledges, sales of participations, and sales other than for the purpose of securitizing. In the first component, SBA establishes a three level unified approach to regulating securitization. This approach would apply to all securitizers and is designed to help ensure the safety and soundness of the 7(a) program. The approach focuses on the quality of the securitizer's underwriting and servicing and the performance of the securitizer's loans. In the second component, SBA sets forth the requirements that Lenders must meet to pledge, sell a participating interest in, or sell (other than for the purpose of securitizing) 7(a) loans. If this proposal becomes final, it would replace the present Interim Final Rule published on April 2, 1997, at 62 FR 15601 (the ''Interim Final Rule''). The proposed rule would amend 13 CFR § 120.420, add §§ 110.421–120.429, renumber §§ 120.430 and 120.431 as §§ 120.414 and 120.415, and add §§ 120.430–120.435. In addition, SBA is providing notice of a public hearing set for 2:00 p.m. on June 4, 1998. The hearing will provide the public an opportunity to comment orally on the proposed rule.

DATES: Submit comments July 17, 1998. SBA will hold a public hearing to receive oral comments on June 16, 1998, at 2:00 p.m. at the U.S. Small Business Administration, 409 Third Street, S.W., Washington, D.C., 8th Floor Eisenhower Conference Room.

ADDRESSES: Mail comments to Jane Palsgrove Butler, Acting Associate Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, S.W., Suite 8200, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Director, Secondary Market Sales, 202–205–6490.

SUPPLEMENTARY INFORMATION: SBA is proposing a new regulation governing the securitization of the unguaranteed portion, sale, sale of a participating interest in, or pledge of SBA 7(a) loans. The rule has two components. The first component governs securitizations. For purposes of this regulation, a securitization is the pooling and sale of the unguaranteed portion of SBA loans, usually to a trust or special purpose vehicle, and the issuance of securities backed by those loans to investors in either a private placement or a public offering (''securitization''). In the securitizations of SBA loans to date, each investor has received an undivided ownership interest in the right to receive the principal of the unguaranteed portion of the pooled SBA loans, together with interest. As a credit enhancement, the securitizer usually transfers to the trust or special purpose vehicle, for the benefit of investors, a portion of the interest on each pooled loan representing the difference between the interest paid by the SBA loan borrower and the interest paid to the holder of the guaranteed interest, the holder of the securitized interest and various administrative fees (the ''Excess Spread'').

The second component of this proposed rule deals with pledges of, sales of participating interests in, and sales other than for the purpose of securitizing SBA loans.

I. Securitization Component

Regulatory History

Congress and SBA have examined whether and under what conditions SBA should permit Lenders to securitize the unguaranteed portion of 7(a) loans. Recognizing that Small Business Lending Companies and Business and Industrial Development Companies and other nondepository institutions (''nondepository institutions'') do not have customer deposits to fund 7(a) lending, SBA in 1992 began permitting nondepository Lenders to securitize. In 1996, Congress and SBA considered extending the authority to securitize to depository Lenders. On September 29, 1996, Congress enacted legislation requiring SBA, by March 31, 1997, either to promulgate a final rule allowing both nondepository and depository Lenders to securitize or cease approving securitizations.

In response to the legislative mandate, on November 29, 1996, SBA published an Advance Notice of Proposed Rulemaking (61 FR 60649) seeking public comments on securitizations in advance of its publication of proposed regulations. On February 26, 1997, SBA published a Proposed Rule (62 FR 8640) requiring a 5 percent retainage for all securitizations. SBA received approximately 25 comments; the commenters were divided almost equally in their response to SBA's proposal.

On April 2, 1997, SBA promulgated the Interim Final Rule (62 FR 15601). This regulation allowed all SBA Lenders to securitize while SBA continued its thorough review of securitization issues. Recognizing the complexity of the subject, SBA decided to hold a public hearing and consult bank regulators and other experts. While doing so, it has reviewed each proposed transaction on a case-by-case basis under the Interim Final Rule to protect the safety and soundness of the 7(a) program.

During its review process, SBA convened a public hearing at which interested parties publicly stated their views on securitization and related safety and soundness issues. SBA engaged securitization and accounting experts, and consulted representatives from bank and other financial regulatory agencies, including the Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Department of the Treasury, the Federal Reserve Board, Office of Federal Housing Enterprise Oversight and Office of Thrift Supervision (OTS).

SBA has carefully considered all views and comments expressed by these experts, bank regulators, and the industry, and has incorporated many of the comments and recommendations into a unified regulatory approach consisting of three levels. In January of 1998, SBA discussed its three level approach with representatives of the bank regulatory agencies.

SBA believes this proposal is an improvement over the Interim Final

Rule. The levels would apply uniformly, providing equal treatment to depository and nondepository institutions and addressing the possibility of increased risk to the SBA portfolio from securitization. The rule provides incentives for Lenders to maintain high underwriting and servicing standards to minimize delinquencies and defaults. Appropriately, the financial impact of the proposal on a particular securitizer would depend on the performance of the securitizer's loans. If the securitizer's loan performance has been good historically and remains consistent or improves during the period that a securitization is outstanding, the financial impact on the securitizer would be minimal. However, if a securitizer's loan performance has been below average historically or declines during the period that the securitization is outstanding, consequences to the securitizer would be greater. The new approach ties securitizer risk retention to securitizer long-term credit performance and considers the long-term credit cycle of SBA loans.

This proposed rule considers historic SBA loan data and is consistent with bank regulatory policy and marketplace risk management. The rule would facilitate the use of securitizations by setting forth clear and consistent standards. Compared to the Interim Final Rule, SBA believes the proposed rule would be better for taxpayers, better for Lenders, and better for small businesses.

Securitization Risks

SBA supports securitization because it encourages Lenders to make more SBA-guaranteed loans to America's small businesses. While securitization can provide enormous benefits, SBA has concerns that under certain circumstances or economic conditions the securitization process might encourage poor credit quality and increase SBA's losses on the guaranteed portion of its loans.

Securitization provides a market for large volume sales of SBA loans. Therefore, securitizers have an incentive to make loans quickly and record the profits from the securitization. Furthermore, if Excess Spread Income from previous securitizations declines, a securitizer might use the profits from new issues to offset the decline. These circumstances create a risk that securitizers might compromise credit quality in order to make more loans more quickly to increase profits.

Also, the securitization of the unguaranteed portions of small business loans is relatively new and has developed during the strong part of a business cycle. It is not clear what effect a downturn in the economy will have on the credit quality of individual securitizers and on the performance of securitized loans.

Under Financial Accounting Standards Board Statement Number 125 (''FASB 125''), a securitizer's earnings and capital grow faster than the earnings and capital of a non-securitizer making the same loans. FASB 125 requires Lenders that securitize loans and retain the servicing to recognize immediately the full amount of future income attributable to the securitized loans. This ''gain-on-sale'' income is calculated by discounting a stream of future income. The approach assumes an average life of the underlying loans, future servicing expenses, and loan losses. Securitization and FASB 125 have a direct effect on a securitizer's bottom line. The more loans a securitizer makes and the faster it makes them, the greater the securitizer's profits. Some experts have expressed concerns that this can lead to pressure for a securitizer to increase volume by potentially relaxing underwriting standards or reducing resources devoted to servicing. SBA's response to these concerns is to focus, through this proposed rule, on credit quality.

To control risk, SBA historically has relied on a Lender's retention of a significant economic interest in the unguaranteed portion of 7(a) loans. Lender risk retention has been the cornerstone of SBA's guarantee program. A Lender that sells the entire unguaranteed interest in a loan might be less accountable for losses because the unguaranteed portion is no longer available as a risk sharing mechanism.

Therefore, in its review, SBA has sought meaningful risk retention mechanisms that encourage securitizers to originate loans of appropriate credit quality while not discouraging securitization. SBA has analyzed a number of questions relating to such risk retention including: How should SBA structure risk retention to ensure that each Lender retains sufficient economic exposure to maintain high underwriting and servicing standards? Should SBA require securitizers to hold back a portion of their loans from securitization, retain subordinated securities issued in the securitization (a ''subordinated tranche''), or reserve cash? How much should the securitizer retain, purchase, or reserve? Who should determine the retainage amount, SBA or the rating agencies? What additional components should SBA require as a complement to a retention? Are there credit quality or loan performance standards which should trigger additional consequences? Supported by expert advice, SBA has now developed the following unified approach to regulating securitizations.

The Unified Regulatory Approach

This proposed rule does not rely solely on retention to encourage Lenders to maintain high credit quality and underwriting and servicing standards. Instead, it contains several progressive levels. The levels are:

(1) A consistent and enforceable capital requirement;

(2) A retention requirement (subordinated tranche); and

(3) Suspension of a securitizing PLP Lender's unilateral loan approval privileges (''PLP approval privileges'') if the currency rate (the percentage of loans that are less than 30 days past due) of the loans in the securitizer's portfolio deteriorates over time.

SBA believes this approach is superior to SBA's February 1997 securitization proposal that suggested a 5% retention requirement on all securitizers at the beginning of the securitization without regard to the securitizer's credit quality history or the subsequent performance of the securitized loans. The unified approach imposes a smaller economic impact on the securitizer initially, but establishes credit quality standards which, if not met during the life of a securitization, trigger increased scrutiny of the securitizer's underwriting. It provides securitizers with appropriate incentives tied to actual credit performance, affords SBA the protection it seeks for itself and taxpayers, and still facilitates securitization for all originators. A more detailed discussion of each level follows.

The Capital Requirement

A capital requirement is a basic component of the regulation of any financial institution. It is a common method for measuring a Lender's financial strength.

SBA is in the process of considering capital requirements for all its participating Lenders. Although maintenance of minimum capital is important for all SBA participating Lenders at all times, SBA believes the maintenance of minimum capital is especially important with respect to securitizers. Requiring the securitizer to maintain a minimum level of capital encourages prudent underwriting and servicing practices. Credit quality is fundamental to the maintenance of capital. Loan losses erode capital. As well as being a measure of reduced

financial strength, eroding capital may signal weakening credit quality.

To emphasize the significance SBA attaches to a securitizer's compliance with capital requirements, SBA has designated the maintenance of minimum capital as the first level of its unified approach for regulating securitization. The proposed rule would require all depository and nondepository securitizers to maintain minimum capital consistent with the requirements imposed on depository institutions by the Federal Reserve Board, the FDIC, the OCC, and the OTS (the ''bank regulatory agencies'').

For depository Lenders, SBA's capital requirement would not add to that which is already required by the bank regulatory agencies. Thus, this proposed rule should have no independent effect on depository institutions that already comply with capital requirements imposed by the bank regulatory agencies.

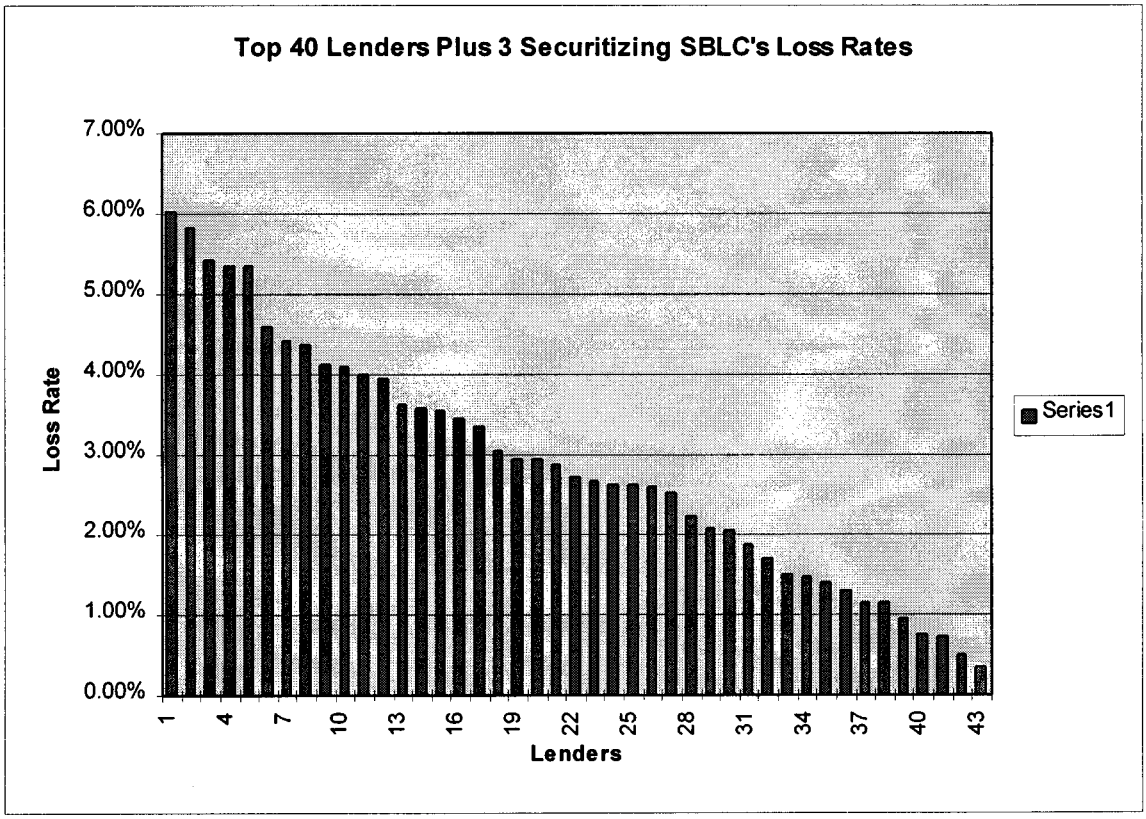
This proposed rule would apply to all securitizing nondepository institutions, including SBLCs, Business and Industrial Development Companies (''BIDCOs''), and other institutions approved for participation in SBA's loan programs. As the Federal agency with primary responsibility for regulating SBLCs, SBA has had a capital requirement for SBLCs in its regulations since 1975. SBA's capital requirements for SBLCs have not always been consistent with the capital requirements imposed by the bank regulatory agencies on depository institutions. For example, SBA's current SBLC regulations include a 10% capital requirement on the SBLC's share of all outstanding loans. At present, the capital requirement for depository institutions imposed by bank regulatory agencies applicable to comparable assets is 8%. Further, SBA's present capital requirement regulation does not consider the recourse issues associated with securitization already addressed by the bank regulatory agencies. SBA believes that conforming its capital requirements for securitizing SBLCs to general bank regulatory policy known and understood by the lending community would eliminate confusion and create a consistent and level playing field.

SBA currently requires SBLCs to maintain a minimum unencumbered paid in capital and paid in surplus equal to at least $1 million. SBA believes that a securitizing nondepository institution should have such minimum capital. Therefore, in addition to the requirements of bank regulatory agencies, SBA will require securitizing nondepository institutions to maintain such minimal capital. SBA also currently requires SBLCs to provide to SBA annual audited financial statements demonstrating that SBA's present capital requirement is met. The proposed rule would require all securitizing nondepository Lenders to submit such audited financial statements.

The Retention of a Subordinated Tranche

As proposed, SBA would require securitizers to retain a subordinated tranche equal to the greater of (a) twice the loss rate (the SBA charge off rate) experienced on a securitizer's SBA loans, originated or purchased, for a 10-year period or (b) 2% of the unguaranteed portion of the securitized loans. These securities would be subordinate to all other tranches issued. Based on historical data, SBA expects that most securitizers' retention levels would be between 12 and 2%. The current average would be 5.4% for SBA's high volume Lenders. (See the loss rates in Chart 1 below). It is a common practice for retention percentages to be based on multiples of expected losses. For example, rating agencies use a multiple of expected losses as part of the formula to determine the minimum amount a securitizer must deposit in the spread account. The 2% minimum approximates twice the cumulative loss rate of the best performing SBA loan originators. Currently, only four of the high volume Lenders referred to in Chart 1 would be below the 2% minimum threshold. Even for the best securitizers, SBA believes the minimum subordinated tranche is necessary to counter the potential risks of securitizing.

CHART 1



SBA is aware that a downturn in regional economic conditions may affect securitizers' loss rates adversely even though the securitizers' underwriting and servicing standards remain high. Under those circumstances, the rule would permit SBA to modify the formula for the retention size, if its enforcement might exacerbate the adverse economic conditions in the region.

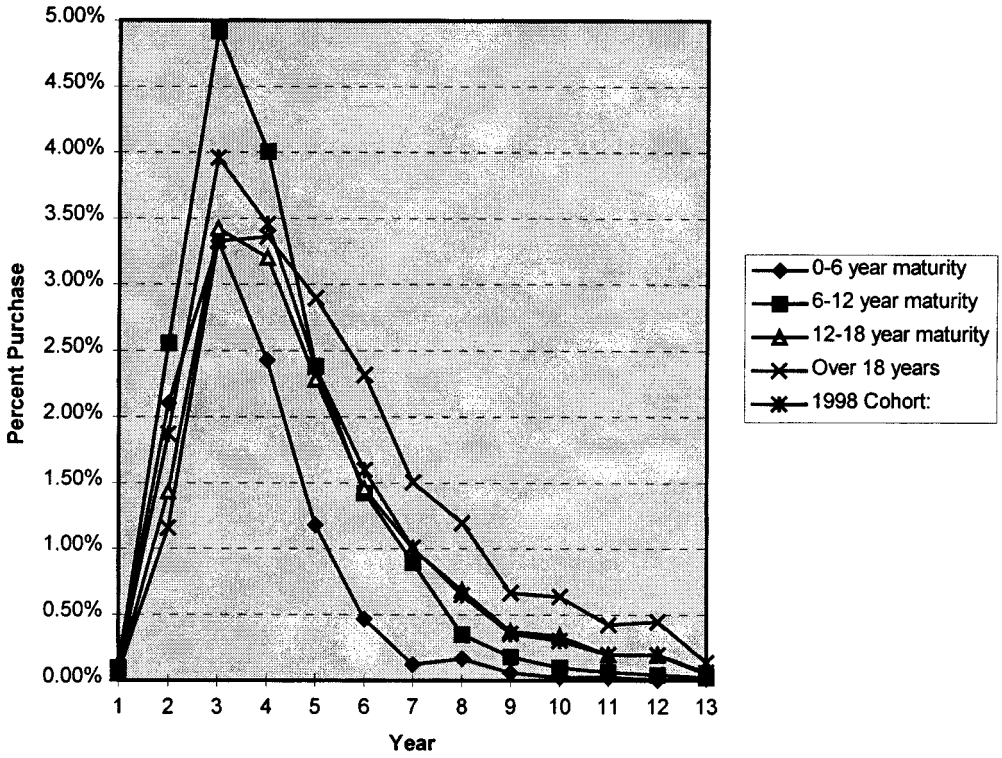
The retention requirement addresses SBA's concern that unusually large losses may occur early in the life of loans originated by a rapidly growing securitizer which may not be covered by Excess Spread or reflected in a securitizer's historical performance. SBA believes the proposed retention requirement is fair because there is a direct relationship between the size of the subordinated interest that a securitizer must retain and the securitizer's own historical performance. The proposed approach should give securitizers an added incentive to originate, purchase, and service high quality loans.

Under the proposed rule, securitizers would be able to sell the subordinated tranche at market value after retaining the tranche for six years. SBA's historical loss data indicates that its Lenders incur most losses between years three and five of a twenty-five year loan (see Charts 2 and 3). If the loans do not perform as expected, not only may the securitizer suffer losses, but the tranche will have significantly less value if the securitizer tries to sell it after the holding period ends. For this reason, requiring securitizers to hold the tranche for the six year period reinforces the incentive to originate and service high quality loans.

CHART 2
[In percent]

Defaults	Total	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13
0–6 year maturity	10.02	0.12	2.10	3.33	2.42	1.18	0.46	0.12	0.16	0.06	0.03	0.02	0.01	0.01
6–12 year maturity	17.02	0.09	2.56	4.92	4.00	2.38	1.42	0.89	0.35	0.18	0.10	0.06	0.04	0.03
12–18 year maturity	14.67	0.05	1.43	3.42	3.20	2.28	1.45	1.00	0.68	0.37	0.34	0.19	0.20	0.05
Over 18 years	18.11	0.05	1.16	3.32	3.36	2.89	2.32	1.50	1.19	0.66	0.64	0.42	0.45	0.14
1998 Cohort	16.11	0.08	1.87	3.96	3.46	2.37	1.60	1.01	0.65	0.35	0.30	0.20	0.20	0.07

Chart 3--Purchases of Defaulted Loans by Year



SBA selected a subordinated tranche as the retention level in its unified approach to regulating securitizations for several reasons. Unlike a retained pro-rata interest in the entire loan, or a cash reserve dedicated to SBA, a retained subordinated interest is a retained economic interest that benefits both SBA and investors. Several commenters and experts have suggested to SBA that such an interest is more sensitive to losses than other available options. The use of a subordinated tranche also is widely accepted by rating agencies and investors.

Unlike a menu of possible retainage options and combinations, retention of a subordinated tranche is a single, simple and uniform requirement. It introduces greater certainty to a developing market and makes it easier to compare one issue of securities with another. A cash reserve in SBA's control also would be less desirable to securitizers because such a reserve would earn less due to required conservative investing.

The size of the subordinated tranche is directly related to loan experience. The three options in SBA's proposed rule (62 FR 8640) of February 26, l997 established a set retention level equal to 5% of the entire loan, which is equal to 20% of the unguaranteed portion of a typical loan, without regard to credit quality or any measurable economic impact. SBA believes an empirically-based retention percentage is superior to a set 5% retention level because it reflects the credit quality and historical loan performance of the securitizer.

SBA has always required Lenders to maintain a meaningful economic interest in SBA guaranteed loans in order to protect the taxpayer. A number of past comments have suggested that SBA need not impose any retainage requirement because securitizers retained a sufficient continuing economic interest in the Excess Spread. These commenters argued that credit losses taken against the Excess Spread result in meaningful economic consequences to a securitizer that has recognized the present value of the future excess cash flow as income. SBA agrees with much of this argument. It acknowledges that the discipline and methodology imposed by, and the information generated by, the rating agencies provide valuable protection to SBA. Nevertheless, SBA has decided not to rely solely on rating agencies to set retention levels.

SBA believes that sole reliance on Excess Spread is not enough to protect taxpayers in the event of deteriorating loan performance. The market uses the Excess Spread to protect the investor, not the taxpayer. Some commenters and experts have asserted that reliance on securitization may change a securitizer's behavior and increase risk to the taxpayer. Since taxpayers have a greater dollar exposure on each loan than any investor, SBA believes it needs economic incentives in addition to those the market provides to ensure the safety and soundness of the 7(a) program.

Suspension of PLP Approval Privileges

For purposes of this proposed rule, if the currency rate of a PLP securitizer declines, SBA would suspend that securitizer's PLP approval privileges under two circumstances: (a) if the rate of decline is more than 110% of the rate of decline of the currency rate of all loans approved under the PLP program (PLP Program Loans) as calculated from quarter to quarter or (b) if the decline is more than five percentage points when the currency rate of the PLP Program Loans remains stable or increases. If the securitizer's currency rate remains stable or improves, the securitizer may continue to use PLP procedures for loan approval. SBA plans to calculate and compare the currency rate for PLP Program Loans and the currency rate for each securitizer's portfolio each quarter.

By suspending PLP approval privileges and requiring a Lender to submit all of its loans through SBA's field offices for approval, SBA can monitor a securitizer's credit practices more closely. Ideally, SBA will be able to identify declining loan performance before it can threaten a securitizer's entire portfolio and financial condition. SBA monitoring may assist the securitizer to improve credit practices while protecting the safety and soundness of the program. SBA may reactivate the securitizer's PLP approval privileges at any time.

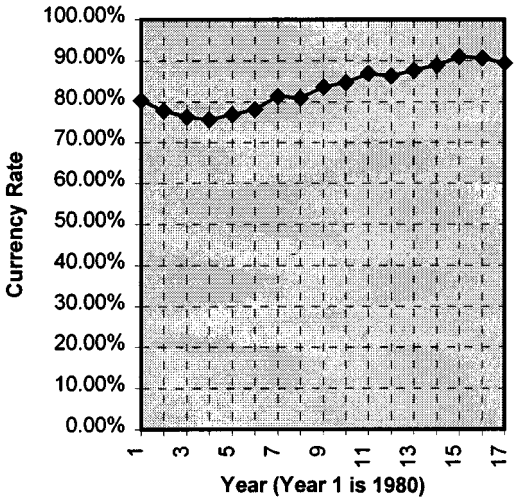
Based on an analysis of changes in the currency rate of the SBA portfolio over the past 16 years, SBA estimates that few securitizing PLP Lenders will be subject to the privilege suspension (see Charts 4 and 5). However, SBA recognizes that a downturn in the economy might trigger suspension for a greater number of PLP Lenders. Consequently, SBA has included in this rule a provision allowing SBA to waive suspension of PLP approval privileges for securitizers in an area where currency rates have been adversely affected by a downturn in regional economic conditions, if enforcing this element might exacerbate the adverse economic conditions in the area.

CHART 4

Year ending	Currency rate (percent)	Absolute value of change	Percentage change	110% of percent change
1980	80.20	.....	.....	.....
1981	77.70	0.0250	3.12	3.43
1982	76.20	0.0150	1.93	2.12
1983	75.50	0.0070	0.92	1.01
1984	76.80	0.0130	**1.72**	**1.89**
1985	78.00	0.0120	**1.56**	**1.72**
1986	81.30	0.0330	**4.23**	**4.65**
1987	80.90	0.0040	0.49	0.54
1988	83.50	0.0260	**3.21**	**3.54**
1989	84.70	0.0120	**1.44**	**1.58**
1990	86.90	0.0220	**2.60**	**2.86**
1991	86.20	0.0070	0.81	0.89
1992	87.60	0.0140	**1.62**	**1.79**
1993	88.80	0.0120	**1.37**	**1.51**
1994	90.90	0.0210	**2.36**	**2.60**
1995	90.60	0.0030	0.33	0.36
1996	89.40	0.0120	1.32	1.46
Average Change	.....	0.0149	.....	.....
Standard Dev	.....	0.0084	.....	.....

Cells in bold represent years when the currency rate increased, therefore the 5 percentage point test would apply.

Chart 5--Currency rate by year



SBA reviewed numerous methodologies to determine an equitable and effective way to measure a securitizer's credit quality and to establish a basis for comparison to overall portfolio behavior. SBA believes that currency rate is a reliable predictor of future losses. SBA also believes the thresholds it has selected are fair and would trigger economic consequences to the securitizer only if loan performance seriously declines.

Additional Levels

One of SBA's consultants proposed a fourth level to SBA's approach to regulating securitization which level would be based on a securitizer's loss rates and, therefore, be tied to long-term

performance. The consultant recommended that the fourth level be a supplemental payment. SBA would impose a supplemental payment equal to 1 percent of the outstanding balance of the securitization based on the performance of the loans in the securitization. If the securitization loss rate (1) remained the same, (2) declined, (3) increased by no more than 5 percent from year to year, or (4) was no more than 2 percent, than a supplemental payment would not be due. If, however, a securitization loss rate was over 2 percent and increased by more than 5 percent, the securitizer would be required to make a supplemental payment with respect to that securitization, if (a) the percentage change in the securitization loss rate was at least two times any percentage increase in SBA's loan portfolio loss rate or (b) the securitization loss rate is twice the loss rate of SBA's loan portfolio, and the loss rate for the SBA loan portfolio remained stable or declined. The provisions of this additional level would apply to a securitization only during the period the subordinated tranche would be required to be held. SBA would limit the supplemental payment to the holding period because it is during this crucial period that Lenders historically have experienced the highest loan losses.

Imposing an economic consequence if a securitizer's loan portfolio begins to show significant increases in losses would give a securitizer an additional direct financial incentive to maintain credit quality. Others with whom SBA has consulted agree that this would be an appropriate progression within SBA's regulatory approach. SBA is predisposed to add a fourth level featuring a direct financial incentive to its unified approach to securitization, but recognizes that it lacks legislative authority to impose new direct fees on its Lenders. SBA will be considering this matter further and welcomes comment on the subject.

In addition to the levels proposed, the rule would: a) require that SBA's Fiscal and Transfer Agent (''FTA'') hold all original promissory notes; (b) prohibit Lenders from securitizing loans not yet closed and fully disbursed; and (c) allow SBA to require all securitizers to use SBA's model multi-party agreement and model pooling and servicing agreement once developed. The use of the model agreements would expedite processing.

Multi-Lender Securitizations

Although SBA has not yet approved a multi-Lender securitization, it believes that low volume Lenders should have the same access to securitization as high volume Lenders. SBA expects that the market will develop the structures necessary to permit low volume Lenders to securitize. Several ideas are in the early stages of development. As part of this proposal, SBA is soliciting comments to assist it in formulating multi-Lender securitization requirements. What criteria should SBA use to review multi-Lender securitizations? Are there unique risks inherent in a multi-Lender transaction? Should all Lenders be eligible to participate in a multi-Lender transaction or should only Preferred Lender Program (''PLP'') Lenders be able to participate? Should each participant in the multi-Lender securitization be required to comply with the levels contained in this proposed rule? Does SBA need safeguards for multi-Lender securitizations in addition to those in this proposed role to ensure credit quality and loan performance and protect the safety and soundness of the 7(a) program?

II. Other Conveyances Component

The Other Conveyances component governs pledges and sales other than sales for the purpose of securitizing. This proposed rule would require SBA's prior written consent for the sale of a Lender's entire interest in a loan to another participating Lender. It would permit, with prior written notice to SBA, a sale after which the SBA Lender would continue to own a portion of the unguaranteed interest equal to at least 10% of the outstanding principal amount of the loan. This proposed rule would permit a Lender to sell an even greater portion of the loan as long as the sale received SBA's prior written consent, which consent could be withheld in SBA's sole discretion. The rules for sales of participating interests mirror those for sales. By allowing Lenders to sell the unguaranteed portion of their SBA loans in this manner, SBA encourages Lenders to make small business loans while protecting the safety and soundness of the 7(a) program.

Like the Interim Final Rule (62 FR 15601), this proposal also would require that a Lender obtain SBA's written consent prior to all pledges of SBA loans except for certain types of pledges enumerated in 13 CFR § 120.435. Except for such enumerated pledges, the SBA Lender must use proceeds of the loan secured by the SBA loans solely for the purpose of financing additional SBA loans. The provisions for pledging are almost unchanged from the Interim Final Rule.

Finally, this proposal incorporates several elements set forth in the Interim Final Rule and requires that a Lender be in good standing as determined by SBA. All documentation, including the multi-party agreement, must be satisfactory to SBA. The proposed rule also would require that a Lender or a third party acceptable to SBA hold the original promissory notes.

SBA seeks comments on all aspects of the proposal. In particular, SBA seeks comments suggesting any other level which it might incorporate in its unified regulatory approach as an additional incentive to securitizers to maintain high underwriting and servicing standards. For example, should additional action (beyond suspension of PLP approval privileges) be taken if a securitizer's loss rate declines significantly?

While this proposed rule is pending, SBA will continue to review proposed securitizations on a case by case basis under the Interim Final Rule.

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 would not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

SBA certifies that this proposed rule would 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.* This proposed rule is intended to replace SBA's Interim Final Rule published on April 2, 1997. Like the Interim Final Rule, it would allow depository Lenders to securitize loans (as nondepository Lenders have done for the last six years). Since the publication of SBA's Interim Final Rule almost one year ago, only one depository Lender has securitized. Moreover, that Lender would not qualify as small under SBA's size standards. 13 CFR § 121.201. SBA will consider any additional information from the public on its assessment of the impact of this proposed rule on small banks, nondepository institutions or other small businesses.

SBA certifies that this proposed rule would not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

For purposes of Executive Order 12612, SBA certifies that this proposed

rule would have no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this proposed rule has been drafted, to the extent practicable, to accord with the standards set forth in section 2 of that Order.

List of Subjects 13 CFR Part 120

Loan programs—business, Reporting and recordkeeping requirement, Small businesses.

For the reasons set forth above, SBA proposes to amend 13 CFR part 120 as follows:

PART 120—[AMENDED]

1. The authority citation for 13 CFR Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Revise § 120.420 to read as follows:

Financings By Participating Lenders

§ 120.420 Definitions:

Bank regulatory agencies—The bank regulatory agencies are the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

Currency rate—A securitizer's ''currency rate'' is the dollar balance of its SBA guaranteed loans that are less than 30 days past due divided by the dollar balance of its outstanding portfolio of SBA guaranteed loans, as calculated by SBA.

Good standing—A securitizer is in ''good standing'' with SBA if it is in compliance with all applicable laws and regulations, policies and procedures, is in good financial condition as determined by SBA, and is not under investigation, indictment for, has not been convicted for or had a judgment entered against it or have any officers or employees who have been convicted, indicted, under investigation or the subject of a civil judgment for a felony or charges relating to a breach of trust or violation of a law or regulations protecting the integrity of business transactions or relationships.

Loss rate—A securitizer's ''loss rate'', as calculated by SBA, is the aggregate principal amount of the securitizer's SBA guaranteed loans determined uncollectable by SBA for the most recent ten year period, excluding current fiscal year activity, divided by the aggregate original principal amount of SBA guaranteed loans disbursed by the securitizer during that period.

Nondepository institution—A ''nondepository institution'' is a Small Business Lending Company regulated by SBA (''SBLC'') or a Business and Industrial Development Company (''BIDCO'') or other nondepository institution participating in SBA's 7(a) program.

Securitization—A ''securitization'' is the pooling and sale of the unguaranteed portion of SBA guaranteed loans to a trust, special purpose vehicle, or other mechanism, and the issuance of securities backed by those loans to investors in either a private placement or public offering.

3. Add § 120.421 through 120.428 to read as follows:

§ 120.421 Which Lenders may securitize?

All SBA participating Lenders may securitize.

§ 120.422 Are all securitizations subject to these regulations?

All securitizations are subject to the regulations in this part. SBA will consider securitizations involving multiple Lenders on a case by case basis. SBA will use the conditions in § 120.425 as a starting point for reviewing multiple Lender securitizations. Securitizations by affiliates are considered single Lender securitizations for purposes of the regulations in this part.

§ 120.423 Which SBA loans may a Lender securitize?

Notwithstanding the provisions of § 120.453(c), a Lender may only securitize guaranteed loans that are fully disbursed by the closing date of the securitization. If the amount of a fully disbursed loan increases after a securitization settles, the Lender must retain the increased amount.

§ 120.424 What are the basic conditions a Lender must meet to securitize?

To securitize, a Lender must:

(a) Be in good standing as determined by the Associate Administrator for Financial Assistance (AA/FA);

(b) Use a securitization structure which is satisfactory to SBA;

(c) Use documents acceptable to SBA, including SBA's model multi-party agreement;

(d) Obtain SBA's written consent, which it may withhold in its sole discretion, prior to executing a commitment to securitize; and

(e) Cause the original notes to be stored at the FTA, as defined in § 120.600, and other loan documents to be stored with a third party approved by SBA.

§ 120.425 What are the minimum elements that SBA will require before consenting to a securitization?

A securitizer must comply with the following three conditions:

(a) Capital requirement.—All securitizers must maintain minimum capital consistent with the requirements imposed on depository Lenders by the bank regulatory agencies. For depository institutions, SBA will consider compliance with the capital requirements of the bank regulatory agencies as compliance with this section. SBA's capital requirement does not change that which these banking agencies already require. In addition to meeting the capital requirements of the bank regulatory agencies, securitizing nondepository institutions also must maintain a minimum unencumbered paid in capital and paid in surplus equal to at least $1 million. Each nondepository institution must submit annually audited financial statements demonstrating that it has met SBA's capital requirement.

(b) Subordinated tranche.—A securitizer must retain a tranche of the securities issued in the securitization (subordinated tranche) equal to the greater of two times the securitizer's loss rate on the securitizer's SBA loans, original and purchased, for a 10 year period or 2 percent of the outstanding principal balance at the time of securitization of the unguaranteed portions of the loans in the securitization. This tranche must be subordinate to all other securities issued in the securitization including other subordinated tranches. The securitizer may not sell, pledge, transfer, assign, sell participations in, or otherwise convey the subordinated tranche during the first 6 years after the date of closing of the securitization. The securities evidencing the subordinated tranche must bear a legend stating that the securities may not be sold until 6 years after the issue date. SBA may modify the formula for determining the tranche size for a securitizer in a region affected by a severe economic downturn if it concludes that enforcing this section might exacerbate the adverse economic conditions in the region.

(c) PLP privilege suspension.—(1) If a PLP securitizer's currency rate declines, SBA may suspend the securitizer's PLP unilateral loan approval privileges (PLP approval privileges) under either of the following circumstances:

(i) If the decline is more than 110% of the rate of the decline of the currency rate of all loans approved under the PLP program (PLP Program Loans) as calculated from quarter to quarter or

(ii) If the decline is more than five percentage points and the currency rate of the PLP Program Loans remains stable or increases.

(2) SBA will calculate and compare the currency rate for PLP Program Loans and the currency rate for each securitizer's portfolio each quarter. Loans approved in the current fiscal year will not be included in the calculation of the currency rate. In the event of a severe downturn in a regional economy, a securitizer's currency rate is adversely affected, SBA may waive privilege suspension for all securitizers in the region, if it concludes that enforcing this section might exacerbate the adverse economic conditions in the region.

§ 120.426 What action will SBA take if a securitizer transfers the subordinated tranche prior to the termination of the holding period?

If a securitizer transfers the subordinated tranche prior to the termination of the holding period, SBA immediately will suspend the securitizer's ability to make new SBA loans. The securitizer will have 30 calendar days to submit an explanation to SBA. SBA will have 30 calendar days to review the explanation and determine whether or not to lift the suspension. If an explanation is not received within 30 calendar days or the explanation is not satisfactory to SBA, SBA may transfer the servicing of the applicable securitized loans, including the securitizers' servicing fee on the guaranteed and unguaranteed portions and the premium protection fee on the guaranteed portion, to another SBA participating Lender.

§ 120.427 Will SBA approve a securitization application from a capital impaired Lender?

If a Lender does not maintain the level of capital required by § 120.425(a), SBA will not approve a securitization application from that Lender.

§ 120.428 What happens if SBA suspends a securitizer's PLP approval privileges?

If SBA suspends a securitizer's PLP approval privileges:

(a) the securitizer must continue to service and liquidate loans according to its PLP Supplemental Agreement.

(b) SBA may reinstate the securitizer's PLP approval privileges if the securitizer demonstrates to SBA's satisfaction that the change in currency rate was caused by factors beyond the securitizer's control.

4. Redesignate current § 120.430 as § 120.414.

5. Redesignate current § 120.431 as § 120.415.

6. Add §§ 120.430 through 120.435 to read as follows:

Other Conveyances

§ 120.430 What conveyances are covered by §§ 120–430 through 120.435?

Sections 120.430 through 120.435 cover all other transactions in which a Lender sells, sells a participating interests in, or pledges an SBA guaranteed loan other than for the purpose of securitizing and other than conveyances covered under subpart F of this part.

§ 120.431 Which Lenders may sell, sell participations in, or pledge SBA loans?

Notwithstanding the provisions of Section 120.453(c), all Lenders may sell, sell participations in, or pledge SBA loans in accordance with this subpart.

§ 120.432 Under what circumstances does this rule permit sales of, or sales of participating interests in, SBA loans?

(a) A Lender may sell all of its interest in an SBA loan to another Lender operating under a current Loan Guarantee Agreement (SBA Form 750) with SBA's prior written consent, which SBA may withhold in its sole discretion. The purchasing Lender must take possession of the promissory note and other loan documents and service the sold SBA loan. The purchasing Lender must sign an agreement satisfactory to SBA acknowledging that it is purchasing the loan subject to SBA's right to deny liability on its guarantee.

(b) A Lender may sell, or sell a participating interest in, a part of an SBA loan. If the Lender retains ownership of a part of the unguaranteed portion of the loan equal to at least 10% of the outstanding principal balance of the loan, the Lender must give SBA prior written notice of the transaction, and the Lender must continue to hold the note and service the loan. If a Lender retains ownership of a portion of the unguaranteed interest of the loan equal to less than 10% of the outstanding principal balance of the loan, the Lender must obtain SBA's prior written consent to the transaction, which consent SBA may withhold in its sole discretion. The Lender must continue to hold the note and service the loan unless otherwise agreed by SBA.

(c) For purposes of this section SBA will not consider a Lender to be the owner of any portion of a loan in which it has sold a participating interest.

§ 120.433 What are SBA's other requirements for sales and sales of participating interests?

SBA requires the following:

(a) The Lender must be in good standing as determined by the AA/FA;

(b) In transactions requiring SBA's consent, all documentation must be satisfactory to SBA, including, if SBA determines it to be necessary, a multi-party agreement or other agreements satisfactory to SBA; and

(c) The servicer of the loan or FTA must retain possession of the original promissory notes. The servicer must retain possession of all other original loan documents for all loans.

§ 120.434 What are SBA's requirements for loan pledges?

(a) Except as set forth in Section 120.435, SBA must give its prior written consent to all pledges of any portion of an SBA loan, which consent SBA may withhold in its sole discretion;

(b) The Lender must be in good standing as determined by the AA/FA;

(c) All loan documents must be satisfactory to SBA and must include a multi-party agreement among SBA, Lender, the pledgee, FTA and such other parties as SBA determines are necessary;

(d) The Lender must use the proceeds of the loan secured by the SBA loans only for financing SBA loans;

(e) The Lender must remain the servicer of the loans and retain possession of all loan documents other than the original promissory notes; and

(f) The Lender must transfer the original promissory notes to FTA.

§ 120.435 Which loan pledges do not require notice to or consent by SBA?

The following pledges of SBA loans do not require notice to or consent by SBA:

(a) Treasury tax and loan accounts;

(b) The deposit of public funds;

(c) Uninvested trust funds;

(d) Discount borrowings at a Federal Reserve Bank; or

(e) Pledges to the Federal Home Loan Bank Board.

Dated: May 5, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–12535 Filed 5–15–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 98–3467]

RIN 2125–AE36

Truck Size and Weight; National Network; North Dakota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to modify the National Network for commercial motor vehicles by adding a route in North Dakota. The National Network was established by a final rule on truck size and weight published on June 5, 1984, as since modified. This rulemaking proposes to add one segment to the National Network as requested by the State of North Dakota.

DATES: Comments on this docket must be received on or before July 17, 1998.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management and Analysis (202–366–2212), or Mr. Charles Medalen, Office of the Chief Counsel (202–366–1354), 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:

Electronic Access

Internet users can access all comments received by the U.S. Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su__docs.

Background

The National Network of Interstate highways and Federally-designated routes, on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. 31111, 31113–31114, may operate, was established by a final rule published in the **Federal Register** on June 5, 1984 (49 FR 23302), as subsequently modified. These highways are located in each State, the District of Columbia, and Puerto Rico. Routes on the National Network are listed in appendix A of 23 CFR Part 658.

Procedures for the addition and deletion of routes are outlined in 23 CFR 658.11 and include the issuance of a notice of proposed rulemaking (NPRM) before final rulemaking.

The State of North Dakota, under authority of the Governor, requests the addition of one segment to the National Network. The segment has been reviewed by State and FHWA offices for general adherence to the criteria of 23 CFR 658.9 and found to provide for the safe operation of larger commercial vehicles and for the needs of interstate commerce.

The segment requested is generally described as ND Highway 32 from the west junction of ND Highway 13 north to Interstate 94, a distance of approximately 56 miles.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT

Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of E.O. 12866, nor is it considered significant under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This rulemaking proposes technical amendments to 23 CFR 658, adding a certain highway segment in accordance with statutory provisions. This segment represents a very small portion of the National Network and has a negligible impact on the prior system. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposal on small entities. This rulemaking proposes a technical amendment to 23 CFR 658, adding a certain highway segment in accordance with statutory provisions. This segment represents a very small portion of the National Network and has a negligible impact on the prior system. This rulemaking would, however, allow motor carriers, including small carriers, access to a highway segment not available to them at the present time.

Based on its evaluation of this proposal, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rulemaking relates to the Federal-aid Highway Program which is a financial assistance program in which State, local, or tribal governments have authority to adjust their program in accordance with changes made in the program by the Federal government, and thus is excluded from the definition of Federal mandate under the Unfunded Mandates Reform Act of 1995.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities do not apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements for the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42

U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highways and roads, Motor carrier—size and weight.

Issued on: May 8, 1998

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, Chapter 1, appendix A to Part 658 for the State of North Dakota as set forth below:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 continues to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111–31115; 49 CFR 1.48(b)(19) and (c)(19).

2. Appendix A to Part 658 is amended for the State of North Dakota by adding a new route listing entry after the listing for ND 13, ND 1 S. Jct., MN State Line , to read as follows:

Appendix A to Part 658—National Network—Federally-Designated Routes

* * * * *

NORTH DAKOTA

Route	From	To
*	*	*
ND32	West Junction of ND Highway 13 North	I–94
*	*	*

* * * * *

[FR Doc. 98–13154 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–217–FOR]

Kentucky Regulatory Program

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Kentucky regulatory program (hereinafter the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky submitted a letter requesting the removal of an amendment at 30 CFR 917.17(a) which required that it maintain a staffing level of 156 field inspectors and, in the same letter, provided justification for its request. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [E.D.T.], June 2, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2494.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601. Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT:

William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2494.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated November 3, 1997 (Administrative Record No. KY–1418), Kentucky submitted a proposed amendment to its program requesting the removal of an amendment at 30 CFR 917.17(a) requiring that Kentucky maintain a staffing level of 156 field inspectors. The proposed amendment was announced in the December 10, 1997, **Federal Register** (62 FR 65044).

The notice did not clarify that Kentucky submitted documents that provide evidence that it has sufficient inspection and enforcement staffing levels to regulate mining in accordance with SMCRA. OSM, therefore, reopened the comment period to describe the documents submitted. The submission of the additional information was

announced in the April 27, 1998, **Federal Register** (63 FR 20561).

During the course of its review, OSM determined that the required amendments at 30 CFR 917.16(b)(1) and in the first sentence of (b)(2), which mandate a staffing level of 408 for Kentucky, and (b)(3), which requires that Kentucky provide a report to OSM describing the actions taken to achieve the staffing level, could possibly be removed based on the additional documentation Kentucky provided. Specifically, the Director proposes to remove the entire required amendment at 917.16(b) because Kentucky appears to have met all the requirements in 30 CFR 917.16(b) (1), (2), and (3). The comment period is being reopened because this proposed action was not specified in the two earlier announcements.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1998.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–13079 Filed 5–15–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA22

Proposed Amendment to the Bank Secrecy Act Regulations; Requirement That Casinos and Card Clubs Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is proposing to amend the Bank Secrecy Act regulations to require casinos and card clubs to report suspicious transactions involving at least $3,000 in funds or other assets, relevant to a possible violation of law or regulation; reports would be made on a reporting form specifically designed for use in the gaming industry. The proposed amendments to the Bank Secrecy Act regulations would also require casinos and card clubs to establish procedures designed to detect occurrences or patterns of suspicious transactions and would make certain other changes to the requirements that casinos maintain Bank Secrecy Act compliance programs. The proposal is a further step in the creation of a comprehensive system (to which banks are already subject) for the reporting of suspicious transactions by financial institutions. Such a system is a core component of the counter-money laundering programs of the Department of the Treasury.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before September 15, 1998.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, Suite 200, 2070 Chain Bridge Road, Vienna, Virginia 22182–2536, *Attention:* NPRM—Suspicious Transaction Reporting—Casinos. Comments also may be submitted by electronic mail to the following Internet address: ''regcomments@fincen.treas.gov,'' with the following caption in the body of the text: ''*Attention:* NPRM—Suspicious Transaction Reporting—Casinos''. For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.''

Inspection of Comments: Comments may be inspected, between 10:00 a.m. and 4:00 p.m., at FinCEN's Washington office, in the Franklin Court Building, 1099 14th Street, N.W., Fourth Floor,

Washington, D.C. 20005. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 216–2870.

FOR FURTHER INFORMATION CONTACT: Leonard C. Senia, Senior Financial Enforcement Officer, Office of Program Development, FinCEN, (703) 905–3931 or Cynthia L. Clark, Deputy Chief Counsel, Office of Chief Counsel, FinCEN, (703) 905–3758.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document proposes to add a new § 103.21 to 31 CFR part 103, to require casinos and card clubs to report to the Department of the Treasury suspicious transactions to the extent provided in such section relevant to a possible violation of law or regulation.[1] The proposal would extend to casinos and card clubs the suspicious transaction reporting regime to which the nation's banks, thrift institutions, and credit unions have been subject since April 1, 1996.[2] Related changes are made to the provisions of 31 CFR 103.54 relating to casino compliance programs. FinCEN has previously proposed a rule that would require suspicious transaction reporting by (i) money transmitters, (ii) issuers, sellers, and redeemers of money orders, and (iii) issuers, sellers, and redeemers of traveler's checks, see 62 FR 27900, which is a part of the set of rules proposed at 62 FR Part V (May 21, 1997). It intends in the near future to propose a rule extending the suspicious transaction reporting requirement to brokers or dealers in securities.

II. Background

A. Statutory Provisions

The Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330), appear at 31 CFR part 103.[3] The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The provisions of the Bank Secrecy Act relating to the reporting of suspicious transactions are contained in 31 U.S.C. 5318(g).[4] That subsection grants the Secretary of the Treasury the authority to require the reporting of such transactions by financial institutions subject to the Bank Secrecy Act, and contains provisions protecting reporting institutions from liability to customers on account of the making of such reports. Subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

> A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that neither a financial institution, nor any director, officer, employee, or agent.

> That makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.'' [5] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement or supervisory agency.'' *Id.*, at subsection (g)(4)(B).

The provisions of 31 U.S.C. 5318(h) grant the Secretary authority to

> Require financial institutions to carry out anti-money laundering programs, including at a minimum,
> (A) the development of internal policies, procedures, and controls,
> (B) the designation of a compliance officer,
> (C) an ongoing employee training program, and
> (D) an independent audit function to test programs.

These provisions, enacted at the same time as the explicit provisions relating to reporting of suspicious transactions, complement the latter provisions.

B. Application of the Bank Secrecy Act to Gaming Businesses

State licensed gambling casinos were generally made subject to the Bank Secrecy Act as of May 7, 1985, by regulation issued early that year. *See* 50 FR 5065 (February 6, 1985).[6] The 1985 action was based on Treasury's statutory authority to designate as financial institutions for Bank Secrecy Act purposes (i) businesses that engage in activities ''similar to'' the activities of the businesses listed in the Bank Secrecy Act, as well as (ii) other businesses ''whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.'' *See* 31 U.S.C. 5312(a)(2)(Y) and (Z)[7]. Special Bank Secrecy Act regulations relating to casinos were issued in 1987, and amended in 1989 and (more significantly) in 1994. *See* 52 FR 11443 (April 8, 1987), 54 FR 1165 (January 12, 1989), and 59 FR 61660 (December 1, 1994) (modifying and putting into final effect the rule originally published at 58 FR 13538 (March 12, 1993)). These actions reflect the continuing determination not only that casinos are vulnerable to manipulation by money launderers and tax evaders but, more generally, that gaming establishments provide their customers with a financial product—gaming—and as a corollary offer a broad array of financial services,

[1] As used hereafter in this document, the phrase ''casino'' when used singly includes a reference both to casinos and to card clubs, as the latter term is defined in 31 CFR 103.11(n)(8), unless the context clearly indicates otherwise. See 31 CFR 103.11(n)(7)(iii). 31 CFR 103.11(n)(7)(iii) and (n)(8) were added to the Bank Secrecy Act Regulations by the final rule published at 63 FR 1919 (January 13, 1998).

[2] The suspicious transaction reporting rules for banks are at present found at 31 CFR 103.21, which is proposed to be renumbered as 301 CFR 103.18 as part of the pending rulemaking relating to the reporting of suspicious transactions by money transmitters and other money services businesses (discussed immediately below in the text).

[3] Bank Secrecy Act provisions relating specifically to gaming establishments are discussed at paragraph B, below.

[4] Subsection (g) of section 5318(g) was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (''Annunzio-Wylie Act''), Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994, to require designation of a single government recipient for reports of suspicious transactions.

[5] This designation is not to preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C).

[6] Casinos whose gross annual gaming revenue did not exceed $1 million were, and continue to be, excluded from Bank Secrecy Act coverage.

[7] In 1985, these provisions were numbered 31 U.S.C. 5312(a)(2)(X) and (Y). The numbering changed with the addition to section 5312(a)(2) of a new subparagraph (X), described in the text, dealing with gaming establishments, by the Money Laundering Suppression Act of 1994.

such as customer deposit or credit accounts, facilities for transmitting and receiving funds transfers directly from other institutions, and check cashing and currency exchange services, that are similar to those offered by depository institutions and other financial firms.

In recognition of the importance of the application of the Bank Secrecy Act to the gaming industry, section 409 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, codified the application of the Bank Secrecy Act to gaming activities by adding casinos and other gaming establishments to the list of financial institutions specified in the Bank Secrecy Act itself. The statutory specification reads:

(2) financial institution means—

* * * * *

(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—

(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

(ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act)

* * *.

31 U.S.C. 5312(a)(2)(X). Gambling casinos authorized to do business under the Indian Gaming Regulatory Act became subject to the Bank Secrecy Act on August 1, 1996. *See* 61 FR 7054 (February 23, 1996), and the class of gaming establishments known as ''card clubs'' will become subject to the Bank Secrecy Act on August 1, 1998.[8] *See* 63 FR 1919 (January 13, 1998).

Casinos in Nevada were exempted from direct coverage under the Bank Secrecy Act as a result of Treasury action taken in 1985 at the request of state authorities. *See* 50 FR 5064 (February 6, 1985). The exemption carries with it a continuing requirement that Nevada casinos must be subject to a state ''regulatory system [that] substantially meets the reporting and recordkeeping requirements'' of 31 CFR part 103, in the judgment of the Department of the Treasury, *see* 31 CFR 103.45(c)(1), and that meets certain additional conditions specified in 31 CFR 103.45(c)(2).

Nevada Gaming Commission Regulation 6A, Cash Transactions Prohibitions, Reporting, and Recordkeeping, has required Nevada casinos to report currency transactions in excess of $10,000 as part of its continuing responsibilities pursuant to a May 1985 cooperative agreement between the State of Nevada and the U.S. Department of the Treasury that implements the exemption. As a result of a recent Treasury review of Nevada's regulatory system, Regulation 6A was amended, *inter alia*, to enhance the counter-money laundering rules to which casinos are subject. The enhanced state rules require casinos to report directly to the Department of the Treasury both: (i) Large currency transactions (on Internal Revenue Service Form 8852, Currency Transaction Report by Casinos—Nevada), and (ii) potentially suspicious transactions and activities (under rules reflecting the same concerns, in the context of Nevada's state regulatory system, as the rules contained in 31 CFR 103.21 as proposed in this document, and as reflected in Treasury Form TD F 90–22.49 (Suspicious Activity Report by Casinos)).[9]

C. Importance of Suspicious Transaction Reporting in Treasury's Counter-Money Laundering Programs

The Congressional mandate to require reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime programs. First, it is to financial institutions that money launderers must go, either initially, to conceal their illegal funds, or eventually, to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification (or in the case of gaming establishments, transactions that appear to lack a reasonable relationship to legitimate wagering activities) or that otherwise cannot be explained as constituting a legitimate use of the casino's financial services. Moreover, because money laundering transactions are designed to appear legitimate in order to avoid detection, the creation of an effective system for detection and prevention of money laundering is impossible without the cooperation of financial institutions, including, in this case, gaming establishments. Indeed, many non-banks have come increasingly to recognize the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The provisions of the Annunzio-Wylie and Money Laundering Suppression Acts recognize that the traditional reliance of Treasury counter-money laundering programs on the reporting of currency transactions between financial institutions and their customers and the reporting of the transportation of currency and certain monetary instruments into or out of the United States, is not adequate to prevent or detect money laundering activities. This document is thus one of a group of proposed rule changes that signals a move from reliance solely on currency transaction reporting to reliance as well upon the timely reporting of information equally, if not more, likely to be of use to law enforcement officials and financial regulators, namely, information about suspicious transactions and activities. Suspicious transaction reporting is a key component of a flexible and effective compliance system required to prevent the use of the nation's financial system for illegal purposes.

The reporting of suspicious transactions is also a key to the emerging international consensus on the prevention and detection of money laundering. One of the central recommendations of the Financial Action Task Force—recently updated and reissued—is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Annual Report (June 28, 1996),[10] Annex 1 (Recommendation 15). The recommendation, which applies equally to banks and non-banks, revises the original recommendation, issued in 1990, that required institutions to be

[8] Generally card clubs would be subject to the same rules as casinos, unless a specific provision of the rules in 31 CFR part 103 applicable to casinos explicitly requires a different treatment for card clubs. As in the case of casinos, card clubs whose gross annual gaming revenue is $1 million or less are excluded from Bank Secrecy Act coverage. *See* 31 CFR 103.11(n)(8).

[9] At present, the use of the form is required only for casinos that file reports subject to Nevada Gaming Commission Regulation 6A. A more thorough discussion of the current status of Form TD F 90–22.49 appears below, under the heading ''Paperwork Reduction Act Notices.''

[10] The Financial Action Task Force, commonly referred to as the ''FATF,'' is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

either ''*permitted or* required.'' (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services or facilities by money launderers and others engaged in financial crime.

Similarly, the European Community's *Directive on prevention of the use of the financial system for the purpose of money laundering* calls for member states to—

> Ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering * * * by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States,* OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[11] All of these documents recognize the importance of extending the counter-money laundering controls to ''non-traditional'' financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-banks as well as depository institutions are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra,* Annex 1 (Recommendation 8).

The FATF's research and national mutual evaluation projects have expanded in recent years the degree of attention paid to non-banks, including gaming establishments. The Caribbean Financial Action Task Force (or ''CFATF''), a 24 nation regional counterpart of the FATF, has also paid special attention to the vulnerability of the gaming industry in the Caribbean to penetration by money launderers.

[11] The Organization of American States (OAS) reporting requirement is linked to the provision of the Model Regulations that institutions ''shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.'' OAS Model Regulation, Article 13, section 1.

D. Importance of Suspicious Transaction Reporting by Casinos and Card Clubs

Billions of dollars of U.S. currency are laundered each year, through many different types of financial institutions and businesses. The corrosive effects of money laundering are well understood. Growing government knowledge about the way illegally-obtained proceeds are laundered has led to a more sophisticated understanding of the steps that can and should be taken to counter this crime.

The placement of illegally-derived currency into the financial system and the smuggling of such currency out of the country remain two of the most serious issues facing financial law enforcement efforts in the United States and around the world. But as financial institutions have responded to the challenges posed by money laundering, it has become far more difficult than in the past to pass large amounts of currency unnoticed directly into the nation's financial system and far easier to identify and isolate those institutions and officials that remain willing to assist or turn a blind eye to money launderers.

Moreover, the placement of currency into the financial system is at most only the first stage in the money laundering process. The money launderer's objective is to integrate the funds into the financial system, passing the funds through multiple transactions, financial instruments, or layers of formal ownership, so that they can be used for consumption or reinvestment in either legitimate or criminal activity without calling attention to their origin. While many currency transactions are *not* indicative of money laundering or other violations of law, many non-currency transactions *can* indicate illicit activity, especially in light of the breadth of the statutes that make money laundering itself a crime. *See* 18 U.S.C. 1956 and 1957.

Owing in part to different business and transactional patterns, non-banks have historically not been subject to the same counter-money laundering controls as depository institutions. As government and industry programs have made it more difficult for customers to launder money at banks and other depository institutions, the interest of money launderers in moving funds into the financial system through non-bank financial services providers has increased.

Gaming establishments have not been spared from this trend.[12] The experience of law enforcement and regulatory officials suggests that the gambling environment can attract criminal elements involved in a variety of illicit activities, including fraud, narcotics trafficking, and money laundering. With large volumes of currency being wagered by legitimate gaming customers from throughout the United States (and, indeed, from around the world), the fast-paced environment of casino gaming can create an especially valuable ''cover'' for money launderers. The explosive growth of casino gaming in the United States in the last decade vastly increases the ''targets of opportunity'' for such criminals, as casino sites, amounts wagered, and casino attendance have multiplied.[13]

[12] *U.S.* v. *Marks,* 97 CR 20069 (District Court Western District of Louisiana), June 1997 (defendants indicted for laundering drug proceeds by buying and cashing casino tokens); *U.S.* v. *Zottola* (District Court Western District of Pennsylvania) and *U.S.* v. *Zottola,* 97 CR 0953T (District Court Southern District of California), April 1997 (defendants indicted for laundering $2.1 million in organized crime proceeds to open a casino on tribal lands); *New Jersey Division of Gaming Enforcement* v. *Freedman,* October 1996, 96–0609–RC NJ–DGE (defendants charged with structuring transactions to avoid reporting by cashing $20,000, in increments of $1,000, in casino chips); *U.S.* v. *Vacanti,* 96 CR 593(SMO) (District Court New Jersey), September 1996 (structuring token purchases to avoid transaction reporting requirements); *U.S.* v. *McClintock,* 96 CR 91(JEI) (District Court New Jersey), February 1996 (structuring transactions totalling $124,000); *U.S.* v. *Baxter,* 95 CR 116 (District Court Eastern District of Louisiana), August 1995 (president of a casino laundered $200,000 by manipulating the books of the casino to show the funds were from legitimate gambling); *U.S.* v. *Grittini,* 1:95 CR 17GR (District Court Southern District of Mississippi), May 1995 (rigged blackjack games used to launder $520,000 for organized crime); *New Jersey Division of Gaming Enforcement* v. *Meyerson,* 96–0393–RC (casino employee advised gamblers to structure $360,000 and assisted in structuring $30,000 to avoid transaction reporting requirements); *U.S.* v. *Freapane,* 94 CR 287 (District Court Eastern District of Louisiana), November 1994, (owner of illegal video slot machine business indicted for laundering profits from the business through casino slot machines in another state).

[13] The General Accounting Office cites in its January 1996 report on money laundering that ''the proliferation of casinos, together with the rapid growth of the amounts wagered, may make these operations highly vulnerable to money laundering.'' General Accounting Office, *Report to the Ranking Minority Member, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Money Laundering: Rapid Growth of Casinos Makes Them Vulnerable* GAO/GGD–96–28. According to *International Gaming and Wagering Business* (August 1997), the amount of money legally wagered in casinos exceeded $480 billion in 1996. This is a substantial increase from the $101 billion wagered in casinos in 1982. Casino gaming accounts for 82 percent of the total amount of money wagered for all gaming activities throughout the United States. Similarly, according to *International Gaming and Wagering Business* (August 1997), the amount of money legally wagered in card rooms constituted an additional $9.8 billion in 1996 (i.e., 1.7 percent of the total amount of money wagered). It is estimated that 125 million people visit government licensed casinos each year.

E. Coordinated System for Reporting Suspicious Transactions

The proposed rule is one of a series of rulemakings designed to extend suspicious activity reporting to institutions subject to the Bank Secrecy Act.[14] As in the case of the other rules, this proposed rule is designed to permit creation of a unified system for all reports of suspicious casino and card club transactions and activities. Under that system, all such reports will be filed with FinCEN and made available, in a single data base, to federal and state law enforcement authorities and gaming regulators nationwide. The single data base will not only permit rapid dissemination of reports to appropriate law enforcement agencies, but will facilitate more thorough analysis and tracking of those reports, and, in time, the provision to the financial community of information about trends and patterns gleaned from the information reported. The single filing location will also facilitate development of procedures for magnetic and ultimately electronic filing of such reports.

FinCEN is developing a form, the Suspicious Activity Report by Casinos (''SARC''), that will be used by casinos and card clubs around the nation to report a suspicious transaction or activity under the proposed rule. A variant of that form is already in use by casinos in Nevada that (as described above) became subject to a state requirement to report suspicious transactions to FinCEN on October 1, 1997. *See* 62 FR 44032 (August 18, 1997) (Paperwork Reduction Act Notice for Form TD F 90–22.49 to be used initially by casinos in Nevada).

No system for the reporting of suspicious transactions can be effective unless information flows from as well as to the government. FinCEN anticipates working on an ongoing basis with gaming establishments and state regulatory officials in their efforts to detect suspicious activities.

Treasury ultimately must rely on the creation of a working partnership with the gaming industry that will assist gaming establishments to apply their knowledge of both their customers and business patterns to identify and report suspicious activity and permit the implementation of suspicious activity reporting by gaming establishments in an efficient and cost-effective manner. Joint efforts will include exchanges of information, training, and advisory guidance as to examples and patterns of potentially suspicious casino transactions and activities. (Of course no list of potentially suspicious activities will apply with equal force to all gaming establishments or all jurisdictions in which gaming is permitted, due in part to differences in the range of gaming activities permitted in various areas.)

In addition, FinCEN intends to hold several public meetings, which will be announced by notice published in the **Federal Register**, to provide additional opportunities for the industry and other interested parties to discuss the various provisions of this proposed rule. During such meetings, FinCEN will also welcome discussion of a new advisory entitled ''Guidance for Detecting and Reporting Suspicious Casino Transactions and Activities,'' which is in preparation.

III. Specific Provisions [15]

A. 103.11(ii)—Transaction

The definition of ''transaction'' in the Bank Secrecy Act regulations for purposes of suspicious transaction reporting conforms generally to the definition Congress added to 18 U.S.C. 1956 when it criminalized money laundering in 1986. See Pub. L. 99–570, Title XIII, 1352(a), 100 Stat. 3207–18 (Oct. 27, 1986). This notice proposes to amend that definition to include explicit references to ''the purchase or redemption of casino chips or tokens, or other gaming instruments,'' to eliminate any question of the application of the definition to transactions of a sort common to gaming establishments. These changes are necessary so that the reporting rules will cover all activity that should be reported under the proposed rule.

B. 103.21—Reports of Suspicious Transactions

General

Proposed § 103.21 contains the rules setting forth the obligation of casinos and card clubs to report suspicious transactions. The rule itself does not contain a separate reference to card clubs, since 31 CFR 103.11(n)(7)(iii) generally provides that ''[a]ny reference in [31 CFR part 103] . . . to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application.'' *See* 63 FR 1919, 1923 (January 13, 1998). No such varying provision is contained in the proposed rule.

Proposed paragraph (a)(1) contains a general statement of the obligation to file a suspicious activity report, as well as language designed to encourage the reporting of transactions that appear relevant to violations of law or regulation, even in cases in which the rule does not explicitly so require, for example in the case of a transaction falling below the $3,000 threshold in the rule. The Department of the Treasury continues to believe that such a voluntary report (that is, the report of a suspicious transaction relevant to a possible violation of law or regulation, in circumstances not required by the rule proposed in 31 CFR 103.21(a)(1)) is fully covered by the rules against disclosure and protections against liability specified in 31 U.S.C. 5318(g)(2) and (g)(3) and in proposed 31 CFR 103.21(d).

Proposed paragraph (a)(2) provides that with respect to casinos, a transaction requires reporting under 31 CFR 103.21 if it is conducted or attempted by, at, or through the casino, involves or aggregates at least $3,000 in funds or assets, and the casino knows, suspects, or has reason to suspect that the transaction is one that must be reported.

Proposed paragraph (a)(2) embodies two important points. First, FinCEN is proposing a $3,000 threshold to the reporting of suspicious casino and card club transactions and activities, so that reports will be required for a transaction (or a pattern of transactions of which the transaction is a part) that involves at least that amount in funds or assets and that otherwise satisfies the terms of the proposed rule. The proposed language makes it clear that related suspicious transactions ''aggregating'' $3,000 or more in funds or assets are also reportable under the Bank Secrecy Act. Transactions are reportable under proposed paragraph (a) whether or not they involve currency.

The proposed $3,000 threshold is intended to focus attention on customers who are conducting suspicious transactions at a level that warrants attention and, at the same time, to limit the application of the reporting requirement to a small, but important percentage of total customer transactions that occur at a casino each day. Casino regulations in several

[14] Several casinos have already voluntarily reported suspicious transactions and activities by filing on Form TD F 90–22.47, Suspicious Activity Report (SAR), which is the form required for banks and other depository institutions. Other casinos have reported such transactions by telephone to local offices of federal law enforcement or gaming regulatory agencies.

[15] Because proposed § 103.21 reflects the terms of the reporting rule for banks, readers of this document may wish to consult the notice of proposed rulemaking and the document containing the final reporting rule for banks, at 60 FR 46556 (September 7, 1995) (proposed rule) and 61 FR 4326 (February 5, 1996) (final rule). The bank rule is found at § 103.21, but is proposed by this notice to be renumbered as § 103.18.

States, namely, Colorado, Illinois, Indiana, Missouri and Nevada, already require the recording and scrutiny of currency transactions occurring at this threshold on the gaming floor or at the cage. Moreover, in other States, such as Louisiana and Mississippi, and at some tribal casinos, customer activity is typically recorded at or slightly below this threshold on cage action control logs and gaming floor multiple currency transaction logs. And, as noted above, Nevada casinos have been subject to a $3,000 threshold for the filing of suspicious activity reports since October 1997.

Second, the use of the term ''knows, suspects, or has reason to suspect'' is intended to introduce a concept of due diligence into the reporting procedures. Casino officials who monitor a customer's gaming activity or conduct transactions with a customer are in a unique position to recognize transactions and activities which appear to have no legitimate purpose, are not usual for a specific player or type of players, or have no apparent business explanation. The suspicious nature of the transaction may first be detected by an employee conducting the transaction, a supervisor observing the transaction, or a surveillance department employee monitoring the transaction. The scrutiny needed to identify suspicious transactions highlights the importance of casinos knowing their customers.

The proposed rule designates three classes of transactions as requiring reporting by casinos. The first class, described in proposed paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second class, described in proposed paragraph (a)(2)(ii), involves transactions designed to evade the requirements of the Bank Secrecy Act. The third class, described in proposed paragraph (a)(2)(iii), involves transactions that appear to have no business purpose or that vary so substantially from normal commercial activities or activities appropriate for the particular customer or type of customer as to have no reasonable explanation.

The determination as to whether a suspicious report is required must be based on all the facts and circumstances relating to the transaction and the customer in question. Suspicious transactions and activities will often take place at a casino cage, gaming table or slot machine, but they can occur anywhere in the casino. *Suspicious transaction reporting is not limited to transactions in currency* such transactions may also involve monetary instruments or credit cards, or may involve funds transfers into, out of, or through casinos. In some situations casinos may be used in an attempt initially to place illegally-obtained funds into the financial system; in other situations, passage of funds through a casino may follow the initial placement of illegal proceeds at another financial institution, as part of the ''placement'' or ''integration'' stages of the money laundering cycle.

Paragraph (a)(2)(iii) includes in the rule a requirement for the reporting of transactions that vary so substantially from normal practice that they legitimately can and should raise suspicions of possible illegality. Unlike many criminal acts, money laundering involves the taking of apparently lawful steps—opening deposit and credit accounts, wiring funds, or cashing checks—for an unlawful purpose. Thus, in attempting to *appear to be* wagering customers, persons may be willing to lose a nominal amount of chips by making small bets or offsetting larger bets and then exchanging their remaining chips for currency, a check or a wire transfer. They may attempt to structure deposits or withdrawals of funds from a casino account to avoid recordkeeping or reporting thresholds or to move substantial funds through a casino's facilities with little or no related gaming activity, or to provide false documents or identifying information to casino officials. A skillful money launderer will often split the movement of funds among different parts of a casino so that no one single person has a complete picture of the transactions or movement of funds involved, and may use agents to conduct multiple transactions for an anonymous individual, layering the transactions to disguise their source.

A casino may also detect suspicious or suspected illegal activity pertaining to transactions involving a check cashing operator, junket operator, gambling tour company, supplier, vendor, etc. with which it has a contractual relationship. For example, a casino may observe a customer (other than an established junket operator) directly supplying large amounts of currency to individuals who then use the currency to make a deposit, purchase of chips, exchange of currency, etc.

Finally, a determination whether a suspicious activity report is required to be filed may not result from face-to-face transactions between customers and casino personnel or from a review of the account of a customer, but instead may be discovered by information contained in the casino's own internal accounts and financial or other records. For instance, patterns of funds transfers by seemingly unrelated customers to a third party account, followed by little or no gaming activity and withdrawal of the consolidated funds, may raise questions that examination of no one transaction would reveal. Such patterns of suspicious activity may be detected during an unrelated review of a casino's internal records, as part of an independent audit of a casino's compliance systems, or as a result of a suspicious activity monitoring program designed to detect the occurrence of potentially suspicious transactions generally.

Proposed paragraph (a)(2)(iii) recognizes the emerging international consensus that efforts to deter, substantially reduce, and eventually eradicate money laundering are greatly assisted by the reporting of unusual financial transactions for which no lawful purpose can be determined. The requirements of this section comply with the recommendations adopted by the FATF and the OAS, and are consistent with the European Community's directive on preventing money laundering through financial institutions.

Given the breadth of the reporting requirement, and the variety of transactions conducted in or through gaming establishments, it is impossible to avoid the need for judgment in administering or applying the reporting standards to particular situations. Different fact patterns will require different types of judgments. In some cases, the facts of the transaction may clearly indicate the need to report. For example, the fact that a customer: (i) Furnishes an identification document which the casino believes is false or altered in connection with the completion of a Currency Transaction Report by Casinos (CTRC), or the opening of a deposit, credit account, or check cashing account; (ii) tries to influence, bribe, corrupt, or conspire with an employee not to file CTRCs; or (iii) converts large amounts of currency from small to large denomination bills; would all clearly indicate that a SARC should be filed.

In other situations a more involved judgment may be needed to determine whether a transaction is suspicious within the meaning of the rule. The need for such judgments may arise, for example, in the case of transactions in which a customer (i) wires out of a casino funds not derived from gaming proceeds, or wires funds to financial institutions located in a country which is not his or her residence or place of

business; (ii) transmits or receives funds transfers without normal identifying information or in a manner that may indicate an attempt to disguise or hide the country of origin or destination or the identity of the customer sending the funds or the beneficiary to whom the funds are sent; (iii) repeatedly uses an account as a temporary resting place for funds from multiple sources; (iv) makes continuous payments or withdrawals of currency in amounts each below the currency transaction reporting threshold applicable under 31 CFR 103.22; or (v) inserts currency into a slot machine validator, accumulates credits with minimal or no gaming activity, and then cashes out the tokens or credits at the cage (or slot booth) for large denomination bills or a casino check. The judgments involved will also extend to whether the facts and circumstances and the institution's knowledge of its customer provide a reasonable explanation for the transaction that would remove it from the suspicious category. Again, it is crucial to recognize that suspicious transactions and activities are reportable under this rule and 31 U.S.C. 5318(g) whether or not they involve currency.

For all of these reasons, casinos must know their customers to make an informed decision as to whether certain customer transactions are suspicious. Many casinos already maintain and rely for business purposes on a great deal of information about their customers from data routinely obtained through deposit, credit, check cashing, and player rating accounts. These accounts generally require casinos to obtain basic identification information about the accountholders, at the time the accounts are opened, and to inquire into the kinds of wagering activities the customer is likely to conduct.[16] Also, in certain instances, casinos use credit bureaus to verify information obtained from their customers. All of these sources of information can help a casino to better understand its customer base and to evaluate specific customer transactions that appear to lack justification or otherwise cannot be explained as falling within the usual methods of legitimate business.

[16] The deposit and credit accounts track customer deposits and casino extensions of credit. Casino customers can draw down on either account to fund their gaming, purchase chips and conduct other activities on casino properties. The player rating account tracks gaming activity and is designed primarily to award complimentary perquisites to volume players, and to serve as a marketing tool to identify customers and to encourage continued patronage.

Filing Procedures

Paragraph (b) sets forth the filing procedures to be followed by casinos making reports of suspicious transactions. Within 30 days after a casino becomes aware of a suspicious transaction, the casino must report the transaction by completing a SARC and filing it in a central location, to be determined by FinCEN.

Supporting documentation relating to each SARC is to be collected and maintained separately by the casino and made available to FinCEN and any appropriate law enforcement or gaming regulatory agency upon request. Special provision is made for situations requiring immediate attention, in which case casinos are to immediately notify, by telephone, the appropriate law enforcement authority in addition to filing a SARC.

Reports filed under the terms of the proposed rule will be lodged in a central data base (on the model of the data base used to process, analyze, and retrieve bank suspicious activity reports). Information will be made automatically available to federal and state law enforcement and gaming regulatory agencies, to enhance the ability of those agencies to carry out their mandates to fight financial crime.

Maintenance of Records

Paragraph (c) provides that filing casinos must maintain copies of SARCs and the original related documentation for a period of five years from the date of filing; the relevant records may include not only paper or electronic accounting or other entries but also (without limitation) appropriate segments of video or audio tapes recorded by the casino as part of its operations. Even though not required to be filed with the SARC, the supporting documentation is deemed to be a part of the SARC and is required to be held by the casino (in effect as agent for FinCEN). This provision is intended to relieve casinos of the need to transmit supporting documentation immediately to FinCEN without lessening the utility or availability of the supporting documentation. Thus, identification of supporting documentation must be made at the time the SARC is filed, and such supporting documentation is deemed filed with a SARC in accordance with paragraph (c); as such, FinCEN, law enforcement authorities and appropriate gaming regulatory agencies need not make their access requests through subpoena or other legal processes.[17]

[17] References to ''appropriate law enforcement and regulatory agencies'' naturally include the Examination Division of the Internal Revenue Service, to which authority to examine, *inter alia*, gaming establishments for compliance with the Bank Secrecy Act has been delegated. *See* 31 CFR 103.46(b)(8).

Prohibition From Disclosing SARCs; Safe Harbor From Civil Liability

Paragraph (d) incorporates the terms of 31 U.S.C. 5318(g)(2) and (g)(3). This paragraph thus specifically prohibits persons filing SARCs from making any disclosure, except to law enforcement and regulatory agencies, about either the fact of the filing of the reports or the reports themselves, the information contained therein, or the supporting documentation. The non-disclosure provisions of section 5318(g)(2) are intended to ensure that suspicious activity report information is restricted to appropriate law enforcement and regulatory personnel and are not otherwise made public. It is also designed to prevent the subject of a report from learning that his suspicious conduct has been reported to the government. SARC information, like other reports required to be filed under the Bank Secrecy Act, are not subject to disclosure to the public without the express authorization of FinCEN.

Auditing and Enforcement

Finally, paragraph (e) notes that compliance with the obligation to report suspicious transactions will be audited, and provides that failure to comply with the rule may constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations, which may subject non-complying casinos to an enforcement action.

C. 103.54—Related Changes to Casino Compliance Program Requirements

General

31 CFR 103.54 contains special compliance program rules for casinos, adopted by Treasury in 1994. See 59 FR 61660 (December 1, 1994). The compliance program requirement contained in the 1994 final rule was revised to include procedures to determine the occurrence of unusual or suspicious transactions.

As noted above, the compliance program and suspicious transaction reporting rules are complementary, and FinCEN believes that it is appropriate to propose modification of those rules in light of the projected commencement of suspicious transaction reporting for casinos. Two specific modifications are proposed.

a. *Testing for compliance.* 31 CFR 103.54(a)(2)(ii) requires that casino compliance programs include ''[i]nternal and/or external independent

testing for compliance.'' FinCEN proposes to modify the requirement so that (i) the necessary testing must occur at least annually, and (ii) must include a specific determination whether programs at the casino are working effectively to: (i) detect and report suspicious transactions of $3,000 or more, and currency transactions of more than $10,000, to proper authorities, and (ii) comply with recordkeeping and compliance program standards. The change would emphasize a casino's responsibility to comply with all Bank Secrecy Act requirements and assure ongoing evaluation of the adequacy of casino compliance programs.

b. *Occurrence or patterns of suspicious transactions.* 31 CFR 103.54(a)(2)(v)(B) requires casinos to maintain procedures to determine ''[w]hen required by [31 CFR part 103] the occurrence of unusual or suspicious transactions.'' FinCEN proposes to modify the requirement to make clear that the necessary procedures extend to analysis not only of customer accounts but also of the casino's own records derived from or used to record, track, or monitor casino activity. FinCEN believes that casinos should utilize available information, including information in existing computerized systems that monitor a customer's account activity to assist in identifying transactions, activities and patterns which appear to have no legitimate purpose, are not usual for a specific player or type of players, or have no apparent business explanation. This will encompass activity occurring through deposit and credit accounts, player rating accounts, as well as any other account that may be feasible.

The proposal does not specify the method that must be used by a casino to determine the occurrence of or patterns of suspicious transactions that may be occurring nor does it require that all such activity be monitored at such establishments. Rather, it permits flexibility by allowing each casino to rely on its existing information systems and operational characteristics to determine how to identify such transactions and activities. The procedures developed by a casino should be designed to identify not only flagrant attempts to defeat the casino's counter-money laundering controls, but also to determine if customers are using more sophisticated schemes and techniques to the same end.

IV. Submission of Comments

An original and four copies of any written hard copy comment (but not of comments sent via E-Mail), must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

V. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The Bank Secrecy Act authorizes Treasury to require financial institutions to report suspicious activities. 31 U.S.C. 5313(g). However, the Bank Secrecy Act excludes casinos or gaming establishments with annual gaming revenue not exceeding $1 million from the definition of ''financial institution.'' 31 U.S.C. 5312(a)(2)(X). Thus, certain small casinos and card clubs are excluded by statute from the operation of the proposed regulation. Other casinos, namely those in Colorado and South Dakota, are subject to state law limitations on the size of wagers that may be made at those casinos. In casinos such as these, the burden to establish procedures to detect suspicious activity should be substantially reduced since the low dollar amount of the limits makes it unlikely that customers would engage in transactions at these casinos large enough to trigger a reporting requirement under the proposed regulation.

As to the remaining casinos and card clubs, many of the requirements of the proposed regulation may be satisfied, in large part, using existing business practices and records. For example, many casinos already obtain a great deal of data about their customers from information routinely collected from casino established deposit, credit, check cashing and player rating accounts. This existing data can assist casinos in making decisions about whether a transaction is suspicious. Many casinos also already have policies and procedures in place and have trained personnel to detect unusual or suspicious transactions, as part of their own risk prevention programs. In addition, it is common in the casino industry to perform annual, and in some cases quarterly, testing of their compliance programs. Further, a number of casinos have already begun voluntarily reporting suspicious transactions to Treasury.

In drafting the proposed regulation, FinCEN carefully considered the importance of suspicious activity reporting to the administration of the Bank Secrecy Act. In light of the fact that Congress considers suspicious activity reporting a ''key ingredient in the anti-money laundering effort,'' [18] there is no alternative mechanism for the government to obtain this key information other than by requiring casinos and card clubs to set up procedures to detect and report suspicious activity. The legislative history of the Bank Secrecy Act demonstrates that money launderers will shift their activities away from more regulated to less regulated financial institutions. [19]

FinCEN has met with the casino industry to discuss issues relevant to suspicious transaction reporting and, as indicated in the preamble, plans to conduct a series of public meetings across the country to provide the members of the industry the opportunity to discuss the proposed regulation. In addition, FinCEN is preparing an industry guide to explain suspicious activity reporting.

VI. Paperwork Reduction Act Notices

A. Suspicious Activity Report by Casinos

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information on the *Suspicious Activity Report by Casinos* is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if adopted as proposed, would result in the annual filing of a total of 3,000 *Suspicious Activity Report by Casinos* forms. This result is an estimate, based on a projection of the size and volume of the industry.

Title: Suspicious Activity Report by Casinos.

OMB Number: 1506–0006.

Description of Respondents: All casinos and card clubs subject to this rule.

Estimated Number of Respondents: 550.

Frequency: As required.

Estimate of Burden: Reporting average of 36 minutes per response; recordkeeping average of three hours per response, which includes internal review of records and other information to determine whether the activity warrants reporting under the rule.

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[18] H.R. Rep. No. 438, 103d Cong., 2d Sess. 15 (1994).

[19] ''It is indisputable that as banks have been more active in prevention and detection on money laundering, money launderers have turned in droves to the financial services offered by a variety of [non-bank financial institutions].'' *Id.*, at 19.

Estimate of Total Annual Burden on Respondents: 3,000 responses. Reporting burden estimate = 1,800 hours; recordkeeping burden estimate = 9,000 hours. Estimated combined total of 10,800 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $216,000.

Estimate of Total Other Annual Costs to Respondents: None.

B. Notification to Law Enforcement in Cases Requiring Immediate Attention

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR part 1320, the following information concerning proposed § 103.21(b)(3) is presented to assist those persons wishing to comment on the information collection. Section 103.21(b)(3) would require respondents, in cases requiring immediate attention, to notify a law enforcement agency by telephone of suspicious activity required to be reported under section 103.21.

FinCEN estimates that this provision, if adopted as proposed, would result in casinos and card clubs making 100 telephone notifications of suspicious activity to law enforcement per year. This estimate is based on FinCEN's experience with financial institutions (other than casinos) which have provided similar telephone notice of suspicious activity to law enforcement.

Title: Notification to Law Enforcement in Cases Requiring Immediate Attention.

OMB Number: To be determined.

Description of Respondents: All casinos and card clubs subject to this rule.

Estimated Number of Respondents: 550.

Frequency: As required.

Estimate of Burden: Average of 15 minutes per telephone call to law enforcement.

Estimate of Total Annual Burden on Respondents: 100 responses per year. Reporting burden estimate = 25 hours annually.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $500 annually.

Estimate of Total Other Annual Costs to Respondents: None.

C. Notification to FinCEN of a Request To Disclose SARC Information

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR part 1320, the following information concerning proposed 103.21(d) is presented to assist those persons wishing to comment on the information collection. Proposed 103.21(d) would require notice to FinCEN when a casino or card club has been requested to disclose a SARC form or the information contained in the form to anyone other than FinCEN or a law enforcement or regulatory agency authorized under the proposed rule.

FinCEN estimates that this provision, if adopted as proposed, would result in less than 10 such reports annually. This estimate is based on FinCEN's experience with financial institutions (other than casinos) which have provided similar notice of requests for suspicious activity report information filed with FinCEN.

Title: Notice to FinCEN of Request for Suspicious Activity Report Information.

OMB Number: To be determined.

Description of Respondents: All casinos and card clubs subject to this rule.

Estimated Number of Respondents: 550.

Frequency: As required.

Estimate of Burden: 30 minutes per notice to FinCEN.

Estimate of Total Annual Burden on Respondents: 10 responses per year. Reporting burden estimate = 5 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $100.

Estimate of Total Other Annual Costs to Respondents: None.

D. Suspicious Transaction Compliance Testing and Monitoring

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., and its implementing regulations, 5 CFR part 1320, the following information concerning Suspicious Transaction Recordkeeping and Reporting is presented to assist those persons wishing to comment on the information collection. The proposed rule would amend: (i) § 103.54(a)(2)(ii) to specify, among other things, that required casino internal, and/or external compliance testing be done, at a minimum, annually and result in an annual statement whether internal control standards and procedures are working effectively to detect and report suspicious transactions, as required by this part; and (ii) § 103.54(a)(2)(v)(B) to require casinos to establish procedures designed to detect the occurrence of any transaction or patterns of transactions required to be reported by this part, including any transactions or patterns of transactions indicated by accounts or records maintained by a casino to record or monitor customer activity.

FinCEN estimates that these provisions, if adopted as proposed, would result in a total of 500 hours per respondent annually. Given the fact that the gross annual gaming revenue of casinos and card clubs covered by this part can vary between $1 million and several hundred million dollars, FinCEN's estimate is based on an average casino or card club expending about 500 hours annually complying with the proposed testing and monitoring requirements. (This number is an average; FinCEN recognizes that because there is a wide disparity between the size of casinos in the United States, the number could well be higher or lower than 500 for a particular casino.) This estimate is based on estimates developed for the banking industry for its suspicious transaction program, and takes into account the fact that the banking industry was subject to a criminal referral system prior to the suspicious transaction program. This 500 hour estimate does not include existing casino internal, and/or external Bank Secrecy Act compliance testing already required by § 103.54(a)(2)(ii).

Title: Suspicious Transaction Compliance Testing and Monitoring.

OMB Number: 1506–0009 (formerly control number 1505–0063).

Description of Respondents: All casinos and card clubs subject to this rule.

Estimated Number of Respondents: 550.

Frequency: As required.

Estimate of Burden: Annual testing and monitoring of 500 hours per respondent.

Estimate of Total Annual Burden on Respondents: Testing and monitoring program burden estimate = 275,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $5,500,000.

Estimate of Total Other Annual Costs to Respondents: None.

FinCEN specifically invites comments on the following subjects: (a) whether the proposed collection of information is necessary to further the purposes of the Bank Secrecy Act, including whether the information retained shall have practical utility; (b) the accuracy of FinCEN'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 retained; and (d) ways to minimize the burden of the collection of information on the affected industry, including through the use of automated storage and retrieval

techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995, *supra*, requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the information collection. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the information collection covered by the requirement. These comments on costs should be divided into two parts: (i) any additional costs associated with recordkeeping and reporting; and (ii) any additional costs associated with testing and monitoring.

VII. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11(ii)(1) is revised to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

§§ 103.20 and 103.2 [Redesignated as §§ 103.15 and 103.18]

3. Sections 103.20 and 103.21 are redesignated as §§ 103.15 and 103.18, respectively, and a new § 103.21 is added to read as follows:

§ 103.21 Reports by casinos of suspicious transactions.

(a) *General.* (1) Every casino (for purposes of this section, a ''reporting casino''), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with the Treasury Department, by using the Suspicious Activity Report by Casinos specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required (whether because of its dollar amount, or otherwise) by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a casino, and involves or aggregates at least $3,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or any other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Casinos (''SARC''), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SARC.

(3) *When to file.* A reporting casino is required to file each SARC no later than 30 calendar days after the date of the initial detection by the reporting casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SAR for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the reporting casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SARC.

(c) *Retention of records.* A reporting casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years

from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the reporting casino, and shall be deemed to have been filed with the SARC. A reporting casino shall make all supporting documentation available to FinCEN and any other appropriate law enforcement agencies or federal, state, local, or tribal gaming regulators upon request.

(d) *Confidentiality of reports; limitation of liability.* No casino, and no director, officer, employee, or agent of any casino, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SARC or the information contained in a SARC, except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency, shall decline to produce the SARC or to provide any information that would disclose that a SARC has been prepared or filed, citing this paragraph and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A reporting casino, and any director, officer, employee, or agent of such reporting casino, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(e) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN, or by delegees of the Department of the Treasury under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

4. Section 103.54 is amended by:

a. Revising paragraph (a)(2)(ii),

b. Removing the word ''hereafter'' in paragraph (a)(2)(iii); and

c. Revising paragraph (a)(2)(v)(B).

The revised paragraphs read as follows:

§ 103.54 Special rules for casinos.

(a) *Compliance programs.* * * *

(2) * * *

(ii) Annual internal and/or external independent testing of compliance, including, without limitation, an annual statement whether internal controls and procedures are working effectively to detect and report suspicious transactions of $3,000 or more, and currency transactions of more than $10,000, to the proper authorities, as required by this part, and to comply with the recordkeeping and compliance program standards of this part;

* * * * *

(v) * * *

(B) The occurrence of any transactions or patterns of transactions required to be reported pursuant to § 103.21, including, without limitation, any transactions or patterns of transactions indicated by accounts or records maintained by a casino to record or monitor customer activity.

* * * * *

Dated: May 12, 1998.

William F. Baity,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 98–13053 Filed 5–15–98; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–134]
RIN 2115–AE47

Drawbridge Operation Regulations; Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules for the I–280 Bridge (Stickel Memorial), mile 5.8, over the Passaic River at Harrison, New Jersey, to allow the bridge to remain closed to navigation. The District Commander, upon six months notice, may require that the bridge be restored to full operational status.

The bridge owner, the New Jersey Department of Transportation (NJDOT), has requested that the Coast Guard consider a change to the operating regulations for the Route 280 Bridge. There have been only 8 requests to open the Route 280 Bridge since 1987; therefore, the Coast Guard proposed to change the operating regulations for this bridge under § 117.39, which allows closure of a drawbridge due to infrequent use.

Additionally, as part of this proposal, the Coast Guard is correcting an error in this regulation regarding the mile point of the Route 7 (Rutgers Street) Bridge. The Route 7 Bridge Listed at mile 6.9 in the existing regulation should be listed at mile 8.9.

This proposed rule, if adopted, is expected to relieve NJDOT of the requirement to crew the Route 280 Bridge and correct an error in this regulation.

DATES: Comments must be received by the Coast Guard on or before July 17, 1998.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 233–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

Request for Comments

The Coast Guard encourages interested persons to participate in this matter by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–97–134) and specific section of this proposal to which their comments apply, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in response to comments received. The Cost Guard does not plan to hold a public hearing; however, persons may request a public hearing by writing to the Coast Guard at the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it is determined 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 subsequent notice published in the **Federal Register.**

Background

The Route 280 Bridge, mile 5.8, at Harrison, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water.

The Route 280 Bridge is presently required under § 117.739(h) to open on signal if at least eight (8) hours advance notice is given. There have been only 8 requests to open this bridge since 1987. The bridge owner has requested relief from being required to crew the bridge since there have been so few requests to open the bridge.

Discussion of Proposal

The Coast Guard is considering amending the regulations to require that the bridge need not open for navigation, relieving the bridge owner of the requirement and expense to crew the bridge. Section 117.39 contains the authority for the Coast Guard to issue such regulations and authorizes the Coast Guard to place certain restrictions on the bridge closure. The fact that there have been only 8 requests to open the bridge since 1987 indicates that there is good cause to no longer require the bridge owner to crew the bridge on a regular basis. The Coast Guard, as a part of this proposal, would require that the bridge be maintained in good operable condition in the event there is a need to open the bridge, since the bridge is still a moveable bridge.

The Coast Guard is also correcting an error in this regulation by changing the mile point of the Route 7 Bridge which is listed at 6.9 and correctly should be 8.9. This correction will require that two paragraphs be changed in the order they appear in this regulation as a result of the corrected ascending order of mile points in the regulation text. The Route 7 Bridge will be changed from paragraph (j) to paragraph (k) and the NJTRO Bridge will be changed from (k) to (j).

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential 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; Feb. 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that there have been only 8 requests to open this bridge in the last ten years. The Coast Guard believes this proposed rule achieves the requirement of balancing both the needs of navigation and vehicular traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this 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 does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A ''Categorical Exclusion Determination'' is not required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.739 redesignate paragraphs (j) and (k) as paragraphs (k) and (j) and revise paragraph (h) and newly redesignated (k) to read as follows:

§ 117.739 Passaic River.

* * * * *

(h) The Route 280 Bridge, mile 5.8, at Harrison, New Jersey, need not open for the passage of vessels. The operating machinery of the draw shall be maintained in serviceable condition and the draw operated at sufficient intervals to assure satisfactory operation. The bridge shall be restored to full operational status upon six months notice from the District Commander should the needs of navigation change to require the bridge to open for the passage of vessels.

* * * * *

(k) The draw of the Route 7 (Rutgers Street) Bridge, mile 8.9, at Belleville, shall open on signal if at least four hours notice is given.

* * * * *

Dated: April 18, 1998.

R.M. Larrabee,

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

[FR Doc. 98–13088 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–098]

RIN 2115–AE47

Drawbridge Operation Regulations: Taunton River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules for the Brightman Street Bridge, mile 1.8, over the Taunton River between Somerset and Fall River, Massachusetts.

The bridge owner, Massachusetts Highway Department (MHD), has requested that the Coast Guard consider a change to the operating regulations for the Brightman Street Bridge to require the bridge to open on signal; except,

from November 1 through March 31, between 6 p.m. and 6 a.m. daily, the draw shall open if at least one hour advance notice is given. From 6 p.m. to midnight on December 24th and all day on December 25th and January 1st, the draw shall open if at least two hours advance notice is given by calling the number posted at the bridge.

Additionally, the provision in the existing regulations to open as soon as possible for state and local vessels used for public safety is being removed since it is now listed under the general requirements for bridges.

This proposal will relieve the bridge owner of the requirement to crew the bridge during time periods when there have been few requests to open the bridge and is expected to still provide for the needs of navigation.

DATES: Comments must reach the Coast Guard on or before July 17, 1998.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The District Commander maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

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 names and addresses, identify this rulemaking (CGD01–97–098) and specific section of this proposal to which their comments apply, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in response to comments received. The Coast Guard does not plan to hold a public hearing; however, persons may request a public hearing by writing to the Coast Guard at the address listed under **ADDRESSES** in this document. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this matter, the Coast Guard will hold a public hearing at a time and place announced by a subsequent notice published in the **Federal Register**.

Background

The Brightman Street Bridge has a vertical clearance at mean high water (MHW) of 27 feet and at mean low water (MLW) of 31 feet.

The Brightman Street Bridge is presently required to open on signal at all times. This proposed change to the operating regulations will require the bridge to open on signal; except that, from November 1 through March 31, between 6 p.m. and 6 a.m. daily, the draw shall open if at least one hour advance notice is given by calling the number posted at the bridge. From 6 p.m. to midnight on December 24th and all day on December 25th and January 1st, the draw shall open if at least two hours advance notice is given by calling the number posted at the bridge.

The Shell Oil facility upstream of the bridge has closed and the Montaup Electric Company has reduced its delivery schedule which together have reduced the total opening requests during the winter time period affected by this proposal.

Additionally, as part of this rule change the Coast Guard is removing from the existing regulations the provisions for opening the bridge as soon as possible for the passage of state and local vessels used for public safety because this is now included under the general operating regulations for bridges at § 117.31.

It is expected that this change to the operating rules will relieve the bridge owner of the requirement to crew the Brightman Street Bridge during time periods when there have been few requests to open and still provide for the needs of navigation.

Discussion of Proposal

The Coast Guard is proposing to revise section 117.619 of the regulations to remove the unnecessary language regarding the state and local vessels and to add the requirement that a one hour notice be provided for bridge openings November 1 to March 31, 6 p.m. to 6 a.m. and a two hour advance notice is required for openings from 6 p.m. to midnight on December 24th and all day on December 25th and January 1st at the Brightman Street Bridge.

The Brightman Street Bridge is presently required to open on signal which requires the bridge owner to crew the bridge at all times. The closure of the Shell Oil facility and the decrease in deliveries to Montaup Electric have changed the demand for openings. Going to an on call basis during the evenings in the winter months should allow the bridge owner to lower their operating expenses but still meet the level of demand for openings. The bridge will still be required to open at all times but from 6 p.m. to midnight on December 24th and all day on December 25th and January 1st, a two hour notice will be required by calling the number posted at the bridge.

The requirement under the existing rules to open as soon as possible for state and local vessels used for public safety will be removed from this regulation because it is now listed under the general bridge requirements at § 117.31.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require as 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 proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that bridges must operate in accordance with the needs of navigation while providing for the reasonable needs of land transportation. This NPRM proposes to adopt the operating hours which the Coast Guard believes to be appropriate because there have been so few requests to open the bridge during the time period the bridge will be on an advance notice status. The proposed advance notice requirements should still provide for the needs of navigation and allow the bridge owner to not crew the bridge during periods when there are few requests to open the bridge. The Coast Guard believes this proposal achieves the requirements of balancing the needs of navigation and the needs of vehicular transportation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this proposed rule will have a significant economic impact

on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this 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 would economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criterion contained in Executive Order 12612 and has determined that this proposed 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 proposed rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A ''Categorical Exclusion Determination'' is not required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.619 is revised to read as follows:

§ 117.619 Taunton River.

(a) The owners of the Brightman Street and Bristol County bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than twelve inches high, designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(b) The draw of the Brightman Street Bridge, mile 1.8, between Somerset and Fall River shall open on signal; except that from November 1 through March 31, between 6 p.m. and 6 a.m. daily, the draw shall open if at least one hour advance notice is give. From 6 p.m. to midnight on December 24th and all day on December 25th and January 1st, the draw shall open on signal if at least two hours, notice is given by calling the number posted at the bridge.

(c) The Bristol County Bridge, mile 10.3, shall open on signal if at least twenty-four hours' notice is given by calling the number posted at the bridge.

Dated: April 18, 1998.

R.M. Larrabee,

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

[FR Doc. 98–13087 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–042]

RIN 2121–AA97

Safety Zone; Tri-State Inboard Powerboat Championships, Hackensack River, Secaucus, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the Hackensack River for the Tri-State Inboard Powerboat Championships. The temporary safety zone will be in effect on Saturday, August 29, and Sunday, August 30, 1998, from 11:30 a.m. until 6 p.m., unless extended or terminated sooner by the Captain of the Port, New York. The temporary safety zone will restrict vessel traffic in the Hackensack River in the vicinity of Laurel Hill Park, Secaucus, New Jersey. The temporary safety zone is needed to protect racing participants and spectator craft from the hazards associated with high-speed powerboat racing.

DATES: Comments must reach the Coast Guard on or before July 17, 1998.

ADDRESSES: You may mail comments to the Waterways Oversight Branch (CGD01–98–042), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade Alma Kenneally, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4195.

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 names and addresses, identify this rulemaking (CGD01–98–042) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Meadowlands Inboard Racing Association has submitted an Application for Approval of Marine Event for an inboard powerboat race in the waters of the Hackensack River. This regulation establishes a temporary safety zone in the waters of the Hackensack River south of red buoy #16 and north of the Snake Hill, NJ swing bridge at river mile 5.4.

The safety zone will be effective on Saturday, August 29, and Sunday, August 30, 1998, from 11:30 a.m. until 6:00 p.m., unless unless extended or terminated sooner by the Captain of the Port, New York. This safety zone restricts vessel traffic in the Hackensack River south of red buoy #16 and north of the Snake Hill, New Jersey swing bridge at river mile 5.4. This safety zone is needed to protect mariners from the hazards associated with a boat race in which the participants transit at excessive speeds.

This event will include up to 75 powerboats, 13 to 24 feet in length, racing on a 1.5 mile oval course at speeds in excess of 130 mph. The sponsor expects less than 100 spectator craft during the event.

Discussion of Proposed Rule

The proposed safety zone is as follows: all waters of the Hackensack River, south of red buoy #16 and north of the Snake Hill New Jersey swing bridge at river mile 5.4.

The safety zone is proposed to provide for the safety of life on navigable waters during 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 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone restricts vessel traffic in the Hackensack River south of red buoy #16 and north of the Snake Hill New Jersey swing bridge at river mile 5.4 on Saturday, August 29, and Sunday, August 30, 1998, from 11:30 a.m. until 6 p.m., unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation prevents traffic from transiting this area, the effect of this regulation would not be significant for the following reasons: the limited amount of commercial traffic in this area of the river, and the extensive notifications that will be made to the affected maritime community by Local Notice to Mariners and Safety Voice Broadcasts. This safety zone has been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 500,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this 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 does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1c, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR 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. Add temporary § 165.T01–042 to read as follows:

§ 165.T01–042 Safety Zone; Tri-State Inboard Powerboat Championships, Hackensack River, Secaucus, New Jersey

(a) *Location.* The following area is a safety zone: all waters of the Hackensack River south of red buoy #16 and north of the Snake Hill New Jersey swing bridge at river mile 5.4.

(b) *Effective period.* This safety zone is in effect on Saturday, August 29, and Sunday, August 30, 1988, from 11:30 a.m. until 6 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 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. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 5, 1998.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 98–13089 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

RIN 0596–AB63

Administration; Cooperative Funding

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for comments.

SUMMARY: The Forest Service proposes to amend current regulations to establish minimum requirements applicable to written agreements between cooperators, such as individuals, States and local governments, and other non-Federal entities, and the Forest Service. This rulemaking implements amendments to the Act of June 30, 1914, which expand the basis for accepting contributions for cooperative work, allow reimbursable payments by cooperators, and adequately protect the Government's interest. The intended effect is to fully implement the new statutory provisions.

DATES: Comments must be received in writing by July 17, 1998.

ADDRESSES: Send written comments to Director, Wildlife, Fish and Rare Plants (MAIL STOP 1121), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the office of the Director, Wildlife, Fish, and Rare Plants Staff, Forest Service, USDA, Cellar Central, Auditor's Building, 201 14th St., SW., Washington, DC 20250 between the hours of 8:30 a.m. and 4:30 p.m. All comments, including name and address when provided, will become a matter of public record and are available for inspection. Those wishing to inspect comments are encouraged to call ahead at (202) 205–1205 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Debbie Pressman, Wildlife, Fish and Rare Plants Staff, at (202) 205–1205.

SUPPLEMENTARY INFORMATION:

Background

Eighty-four years ago, Congress passed the Act of June 30, 1914. This legislation authorized the Forest Service to receive money as contributions toward cooperative work in forest investigations or for the protection and improvement of the national forests.

Since passage of the Act of June 30, 1914, the public has become increasingly interested in the management of National Forest System lands. These lands offer unparalleled recreational opportunities, contain a spectacular array of wild animals and plants, possess magnificent scenery, and provide social, ecological, and economic benefits to the Nation. In addition to increased interest in the management of these national resources, the public also is demanding more services and benefits from National Forest System lands. While the Forest Service mission includes providing services and benefits to the public in addition to managing National Forest System lands, the agency recognizes it cannot meet the public's increased demands for services and benefits without seeking innovative ways of accomplishing its mission. To that end, the Forest Service is building important cooperative relationships with numerous groups, individuals, and private and public agencies to help accomplish projects within the National Forest System.

There have been impediments, however, to cooperative opportunities. The Act of June 30, 1914, as amended, has been interpreted to restrict the use of contributions for cooperative work to only projects on national forest lands. Such an interpretation prevented the completion of cooperative projects on other portions of the National Forest System, including national grasslands, land utilization projects, administrative sites and other lands. Additionally, if the Forest Service were to pay the entire cost of cooperative work from appropriated funds, under law, there was no lawful means to reimburse the Forest Service appropriation from cooperator funds. Therefore, the Forest Service required cooperators to contribute funds in advance of any work to be accomplished. However, projects for which cooperators have already contributed funds, such as habitat enhancement, may be subject to delay and uncertainty for a variety of reasons, including the development of new information or controversy. Requiring contributions prior to the start of work often creates difficulties for cooperators by tying up their funds, sometimes for lengthy periods, with a corresponding loss of interest income. Additionally, some cooperators have policies requiring work to be completed before their shares are paid, which directly conflict with the Government requirement to receive a cooperator's money in advance of the start of work.

Delays in project completion are also costly to the Forest Service in that records of funds contributed prior to the start of work must be maintained from receipt through expenditure, as well as subsequent refund of any unspent funds.

Summary of Proposed Rule

On April 4, 1996, Congress enacted amendments to the Act of June 30, 1914, which eliminate these impediments. The amendments provide authority to use contributions for cooperative work on the entire National Forest System. Clarifying language adds ''management'' to the list of activities for which contributions for cooperative work may be accepted, and specific authority is provided to accomplish cooperative work using Forest Service funds prior to reimbursement by the cooperator pursuant to a written agreement.

This proposed rule is intended to implement these recent amendments to the Act of June 30, 1914. The provisions would be set out at a new § 211.6 of Title 36 of the Code of Federal Regulations.

Proposed paragraph (a), Purpose and scope, restates the statutory authority for Forest Officers to enter into written agreements with cooperators to receive monies as contributions toward cooperative work in forest investigations or the protection, management and improvement of the National Forest System, which now includes such work as planning, analysis, and related studies, as well as resource activities.

Proposed paragraph (b), Reimbursements and bonding, states that, when a written agreement so provides, projects may be planned and completed using Forest Service funds available for similar type work with subsequent reimbursement from a cooperator to be completed in the same fiscal year as Forest Service expenditures. This proposed rule restates the statute, which permits the Forest Service to bill cooperators after work is completed. This proposed provision will allow cooperators to have access to their funds or to keep their funds in interest-bearing accounts until after the work is completed. Also, as previously noted, this provision is consistent with the policy requirements of some cooperators that work be completed before their funds are contributed to the Forest Service.

Proposed paragraph (b) also protects the interests of the Government by requiring, as part of the written agreement with the cooperator, a payment bond when a non-Government cooperator agrees to contribute $25,000 or more on a reimbursable basis. Historically, the Federal Government has required payment bonds for certain projects with values exceeding $25,000. Acceptable security for payment bonds includes Department of the Treasury approved corporate sureties, Federal Government obligations, and irrevocable

letters of credit. Government cooperators are not required to execute a payment bond.

Proposed paragraph (c), Avoiding conflict of interest, of the proposed rule fulfills the statutory direction to protect the agency from conflict of interest in these cooperative funding situations. The proposed rule does not attempt to promulgate new conflict of interest regulations, because conflict of interest statutes and regulations at 18 U.S.C. 201–209 and 5 CFR Part 2635 are sufficient. Accordingly, proposed paragraph (c) provides that the Forest Service shall be guided by provisions of 18 U.S.C. 201–209, 5 CFR Part 2635, and applicable Department of Agriculture regulations, in determining if a conflict of interest or an appearance of a conflict of interest, exists in a proposed cooperative effort. Forest Service ethics officials or the designated Department of Agriculture ethics official should be consulted on conflict of interest issues.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This proposed rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel any expenditure of funds by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Impact

This proposed rule affects the administrative requirements for reimbursement payments to the agency by cooperators. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed rule does not pose the risk of a taking of constitutionally-protected private property since it sets forth administrative requirements regarding the deposit of cooperator funds for forest investigations or the protection, management, and improvement of the National Forest System.

Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule were adopted, (1) all State and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR 1320 do not apply.

Conclusion

The proposed rule implements the statutory amendments to the Act of June 30, 1914, and expands the basis for accepting contributions for cooperative work between the Forest Service and cooperators. The proposed rule also provides for the planning and completion of projects using Forest Service funds with subsequent reimbursement from cooperators. The Government's interests are protected in the proposed rule by securing reimbursement payments from cooperators with payment bonds when such payments are $25,000 or more. Government cooperators are not required to execute payment bonds. The proposed rule also addresses concerns about conflicts of interest by referring Forest Service officials and employees to existing statutes and regulations, as well as Forest Service and Department of Agriculture ethics officials, concerning a conflict of interest or the appearance of a conflict of interest.

The Forest Service invites comments on this proposal, which would permit the agency to bill cooperators upon completion of a project and to require non-Government cooperators to execute a payment bond as part of the written agreement between the Cooperator and the Forest Service, when cooperators have entered into an agreement to provide $25,000 or more for a project on a reimbursable basis.

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, Intergovernmental relations and national forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend Part 211 of Title 36 of the Code of Federal Regulations as follows:

PART 211—ADMINISTRATION

1. The authority citation for Part 211 is revised to read as follows:

Authority: 16 U.S.C. 472, 498, 551.

Subpart A—Cooperation

2. Revise the heading for subpart A to read as set out above.

3. Add a new section 211.6 to Subpart A to read as follows:

§ 211.6 Cooperation in forest investigations or the protection, management, and improvement of the National Forest System.

(a) *Purpose and scope.* In accordance with the Act of June 30, 1914, as amended (16 U.S.C. 498), forest officers may enter into written agreements with cooperators to receive monies as contributions toward cooperative work in forest investigations or for the protection, management, and improvement of the National Forest System. Management may include such

work as planning, analysis, and related studies, as well as resource activities.

(b) *Reimbursements and Bonding.* Agency expenditures for work in accordance with this section may be made from Forest Service appropriations available for similar type work, with subsequent reimbursement from the cooperator, when a written agreement so provides. Reimbursement from the cooperator must occur in the same fiscal year as Forest Service expenditures. When a non-Government cooperator agrees to contribute $25,000 or more to the Forest Service on a reimbursable basis, the authorized officer must require, as part of the written agreement with the cooperator, a payment bond to guarantee the reimbursement payment, thereby ensuring the public interests are protected. Acceptable security for the payment bond includes Department of the Treasury approved corporate sureties, Federal Government obligations, and irrevocable letters of credit.

(c) *Avoiding conflict of interest.* Forest officers shall avoid acceptance of contributions from cooperators, when such contributions would reflect unfavorably upon the ability of the Forest Service to carry out its responsibilities and duties. Forest officers shall be guided by the provisions of 18 U.S.C. 201–209, 5 CFR 2635, and applicable Department of Agriculture regulations, in determining if a conflict of interest or potential conflict of interest exists in a proposed cooperative effort. Forest Service ethics officials or the designated Department of Agriculture ethics official should be consulted on conflict of interest issues.

Dated: April 15, 1998.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 98–13037 Filed 5–15–98; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6015–2]

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutants Emissions for the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is extending the public comment period on the Notice of Proposed Rulemaking (NPRM) for hazardous air pollutants emissions for the portland cement manufacturing industry, which was published in the **Federal Register** on March 24, 1998 (63 FR 14182). The purpose of this notice is to extend the comment period from May 26, 1998 to June 26, 1998, in order to provide commenters adequate time to review the NPRM and extensive supporting materials.

DATES: The EPA will accept comments on the NPRM until June 26, 1998.

ADDRESSES: Comments should be submitted (in duplicate) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–92–53, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below (Mr. Joseph Wood). The docket may be inspected at the above address between 8:00 a.m. and 5:30 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the NPRM, contact Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5446; electronic mail address wood.joe@epamail.epa.gov.

Dated: May 12, 1998.

Richard D. Wilson,

Acting Assistant Administrator.

[FR Doc. 98–13124 Filed 5–15–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–6014–3]

Identification of Additional Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard is No Longer Applicable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the identification of additional ozone areas attaining the 1-hour standard and to which the 1-hour standard is no longer applicable. Thus, upon finalization of this proposed action, the Code of Federal Regulations for ozone will be amended to reflect such changes. Today's action is being proposed in direct response to the President's memorandum of July 16, 1997. The President's memorandum directed EPA to publish an action identifying ozone areas to which the 1-hour standard will cease to apply because they have not measured a current violation of the 1-hour standard. For all other areas, the 1-hour standard will continue to apply. Furthermore, this action is being taken as indicated in the direct final rule published on January 16, 1998, which due to the receipt of adverse comments, was subsequently converted to a proposal and was withdrawn on March 16, 1998. According to the direct final rule, the Agency intended to publish, in early 1998, a subsequent document which takes similar action to revoke the 1-hour standard in additional areas that have air quality that does not violate the 1-hour standard. Today's proposed action identifies six additional areas where the 1-hour standard will no longer apply. The additional proposed areas are: Dayton-Springfield, Ohio; Detroit-Ann Arbor, Michigan; Warrick County, Indiana; Grand Rapids, Michigan; Poughkeepsie, New York, and Morgan County, Kentucky.

DATES: To be considered, comments must be received on or before June 17, 1998.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–98–19, U.S. Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Comments and data may also be submitted electronically by following the instructions under

SUPPLEMENTARY INFORMATION OF THIS DOCUMENT. NO CONFIDENTIAL BUSINESS INFORMATION (CBI) SHOULD BE SUBMITTED THROUGH E-MAIL.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238. In addition, the following Regional contacts may be called for individual information regarding monitoring data and policy matters specific for each Regional Office's geographic area:

Region I—Richard P. Burkhart, (617) 565–3578
Region II—Ray Werner, (212) 637–3706
Region III—Marcia Spink, (215) 566–2104
Region IV—Kay Prince, (404) 562–9026
Region V—Todd Nettesheim, (312) 353–9153
Region VI—Lt. Mick Cote, (214) 665–7219
Region VII—Royan Teter, (913) 551–7609
Region VIII—Tim Russ, (303) 312–6479
Region IX—Morris Goldberg, (415) 744–1296
Region X—William Puckett, (206) 553–1702.

SUPPLEMENTARY INFORMATION: Electronic Availability—The official record for this proposed rule, as well as the public version, has been established under docket number A–98–19 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The official proposed rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–98–19. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

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I. Background

On July 16, 1997, the President issued a memorandum (62 FR 38421, July 18, 1997) to the Administrator of the EPA which indicates that within 90 days of promulgation of the new 8-hour standard, the EPA will publish an action identifying ozone areas to which the 1-hour standard will cease to apply. The memorandum states that for areas where the air quality does not currently attain the 1-hour standard, the 1-hour standard will continue in effect. The provisions of subpart 2 of title I of the Clean Air Act (CAA) would also apply to currently designated nonattainment areas until such time as each area has air quality meeting the 1-hour standard.

On July 18, 1997 (62 FR 38856), EPA promulgated a regulation replacing the 1-hour ozone standard with an 8-hour standard at a level of 0.08 parts per million (ppm). The form of the 8-hour standard is based on the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The new primary standard, which became effective on September 16, 1997, will provide increased protection to the public, especially children and other at-risk populations. On July 18, 1997, EPA also announced that revocation of the 1-hour ozone national ambient air quality standard (NAAQS) would be delayed until areas achieved attainment of the 1-hour NAAQS. This was done in order to facilitate continuity in public health protection during the transition to the new NAAQS.

Therefore, on January 16, 1998, according to the President's memorandum, the Agency issued a direct final rule (63 FR 2726) which identified ozone areas to which the 1-hour standard will cease to apply because they have not measured a current violation of the 1-hour standard. For all other areas, the 1-hour standard will continue to apply. However, due to the receipt of adverse comments, the direct final action was withdrawn on March 16, 1998 (63 FR 12652) and converted to a proposed rule that had previously been published on January 16, 1998 (63 FR 2804). The Agency will summarize and address all relevant public comments received in a subsequent final rule. According to the initial direct final rule, the Agency intended to publish, in early 1998, a subsequent document which takes similar action to revoke the 1-hour standard in additional areas that have air quality that does not violate the 1-hour standard and to take similar action each year thereafter.

II. Summary of Today's Action

The purpose of this document is to propose the revocation of the 1-hour standard in six additional areas that EPA has determined are not violating the 1-hour standard. The newly identified areas are: Dayton-Springfield, Ohio; Detroit-Ann Arbor, Michigan; Warrick County, Indiana; Grand Rapids, Michigan; Poughkeepsie, New York, and Morgan County, Kentucky.

III. Analysis of Air Quality Data

This action, proposing to revoke the 1-hour standard in additional selected areas, is based upon analysis of quality-assured, ambient air quality monitoring data showing no violations of the 1-hour ozone standard. The method for determining attainment of the ozone NAAQS is contained in 40 CFR part 50.9 and Appendix H to that section. The level of the 1-hour primary and secondary NAAQS for ozone is 0.12 ppm.

The 1-hour standard no longer applies to an area once EPA determines that the area has air quality not violating the 1-hour standard. Determinations for this notice were based upon the most recent data available, i.e., 1995–1997 data. Detailed air quality data information used for today's determinations is contained in the Technical Support Document (TSD) to Docket No. A–98–19.

IV. Tables

The ozone tables proposed in today's action are significantly different from the tables now included in 40 CFR part 81. The current 40 CFR part 81 designation listings (revised as of November 6, 1991) include, by State and NAAQS pollutant, a brief description of areas within the State and their respective designation. Today's proposed action includes completely new entries for certain ozone areas indicating where the 1-hour standard no longer applies.

V. Other Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604), unless EPA certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. I hereby certify that

this rule will not have a significant impact on a substantial number of small entities.

C. E.O. 12875 and Unfunded Mandates

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

The EPA has determined that today's action, if finalized, would not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Children's Health Protection

This proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 12, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1, part 81, of the Code of Federal Regulations is proposed to be amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.315, the table entitled ''Indiana—Ozone'' is amended by revising the entry for ''Warrick County'' and adding footnote 2 to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*	*		*
Warrick County Area:				
Warrick County		1 hr. std. N.A.[2]		
* * * *	*	*		*

[1] This date is the effective date of the final.
[2] 1 hour standard Not Applicable.

* * * * *

3. In § 81.318, the table entitled ''Kentucky—Ozone'' is amended by revising the entry for ''Morgan County'' and adding footnote 3 to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*	*		*
Morgan County Area:				
Morgan County		1 hr. std. N.A.[3]		
* * * *	*	*		*

[1] This date is the effective date of the final.
[3] 1 hour standard Not Applicable.

* * * * *

4. In § 81.323, the table entitled ''Michigan-Ozone'' is amended by revising the entries for ''Detroit-Ann Arbor Area'' and ''Grand Rapids Area'' and adding footnote 2 to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Detroit-Ann Arbor Area:				
Livingston County		1 hr. std. N.A.[2]		
Macomb County		1 hr. std. N.A.[2]		
Monroe County		1 hr. std. N.A.[2]		
Oakland County		1 hr. std. N.A.[2]		
St. Clair County		1 hr. std. N.A.[2]		
Washtenaw County		1 hr. std. N.A.[2]		
Wayne County		1 hr. std. N.A.[2]		
* * * * * * *				
Grand Rapids Area:				
Kent County		1 hr. std. N.A.[2]		
Ottawa County		1 hr. std. N.A.[2]		
* * * * * * *				

[1] This date is the effective date of the final.
[2] 1 hour standard Not Applicable.

* * * *

5. In § 81.333, the table entitled ''New York—Ozone'' is amended by revising the entry for ''Poughkeepsie Area'' and revising footnote 2 to read as follows:

§ 81.333 New York.

* * * * *

NEW YORK—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Poughkeepsie Area:				
Dutchess County		1 hr.std.N.A.[2]		
Orange County (remainder)		1 hr.std.N.A.[2]		
Putnam County		1 hr.std.N.A.[2]		
* * * * * * *				

[1] This date is the effective date of the final.
[2] 1 hour standard Not Applicable.

* * * * *

6. In § 81.336, the table entitled ''Ohio—Ozone'' is amended by revising the entry for ''Dayton-Springfield Area'' and adding footnote 3 to read as follows:

§ 81.336 Ohio.

* * * * *

Ohio-Ozone

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * *				
Dayton-Springfield Area:				
Clark County		1 hr.std.N.A.[3]		
Greene County		1 hr.std.N.A.[3]		
Miami County		1 hr.std.N.A.[3]		
Montgomery County		1 hr.std.N.A.[3]		
* * * * * * *				

[1] This date is the effective date of the final.
[3] 1 hour standard Not Applicable.

* * * * * * *

[FR Doc. 98–13119 Filed 5–15–98; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[HCFA–1876–P]

RIN 0938–AH61

Medicare Program; Revision to Accrual Basis of Accounting Policy

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: Current policy provides that payroll taxes a provider becomes obligated to remit to governmental agencies are included in allowable costs under Medicare only in the cost reporting period in which payment (upon which the payroll taxes are based) is actually made to an employee. Therefore, for payroll accrued in one year but not paid until the next year, the associated payroll taxes on the payroll are not an allowable cost until the next year. This proposed rule would make one exception, in the situation where payment would be made to the employee in the current year but for the fact the regularly scheduled payment date is after the end of the year. In that case, the rule would require allowance in the current year of accrued taxes on payroll that is accrued through the end of the year but not paid until the beginning of the next year, thus allowing accrued taxes on end-of-the year payroll in the same year that the accrual of the payroll itself is allowed. The effect of this proposal is not on the allowability of cost but rather only on the timing of payment; that is, the cost of payroll taxes on end-of-the-year payroll would be allowable in the current period rather than in the following period.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m on July 17, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1876–P, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–11–17 Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1876–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 37194, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or MasterCard number and expiration date. Credit card numbers can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Deposit Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

FOR FURTHER INFORMATION CONTACT: John Eppinger, (410) 786–4518.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, under the Medicare program, health care providers not subject to prospective payment are paid for the reasonable costs of covered services furnished to Medicare beneficiaries. This policy pertains to all services furnished by providers other than inpatient hospital services furnished in acute care hospitals (section 1886(d) of the Social Security Act (the Act)) and certain inpatient routine services furnished by skilled nursing facilities choosing to be paid on a prospective payment basis (section 1888(d) of the Act). Additionally, there are other limited services not paid on a reasonable cost basis, to which this policy will not apply.

Section 1861(v)(1)(A) of the Act defines reasonable cost and provides that reasonable cost shall be determined in accordance with implementing regulations. Section 413.24 establishes the methods to be used and the adequacy of data needed to determine reasonable costs for various types or classes of institutions, agencies, and services. Section 413.24(a) requires providers receiving payment on the basis of reasonable cost to maintain financial records and statistical data sufficient for the proper determination of costs payable under the program and for verification of costs by qualified auditors. The cost data are required to be based on an approved method of cost finding and on the accrual basis of accounting. Section 413.24(b)(2) provides that under the accrual basis of accounting, revenue is reported in the period in which it is earned, regardless of when it is collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid. Further, § 413.100 (see 60 FR 33126, June 27, 1995) provides for special treatment of certain accrued costs, including Federal Insurance Contribution Act (FICA) and other payroll taxes claimed by providers on their cost reports. Specifically, § 413.100(c)(2)(vi) provides that a provider's share of FICA and other payroll taxes that the provider becomes obligated to remit to governmental agencies is included in allowable costs only during the cost reporting period in which payment (upon which the payroll taxes are based) is actually made to the employee.

Prior to publication of § 413.100 on June 27, 1995, we published a proposed rule on October 9, 1991 (56 FR 50834). Following publication of that proposal, we received several comments that we should recognize accrued payroll taxes during the same period that the employee benefits are earned and accrued. One commenter asserted that costs related to the accrual of payroll taxes should be allowed especially as they relate to the accrual of year-end

wages. Based on our belief that payroll taxes should not be accrued and claimed for Medicare payment until the period in which actual payment is made to the employees, we published § 413.100(c)(2)(vi) in its present form. The policy in § 413.100(c)(2)(vi) continues to be Medicare's policy, subject to the exception proposed in section II below. When an employee is paid by a provider as part of a provider payroll, whether the payment is for time worked during the payroll period or for benefits (for example, vacation benefits) earned in an earlier period, the provider's share of FICA and other payroll taxes is an allowable cost during the cost reporting period in which payment is made to the employee. Our policy is based on the fact that a provider becomes obligated to governmental agencies for payroll taxes only at the time that the salary or benefits, upon which the payroll taxes are based, are actually paid to the provider's employee. Further, until the salary or benefits are actually paid, it cannot be known for certain whether there will be a payroll tax or taxes, what the amount of the tax(es) will be, or whether a particular employee will be liable for the tax(es).

II. Provisions of Proposed Rule

Upon reconsideration, we agree with the comment to the October 9, 1991 proposed rule that Medicare should recognize, as allowable, the costs related to the accrual of provider payroll taxes specifically as they relate to the accrual of year-end payroll. Therefore, we propose to revise § 413.100(c)(2)(vi) to make one exception to the above-stated policy. We propose to provide that if payment would be made to an employee during a cost reporting period but for the fact that the regularly scheduled payment date is after the end of the period, costs of accrued payroll taxes related to the portion of payroll accrued through the end of the period, but paid to the employee after the beginning of the new period, are allowable costs in the year of accrual, subject to the liquidation requirements specified in the regulations (§ 413.100(c)(2)(i)). The revision made in this proposed rule thus is intended to allow accrued taxes on end-of-the-year payroll in the same year that the accrual of the payroll itself is allowed, just as Medicare, in other than end-of-the-year payroll situations, allows accrued taxes on payroll in the same year that the accrual of the payroll is allowed. Our proposal is based on the notion that the insignificant amount of time passing between the accrual of the end-of-the-year payroll and the payment of the payroll in the following year does not give rise to the same concerns described in section I. above.

We also propose to change the example in § 413.100(c)(2)(vi) to emphasize, as discussed above, that payroll taxes applicable to benefits accrued, such as vacation benefits, are not allowable until the period in which the employee uses the benefits, that is, takes the vacation. Finally, we propose to change payroll tax from singular to plural throughout the section to clarify that there can be more than one payroll tax.

III. Impact Statement

We have examined the impact of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). This proposed rule, which would permit allowance of accrued taxes on end-of-the-year payroll in the same year that the accrual of the payroll itself is allowed, does not make any significant changes in program payments. The proposal is limited in nature, as it affects only accrued payroll taxes for payroll accrued at the end of one cost reporting period which is not actually paid to employees until the beginning of the next period. Furthermore, in this situation, the effect of the proposal is only on the timing of payment; that is, it does not allow an additional cost of payroll taxes but rather allows the cost in the current period instead of in the following period. The proposal should not involve changes in provider accounting systems and, in fact, will free providers or intermediaries from making cost report adjustments, under the current policy, to postpone reimbursement of the cost on the current cost report to the subsequent cost report. We do not expect any significant costs or savings due to this change.

We have also examined the impact of the proposed rule as required by the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), and by section 1102(b) of the Act. The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, most hospitals, and most other providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and we certify, that this proposed rule would not result in a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

IV. Paperwork Reduction Act

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Response to Public Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney disease, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR part 413 would be amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END—STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

A. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart F—Specific Categories of Costs

B. In § 413.100, paragraph (c)(2)(vi) is revised to read as follows:

§ 413.100 Special treatment of certain accrued costs.

(c) *Recognition of accrued costs.*

* * * * *

(2) *Requirements for liquidation of liabilities.*

* * * * *

(vi) *FICA and other payroll taxes.*—(A) *General rule.* The provider's share of FICA and other payroll taxes that the provider becomes obligated to remit to governmental agencies is included in allowable costs only during the cost reporting period in which payment (upon which the payroll taxes are based) is actually made to the employee. For example, payroll taxes applicable to vacation benefits are not to be accrued in the period in which the vacation benefits themselves are accrued but rather are allowable only in the period in which the employee takes the vacation.

(B) *Exception.* If payment would be made to an employee during a cost reporting period but for the fact the regularly scheduled payment date is after the end of the period, costs of accrued payroll taxes related to the portion of payroll accrued through the end of the period, but paid to the employee after the beginning of the new period, are allowable costs in the year of accrual, subject to the liquidation requirements specified in paragraph (c)(2)(i) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: January 26, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: April 8, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–13110 Filed 5–15–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1146

[STB Ex Parte No. 628]

Expedited Relief for Service Inadequacies

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Pursuant to its decision in *Review of Rail Access and Competition Issues*, STB Ex Parte No. 575 (STB served Apr. 17, 1998) (''*Review*''), the Board is instituting a proceeding to solicit comments on proposed rules that would establish expedited procedures for shippers to obtain alternative service from another rail carrier when the incumbent carrier cannot properly serve shippers. The Board requests that persons intending to participate in this proceeding notify the agency of that intent. A separate service list will be issued based on the notices of intent to participate that the Board receives.

DATES: Notices of intent to participate in this proceeding are due May 28, 1998. Comments on this proposal are due June 15, 1998. Replies are due July 15, 1998.

ADDRESSES: An original plus 12 copies of all comments and replies, referring to STB Ex Parte No. 628, must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Ex Parte No. 628, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

Copies of the written comments will be available from the Board's contractor, D.C. News and Data, Inc., located in Room 210 in the Board's building. D.C. News can be reached at (202) 289–4357. The comments will also be available for viewing and self copying in the Board's Microfilm Unit, Room 755.

In addition to an original and 12 copies of all paper documents filed with the Board, the parties shall submit their pleadings, including any graphics, on a 3.5-inch diskette formatted for WordPerfect 7.0 (or in a format readily convertible into WordPerfect 7.0). All textual material, including cover letters, certificates of service, appendices and exhibits, shall be included in a single file on the diskette. The diskettes shall be clearly labeled with the filer's name, the docket number of this proceeding, STB Ex Parte No. 628, and the name of the electronic format used on the diskette for files other than those formatted in WordPerfect 7.0. All pleadings submitted on diskettes will be posted on the Board's website (www.stb.dot.gov). The electronic submission requirements set forth in this notice supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in the Board's regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527, 61 FR 52710, 711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).[1]

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In STB Ex Parte No. 575, the Board conducted two days of informational hearings, on April 2 and 3, 1998, to examine issues of rail access and competition in today's railroad industry, and the statutory remedies and agency regulations and procedures that relate to those matters. As a result of those hearings, we announced, *inter alia*, that we would begin a rulemaking proceeding to consider revisions to our rules to provide shippers receiving poor service greater opportunity to obtain service from an additional carrier.

Overview

While the Board lacks general authority to require an unwilling railroad to permit physical access over its lines to the trains and crews of another railroad, it may direct that result in certain situations: under 49 U.S.C. 11324(c), as a condition to the incumbent's merger with another railroad; under 49 U.S.C. 11102(a), to serve terminal facilities when it would be in the public interest; or, under 49 U.S.C. 11123(a), to serve any facilities for a limited period of time (not more than 270 days) because of the carrier's inability or failure to provide its shippers with adequate service.[2] The Board may also direct an incumbent railroad to afford access indirectly, either by prescribing alternative through routes under 49 U.S.C. 10705(a) (requiring the incumbent to interline traffic with another railroad over a designated interchange and thereby create an alternative route and rates for a shipper's traffic) or by requiring reciprocal switching under 49 U.S.C. 11102(c) (where, for a fee, the incumbent must switch cars to and from another railroad so that the latter, even though it cannot physically reach a shipper, can constructively offer alternative single-line service).

The access remedies under sections 11102 and 10705—terminal trackage rights, reciprocal switching, and alternative through routes—are now invoked through the ''competitive access'' regulations, 49 CFR part 1144, and, to obtain relief, parties must show

[1] A copy of each diskette submitted to the Board should be provided to any other party upon request.

[2] The using railroad must compensate the incumbent railroad for the use of its tracks, at a level to be determined by the carriers or fixed by the Board. 49 U.S.C. 11324(c), 11102(a), and 11123(b)(2).

that the incumbent rail carrier has acted in a way ''that is contrary to the competition policies of 49 U.S.C. 10101[] or is otherwise anticompetitive.'' [3] At the Ex Parte 575 hearings, shippers complained that the ''anticompetitive conduct'' standard of the regulations is too restrictive and effectively precludes alternative service in those situations where it is most urgently needed—where shippers (such as those poorly served during the recent service emergency in the West) are not receiving the level of service needed from their incumbent carrier. At the hearings, the rail industry concurred that the Board should be able to remedy such service failures more quickly and effectively.

Accordingly, we seek comment on the proposed rules set forth below to provide expedited relief for demonstrated poor service.[4]

Choice of Remedies

To address these service issues more effectively, we propose rules under which parties may seek alternative rail service under either the access provisions of sections 11102 and 10705, or the emergency service provisions of section 11123. While section 11123 has typically been used to address regional service emergencies, such as the one recently experienced in the West,[5] we believe it can also be used to afford more localized relief to shippers; that section broadly permits Board intervention to remedy service deficiencies having ''substantial adverse effects'' on shippers, or where a rail carrier ''cannot transport the traffic offered to it in a manner that properly serves the public.'' 49 U.S.C. 11123(a).

Moreover, permitting shippers to proceed either under sections 11102 or 10705, on the one hand, or section 11123, on the other, affords greater flexibility and broadens the potential for regulatory relief. For example, trackage rights access under section 11102(a), while not statutorily limited in duration, is limited to an incumbent railroad's terminal facilities, and therefore is not available for shippers that are not located at or near terminal areas. In contrast, remedies under section 11123(a), although limited to 270 days, are potentially available for shippers located on any part of the incumbent carrier's network; this section also affords the Board more latitude to craft a variety of measures to remedy any particular service situation.[6]

Standard for Relief

Whichever remedies are sought, however, the predicate for relief would be the same: that, over an identified period of time, there has been a substantial, measurable deterioration in the rail service provided by the incumbent carrier.[7] We do not think it necessary or appropriate to propose a list of particular factors—or a formulaic weighing of such factors—that shippers must use to make that assessment, or to propose a specific test period. Each shipper has its own particular service needs and experiences, and carrier difficulties may vary. Our standard of relief must be flexible enough to permit us to address varying circumstances. Commenters may wish to address this issue.

We caution that the proposed rules are not meant to redress minor service disruptions. Access—particularly that which would compel physical access by another railroad over an incumbent's lines—is a serious remedy with potentially significant operational, safety, and financial consequences for the involved carriers, and we intend that the rules be used to remedy only substantial service problems that cannot readily be resolved by the incumbent railroad. Accordingly, we propose to require shippers to: (1) First discuss and assess with their incumbent carrier whether adequate service can be restored within a reasonable period of time that is consistent with the shipper's needs and, if not, outline in its request for relief why that is the case; and (2) obtain from another railroad the necessary commitment—should it be afforded access—to meet the shipper's service needs, and describe the carrier's plan to do so safely and without degrading service to its existing customers or unreasonably interfering with the incumbent's overall ability to provide service.

Expedited Procedures

The proposed rules include expedited procedures because of the usually urgent nature of serious service problems. Instead of the more time-consuming complaint process, parties may seek relief by petition.[8] We propose that the incumbent carrier be required to reply to such a petition within five business days, and that the shipper, if it wishes to file a rebuttal, be required to do so no more than three business days later.

If relief is granted under these rules, once the incumbent carrier can demonstrate that it has restored, or is prepared to restore, adequate service, it may file a petition to terminate that relief. We would discourage an incumbent carrier from filing such a petition too hastily after the Board's order, however, as the objective in a proceeding of this nature is to provide shippers with a needed degree of certainty of adequate rail service.

For the same reason, we propose that satisfying the standard for relief under section 11123 ordinarily would establish a presumption that the incumbent's inability to provide adequate service will last beyond the initial 30-day period, and thus will provide the basis for a subsequent order extending relief beyond the initial 30-day period. However, if the incumbent carrier can show that it is prepared to provide adequate service, it may seek to have the relief terminated within the first 30 days.

Should the incumbent carrier file a petition to terminate relief, replies are to be filed in five business days, and the carrier may file any rebuttal three business days afterward. The Board will then assess all relevant factors in determining what action would be appropriate.

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[3] 49 CFR 1144.5(a); *Intramodal Rail Competition,* 1 I.C.C.2d 822 (1985), *aff'd sub nom. Baltimore Gas & Elec. Co.* v. *United States,* 817 F.2d 108 (D.C. Cir. 1987). Under existing case law, parties must show that the incumbent carrier has either: (1) Used its market power to extract unreasonable terms, or (2) because of its monopoly position, shown a disregard for the shipper's needs by rendering inadequate service. *Midtec Paper Corp.* v. *Chicago & N.W. Transp. Co.,* 3 I.C.C. 2d 171 (1986), *aff'd sub nom. Midtec Paper Corp.* v. *United States,* 857 F.2d 1487 (D.C. Cir. 1988).

[4] As we explained in *Review,* slip op. at 6–7, this decision does not address whether to revise the competitive access regulations with respect to competitive issues not related to quality of service. We have directed the railroads and shippers to meet, under the supervision of an Administrative Law Judge, to identify mutually acceptable modifications to facilitate greater access in appropriate circumstances, and to report back to us by August 3, 1998. We are confident that shippers and railroads can find common ground on this issue. *See Review of Rail Access and Competition Issues,* STB Ex Parte No. 575 (STB served May 4, 1998).

[5] STB Service Order No. 1518, *Joint Petition for Service Order* (STB served Oct. 31 and Dec. 4, 1997, and Feb. 17 and 25, 1998).

[6] Although the remedies under sections 11102 and 10705 are not statutorily limited in duration, we remind commenters that the relief contemplated by this proposal is intended to respond to service problems, and not to provide permanent responses to perceived competitive issues.

[7] Because the proposed predicate for relief is different than that for ''competitive'' access under 49 CFR 1144.5(a), and to avoid confusion, we do not propose to amend the competitive access regulations, as we had suggested in *Review,* but rather to adopt a new, discrete set of regulations to address relief for service inadequacies, 49 CFR part 1146.

[8] We note that section 11123(b)(1) gives us broad authority to afford relief without regard to the administrative adjudication procedures in 5 U.S.C. 551 et seq.

We invite comment on all aspects of this proposal. Any person that wishes to participate as a party of record in this matter must notify us of this intent by May 28, 1998. In order to be designated a party of record, a person must satisfy the filing requirements outlined in the **ADDRESSES** section. We will then compile and issue a service list. Copies of comments and replies must be served on all persons designated on the list as a party of record. Comments on the proposal are due June 15, 1998; replies are due July 15, 1998.

A copy of this decision is being served on all parties on the service list in Ex Parte No. 575. This decision will serve as notice that persons who were parties of record in the Ex Parte 575 proceeding will not be placed on the service list in the Ex Parte 628 proceeding unless they notify us of their intent to participate therein.

The Board preliminarily certifies that the proposed rules, if adopted, would not have a significant effect on a substantial number of small entities. While the proposed rules, if adopted, may ease the burdens on obtaining alternative rail service in the limited situations described, we do not expect them to affect a substantial number of small entities. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1146

Administrative practice and procedures, Railroads.

Decided: May 12, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, Part 1146, consisting of § 1146.1, is proposed to be added to read as follows:

PART 1146—EXPEDITED RELIEF FOR SERVICE INADEQUACIES

1. The authority for part 1146 will read as follows:

Authority: 49 U.S.C. 721, 11102, 11123, and 10705.

§ 1146.1 Prescription of Alternative Rail Service

(a) *General.* Alternative rail service will be prescribed under 49 U.S.C. 11102(a), 11102(c), 10705(a), or 11123(a), if the Board determines that, over an identified period of time, there has been a substantial, measurable deterioration in rail service provided by the incumbent carrier.

(b)(1) *Petition for Relief.* Parties may seek relief described in paragraph (a) of this section by filing an appropriate petition containing:

(i) A full explanation, together with all supporting evidence, to demonstrate that the standard for relief contained in paragraph (a) of this section is met;

(ii) A summary of the petitioner's discussions with the incumbent carrier of the service problems and the reasons why the incumbent carrier is unlikely to restore adequate rail service consistent with the shipper's needs within a reasonable period of time;

(iii) A commitment from another available railroad to provide alternative service that would meet the shipper's service needs, and how that carrier would provide the service safely without degrading service to its existing customers or unreasonably interfering with the incumbent's overall ability to provide service; and

(iv) A certification of service of the petition, by overnight delivery, on the incumbent carrier.

(2) *Reply.* The incumbent carrier must file a reply to a petition under this subsection within five (5) business days.

(3) *Rebuttal.* The party requesting relief may file rebuttal no more than three (3) business days later.

(c) *Presumption of Continuing Need.* Unless otherwise indicated in the Board's order, a Board order issued under paragraph (a) of this section that prescribes relief under 49 U.S.C. 11123(a) shall establish a rebuttable presumption that the transportation emergency will continue for more than 30 days from the date of that order.

(d)(1) *Petition to Terminate Relief.* Should the Board prescribe alternative rail service under paragraph (a) of this section, the incumbent carrier may subsequently file a petition to terminate that relief. Such a petition shall contain a full explanation, together with all supporting evidence, to demonstrate that the carrier is providing, or is prepared to provide, adequate service to affected shippers. Absent special circumstances, carriers are discouraged from filing such a petition less than 90 days after relief is granted under paragraph (a) of this section.

(2) *Reply.* Parties must file replies to petitions to terminate filed under this subsection within five (5) business days.

(3) *Rebuttal.* The incumbent carrier may file any rebuttal no more than three (3) business days later.

* * * * *

[FR Doc. 98–13095 Filed 5–15–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants, Notice of Reopening of Comment Period on the Proposed Threatened Status of the Sacramento Splittail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of the reopening of the comment period for the proposed threatened status for the Sacramento splittail (*Pogonichthys macrolepidotus*). The comment period has been reopened to acquire additional information on the status, abundance and distribution of the Sacramento splittail in the Central Valley of California.

DATES: Comments received by July 17, 1998 will be considered by the Service.

ADDRESSES: Written comments, materials and data, and available reports and articles concerning this proposal should be sent directly to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Thabault, at the address listed above (telephone 916/979–2725, facsimile 916/979–2723).

SUPPLEMENTARY INFORMATION:

Background

The Sacramento splittail (*Pogonichthys macrolepidotus*), is the only large cyprinid that is endemic to California's Central Valley, where they were once widely distributed (Moyle 1976). Historically, splittail were found as far north as Redding on the Sacramento River, as far south as the present-day site of Friant Dam on the San Joaquin River, and as far upstream as the current Oroville Dam site on the Feather River and Folsom Dam site on the American River (Rutter 1908).

In recent times, dams and diversions have increasingly prevented upstream access to large rivers, and the species is now apparently restricted to a small portion of its former range (Moyle and Yoshiyama 1992). Splittail enter the

lower reaches of the Feather (Jones and Stokes 1993) and American rivers (Charles Hanson, State Water Contractors, *in litt*., 1993) on occasion; however, the species now is largely confined to the delta, Suisun Bay, Suisun Marsh, and Napa Marsh. The ''Delta'' refers to all tidal waters contained within the legal definition of the San Francisco Bay-Sacramento-San Joaquin River Delta, as delineated by section 12220 of the State of California's Water Code of 1969. Generally, the Delta is contained within a triangular area that extends south from the City of Sacramento to the confluence of the Stanilaus and San Joaquin Rivers at the southeast corner and Chipps Island in Suisun Bay.

In recent years, splittail have been found most often in slow moving sections of rivers and sloughs and dead-end sloughs (Moyle et al. 1982, Daniels and Moyle 1983). Reports from the 1950's, however, mention Sacramento River spawning migrations and catches of splittail during fast tides in Suisun Bay (Caywood 1974). California Department of Fish and Game survey data from the last 15 years indicate that the highest catches occurred in shallow areas subject to flooding. Historically, major flood basins, distributed throughout the Sacramento and San Joaquin Valleys, provided spawning and rearing habitat. These flood basins have all been reclaimed or modified into flood control structures (bypasses). Although primarily a freshwater species, splittail can tolerate salinities as high as 10 to 18 parts per thousand (Moyle and Yoshiyama 1992).

On January 10, 1995, a second comment period was opened for 45 days, and a 6-month extension added to the final rulemaking time frame, in accordance with section 4(b)(6)(B)(i) of the Act. A moratorium on listing actions, imposed on April 10, 1995 (Pub. L. 104–6), was lifted on April 26, 1996. Severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996 were followed by passage of the Omnibus Budget Reconciliation Act on April 26, 1996, allowing work to continue on various listing actions in accordance with fiscal year guidance that assigned priorities in a multi-tiered approach in accordance with section 4 of the Act (61 FR 64479). The guidance stated that handling emergency situations was highest priority (Tier 1), and resolving the listing status of outstanding proposed rules was second highest priority (Tier 2). Processing of this proposed rule fell under Tier 2.

On March 19 and March 20, 1998, the California Department of Water Resources and the State Water Contractors, respectively, requested a reopening of the comment period. The basis of this request is that substantial data have been collected since 1995 regarding the abundance and distribution of the splittail. The Service believes that consideration of this and any new information is significant to make the final determination for the Sacramento splittail. For this reason, the Service particularly seeks information concerning abundance and distribution data for this species from 1995–1997. Specifically, the Service seeks comments regarding the paper ''Resilience of Splittail in the Sacramento-San Joaquin Estuary'' (Sommer *et al.* 1997), and how the information contained in this paper effects the Service's recommendation for listing the Sacramento splittail as a threatened species.

Written comments may be submitted until July 17, 1998 to the Service office in the **ADDRESSES** section.

Author.

The primary author of this notice is Diane Windham, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

References

Caywood, M.L. 1974. Contributions to the life history of the splittail *Pogonichthys macrolepidotus* (Ayres). M.S. Thesis, California State University, Sacramento.

Daniels, R.A., and P.B. Moyle. 1983. Life history of the splittail (Cyprinidae: *Pogonichthys macrolepidotus*) in the Sacramento-San Joaquin estuary. Fish. Bull. 84:105–117.

Jones and Stokes Assoc., Inc. 1993. Sutter Bypass fisheries technical memorandum II: Potential entrapment of juvenile chinook salmon in the proposed gravel mining pond. May 27, 1993. (JSA 91–272). Sacramento, California. Prepared for Teichert Aggregates, Sacramento, California. 31 pp. + Appendix.

Moyle, P.B., J.J. Smith, R.A. Daniels, and D.M. Balz. 1982. Distribution and ecology of stream fishes of the Sacramento-San Joaquin Drainage System, California: A review. Univ. Calif. Publ. Zool. 115:225–256.

Moyle. P.B., and R.M. Yoshiyama. 1992. Fishes, aquatic diversity management areas, and endangered species: A plan to protect California's native aquatic biota. Draft report prepared for California Policy Seminar, Univ. of Calif. Berkeley, California. July 1992. 196 pp.

Rutter, C. 1908. The fishes of the Sacramento-San Joaquin basin, with a study of their distribution and variation. U.S. Bull. 27:103–152.

Sommer, T., R. Baxter, and B. Herbold. 1997. Resilience of the Splittail in the Sacramento-San Joaquin Estuary. Transactions of the American Fisheries Society 126:961–976.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 12, 1998.

Thomas Dwyer,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 98–13083 Filed 5–15–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980508122–8122–01; I.D. 042498A]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Control Date for Spiny Dogfish

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

ACTION: Advance notice of proposed rulemaking; notice of control date for spiny dogfish fishery.

SUMMARY: NMFS announces that anyone entering the spiny dogfish (*Squalus acanthias*) (dogfish) fishery after May 18, 1998 (control date) will not be assured of future access to the dogfish resource in Federal waters if a management regime is developed and implemented under the Magnuson-Stevens Act that limits the number of participants in the fishery. This announcement is intended to promote awareness of potential eligibility criteria for future access to that portion of the dogfish fishery and to discourage new entries into this fishery based on economic speculation while the Mid-Atlantic and New England Fishery Management Councils (Councils) contemplate whether and how access to that portion of the dogfish fishery in Federal waters should be controlled. The potential eligibility criteria may be based on historical participation. This announcement, therefore, gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the dogfish fishery in Federal waters.

DATES: Comments must be received by June 17, 1998.

ADDRESSES: Comments should be addressed to Dr. Christopher M. Moore, Acting Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover DE 19904.

FOR FURTHER INFORMATION CONTACT: Rick Pearson, Fishery Policy Analyst, 978-281-9324.

SUPPLEMENTARY INFORMATION:

Background

For most of the first two decades of extended jurisdiction under the Magnuson-Stevens Act, dogfish was considered to be underutilized and of minor economic importance. With the decline of more traditional groundfish resources in recent years, an increase in directed fishing for dogfish has resulted in a nearly sixfold increase in landings in the last 7 years. The lack of any regulations pertaining to the harvest of dogfish in the exclusive economic zone, combined with the recent expansion of the fishery led the Councils to initiate development of a management plan for the species.

The most recent stock assessment conducted by NMFS for dogfish (SAW–26, 1998) indicates that the stock in the Northwest Atlantic has begun to decline and the spawning stock has declined significantly since 1989 as a result of an increase in exploitation. Expansion of the fishery has resulted in a dramatic increase in fishing mortality (F). This increased F has been focused primarily on mature females due to their larger size. The increased F, in combination with the removal of a large portion of the adult female stock, has resulted in the species' being designated overfished. The Assistant Administrator for Fisheries, NMFS, on April 3, 1998, notified the Councils of this designation, thus initiating the 1-year time frame for development of a fishery management plan as required by the Magnuson-Stevens Act.

SAW–26 recommended that a management program be developed promptly for this species and that targets for stock biomass and F be established. In addition, the recent prominence of this species in the Northwest Atlantic ecosystem and evidence of the effects of F on stock abundance, including decreased indices of large fish, resulted in the Councils' decision to implement a fishery management plan for dogfish.

The Councils held scoping hearings in the New England and Mid-Atlantic regions during the fall of 1997 to begin the process of developing a fishery management plan for the dogfish fishery (FMP). The purpose of the scoping hearings was to determine the scope of issues to be addressed and to identify the significant issues and problems relating to the management of dogfish.

Foremost among the problems and issues that were identified during the dogfish scoping hearings was the status of the resource. The assessment conducted in 1994 indicated that the stock was stable, but possibly beginning to decline. Landings have increased since that assessment, prompting concerns that the stock may be overfished. Since current levels of fishing effort may exceed the level required to achieve optimum yield for dogfish, the Councils will be considering limiting access to the dogfish fishery during FMP development.

The Councils intend to address whether and how to limit entry of commercial vessels into this fishery in the dogfish FMP. The Councils' publication of this control date is to discourage speculative entry into the dogfish fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Councils. The control date will help to distinguish established participants from speculative entrants to the fishery. Although participants are notified that entering the fishery after the control date will not assure them of future access to the dogfish resource on the grounds of previous participation, additional and/or other qualifying criteria may be applied. The Councils may choose different and variably weighted methods to qualify participants based on the type and length of participation in the fishery or on the quantity of landings.

This notification hereby establishes May 18, 1998 for potential use in determining historical or traditional participation in the Federal waters dogfish fishery. This action does not commit the Councils to develop any particular management regime or to use any specific criteria for determining entry to the fishery. The Councils may choose a different control date or a management program that does not make use of such a date. The Councils may also choose to take no further action to control entry or access to the fishery. Any action by the Councils will be taken pursuant to the requirement for FMP development established under the Magnuson-Stevens Act.

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

Dated: May 11, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–13051 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 95
Monday, May 18, 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 COMMERCE

International Trade Administration

[A–122–822, A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Amended Final Results of Antidumping Duty Administrative Reviews

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

EFFECTIVE DATE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230; telephone: (202) 482–3818.

Scope of This Review

The products covered by these administrative reviews constitute two separate ''classes or kinds'' of merchandise: (1) Certain corrosion-resistant steel and (2) certain cut-to-length plate.

The first class or kind, certain corrosion-resistant steel, includes flat-rolled carbon steel products of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The second class or kind, certain cut-to-length plate, includes hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling) —for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The period of review (POR) is August 1, 1995, through July 31, 1996.

Amendment of Final Results

On March 16, 1998, the Department of Commerce (''the Department'') published the final results of administrative reviews of the antidumping duty order on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada (63 FR 12725) (''Final Results''). These reviews cover five manufacturers/exporters of the subject merchandise to the United States during the period August 1, 1995, through July 31, 1996. We received comments on the final results from Algoma, Inc. (''Algoma''), Stelco Inc. (''Stelco''), and from the petitioners.

Interested Party Comments

Algoma

Comment 1: Algoma alleges that the Department made a ministerial error in its adjustment of certain U.S. commission amounts. Specifically, Algoma contends that the Department should not have applied a ''facts available'' methodology for certain U.S. commissions calculated on a semi-annual basis for several reasons. First, Algoma argues that this methodology was accepted in prior segments of this proceeding. Second, Algoma argues that it received no opportunity from the Department to clarify the record or change its existing reporting methodology.

Petitioners did not comment on this issue.

Department's Position: We disagree with Algoma that the Department made a ministerial error in its calculation of certain U.S. commission amounts. The purpose of this amended final is solely to correct ministerial errors, and not to re-consider other decisions. A ministerial error is defined in 19 C.F.R. section 353.28(d) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.'' (Designated in the Department's new regulations as 19 C.F.R. 351.224(f).) As the Department noted in Comment 4 of the *Final Results* notice, while ''it was appropriate for Algoma to report commissions on a customer-specific basis over a period of time....(however), it is also clear that commissions were paid by Algoma based on monthly shipments, and not semi-annually. Therefore, Algoma should have reported its U.S. commissions on a monthly basis instead of a semi-annual basis.'' *See Final Results* at 12728. Algoma does not dispute the mathematical application of the Department's decision but instead has expressed its disagreement with the Department's decision in this instance. Therefore, we reject Algoma's allegation because it does not address an alleged error which is ministerial in nature.

Stelco

Comment 2: In a letter to the Department dated March 27, 1998, Stelco alleges that the Department failed to apply the Baycoat, Z-Line, and iron ore supplier adjustment to home market VCOMs (variable cost of manufacture) in its model-match computer program for corrosion-resistant steel. Stelco argues that based on the Department's statement in the footnote of the final analysis memorandum (*See Stelco Final Results Analysis Memorandum for Corrosion-Resistant Steel Products* at page 3), the Department clearly intended to apply these supplier adjustments to TCOM and VCOM.

Petitioners did not comment on this issue.

Department's Position: We agree with Stelco. The Department erroneously compared adjusted U.S. VCOMS to unadjusted home market VCOMS. To ensure accurate product comparisons, we have recalculated VCOMH in the model match program for corrosion-resistant steel so that adjusted figures are used on both sides of the comparison. *See Analysis of Alleged Ministerial Errors for Corrosion-Resistant Products* at page 1.

Comment 3: Stelco argues that in its final margin calculation program for corrosion-resistant products, the Department incorrectly calculated GNACV and INTEXCV using the variable TOTCOM rather than the revised variable TCOM in its computer programs for corrosion-resistant steel.

Petitioners allege that the Department inadvertently used the variable TOTCOM in its model match program for plate rather than the correct term TCOM.

Department's Position: We agree with Stelco and petitioners. We have corrected the final margin program for corrosion-resistant steel to calculate GNACV and INTEXCV using the revised variable TCOM. *See Id.* at page 2. Additionally, we have corrected the model match program for plate to use the variable TCOM. *See Analysis of Alleged Ministerial Errors for Plate* at page 2.

Comment 4: Stelco alleges that, for corrosion-resistant steel, the Department applied cost adjustments intended for only those orders processed by Baycoat to orders which had not been serviced by Baycoat. Stelco argues that the computer programming language used by the Department to apply these Baycoat adjustments to unpainted, code 4 control numbers resulted in non-Baycoat serviced merchandise being incorrectly adjusted for Baycoat services.

Petitioners did not comment on this issue.

Department's Position: We agree with Stelco. The Department erroneously applied the Baycoat adjustment to sales of class 4 merchandise that were not serviced by Baycoat. The Department has amended the programming language in its model match and margin calculation programs for corrosion-resistant steel to remedy this error. *See Analysis of Alleged Ministerial Errors for Corrosion-Resistant Steel Products* at page 2.

Comment 5: Stelco alleges that for corrosion-resistant steel the Department inappropriately recalculated the credit expense for all U.S. sales using a U.S. short-term borrowing rate though the Canadian dollar was the currency of certain U.S. sales. Similarly, Stelco alleges that the Department overlooked the fact that certain home market sales were incurred in U.S. dollars. Stelco argues that the Department should recalculate the credit expense for those home market sales for which the currency of the transaction was U.S. dollars using the U.S. short-term borrowing rate.

Petitioners did not comment on this issue.

Department's Position: We agree with Stelco. The Department's policy bulletin 98.2 states that the short term interest rate should be tied to the currency in which the sales are denominated. We have inserted language into the final programs for corrosion-resistant steel which ties the short-term interest rate to the currency in which the sale is denominated. *See Analysis of Alleged Ministerial Errors for Corrosion-Resistant Steel Products* at pages 3 and 4.

Comment 6: Stelco argues that the Department's use of the date of the final results as the pay date for those U.S. sales that had not yet been paid by the time of Stelco's submission was a ministerial error. Stelco maintains that it is generally the Department's policy to substitute the date of the last submission or the date on which the respondent had an opportunity to provide updated information as the pay date.

Petitioners argue that the Department's use of the date of the final results as the surrogate pay date does not constitute a ministerial error. Citing to the Department's final analysis memorandum, petitioners note that the Department stated that it ''used the date of the final determination of March 9, 1998 as the pay date'' for those sales for which Stelco had not yet been paid. *See Stelco Final Results Analysis Memorandum for Corrosion-Resistant Steel Products* at page 16. Petitioners argue that the Department must reject Stelco's allegation of ministerial error as the Department clearly intended to use the date of the final results in its credit calculation.

Department's Position: We agree with petitioners. The error Stelco alleges does not meet the Department's criteria of a ministerial error within the meaning of 19 C.F.R. section 353.28(d) as cited in the recommendation to Comment 1

above. Stelco does not dispute the mathematical application of the Department's decision but instead has expressed its disagreement with the Department's decision in this instance. The Department explicitly intended to use the date of the final results in its credit calculation. Therefore, we reject Stelco's allegation of ministerial error.

Comment 7: Petitioners allege that the Department inadvertently used an incorrect dataset for the concordance data in the margin calculation program for plate. The model match program creates a concordance dataset named CONCORD; however, the margin calculation program uses the term CONCORDP. Petitioners argue that the Department should use the dataset name CONCORD in its margin calculation program.

Stelco did not comment on this issue.

Department's Position: We agree with petitioners. Because this error is typographical in nature, it falls within the Department's definition of ministerial error. We have corrected the margin calculation program for plate to use the proper concordance dataset. *See Analysis of Alleged Ministerial Errors for Plate* at page 2.

Comment 8: Petitioners allege that the Department failed to exclude general sales tax (''GST'') and provincial sales tax (''PST'') from home market credit expenses in its final programs for both corrosion-resistant steel and plate. They note that the Department stated in its *Final Results* notice that it ''corrected Stelco's home market credit expenses to exclude both GST and PST'' (*see Final Results* at 12742).

Stelco did not comment on this issue.

Department's Position: We agree with petitioners. We have amended the final programs for both corrosion-resistant steel and plate to exclude GST and PST from the calculation of home market credit expenses. *See Analysis of Alleged Ministerial Errors for Corrosion-Resistant Steel Products* at pages 3 and 4. *See* also *Analysis of Alleged Ministerial Errors for Plate* at page 3.

Amended Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manufacturer/exporter	Margin (percent)
Corrosion—Resistant Steel:	
Dofasco	0.72.
CCC	0.54.
Stelco	1.55.
Cut-to-Length Plate:	
Algoma	0.44 (*de minimis*).
MRM	0.00.
Stelco	0.35 (*de minimis*).

Pursuant to section 353.28 of the Department's regulations, parties to the proceeding will have five days after the date of publication of this notice to notify the Department of any new ministerial or clerical errors, as well as five days thereafter to rebut any comments by parties.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between sales to the United States and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of amended final results of review, for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates for those firms as stated above, except if the rate is less than .5 percent and therefore *de minimis,* the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be the ''all others'' rate made effective by the final results of the 1993–1994 administrative review of these orders (*see Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Steel Plate from Canada; Final Results of Antidumping Administrative Reviews,* 61 FR 13815 (March 28, 1996)). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This amendment of final results of administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 11, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–13138 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–805]

Amended Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate From Sweden

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

ACTION: Amended final results of administrative review.

SUMMARY: On January 13, 1998, the United States Court of International Trade affirmed the Department of Commerce's final remand results affecting the final assessment rate for the 1993/94 administrative review in the case of certain cut-to-length carbon steel plate from Sweden. *SSAB Svenkst Stal AB* v. *United States,* Slip Op. 98–3 (CIT January 13, 1998). As there is now a final and conclusive court decision in this action, we are amending our final results of review, and we will instruct the U.S. Customs Service to liquidate entries subject to this review.

EFFECTIVE DATE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Stephen Jacques, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230; telephone: (202) 482–0374 or 482–1391, respectively.

Applicable Statue

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Tariff Act''), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations

to the Department of Commerce's (''the Department's'') regulations are to the regulations as codified at 19 CFR Part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1996, the Department published its final results of administrative review in the case of *Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Antidumping Duty Administrative Review*, 61 FR 15772 (''*Final Results*''). The review covered one manufacturer/exporter, SSAB Svenskt Stal AB (''SSAB''), of the subject merchandise for the period February 4, 1993, through July 31, 1994. Subsequently, SSAB filed a lawsuit with the U.S. Court of International Trade (''CIT'') challenging the results.

In the context of this litigation, the Department requested a remand to reconsider the propriety of making an adjustment for post-sale price adjustments (''PSPAs''). The CIT granted this remand on August 29, 1997. On remand, through an examination of the record, the Department found that all rebates were made on either a fixed or constant percentage-of-sales value or on a fixed and constant Swedish Kroner-per-ton of total tonnage sold. Therefore, the Department determined that these PSPAs qualified as adjustments to foreign market value.

The Department filed its redetermination with the Court of International Trade (''CIT'') on October 29, 1997. *See Final Results of Redetermination on Remand, SSAB Svenskt Stal AB* v. *United States, Court No. 96–05–01372, Slip Op. 97–123 (August 29, 1997)* (''*Remand Results*''). In its *Remand Results*, the Department stated that it would ''instruct the Customs Service to collect cash deposits at the above rate [of 7.25%] for entries from SSAB of cut-to-length carbon steel plate from Sweden'' (*Remand Results* at 4). Since then, parties and the CIT have agreed that such instructions would be incorrect because the Department has published subsequent administrative reviews that govern future cash deposits. Therefore, cash deposit rates will be governed not by the rate published in the *Remand Results*, but by the most recently completed administrative review, according to the Department's normal procedures. *See Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Antidumping Duty Administrative Review*, 62 FR 46947 (September 5, 1997).

On January 13, 1998, the CIT affirmed the Department's final remand results (with the exception noted above), Slip Op. 98–3. As there is now a final and conclusive court decision in this action, we are amending our final results of review in this matter and we will instruct the U.S. Customs Service to liquidate entries subject to this review in accordance with the remand results.

Amendment to Final Results

Pursuant to 516A(e) of the Tariff Act, we are now amending the final results of administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Sweden for the period February 4, 1993, through July 31, 1994. As a result of the remand determination, the final weighted-average margin for SSAB is as follows:

Manufacturer/exporter	Margin (percent)
SSAB	7.25

Accordingly, the Department shall determine, and the U.S. Customs Service shall assess appropriate antidumping duties on entries of the subject merchandise manufactured by SSAB. We calculated an importer-specific ad valorem duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. To determine the amount of antidumping duties on those U.S. sales for which the Department assigned a margin based on the best information available (''BIA''), we calculated a unit duty rate (based on the BIA rate of 24.23%) for all BIA sales. Consequently, the assessment rate for SSAB represents a weighted-average of the total amount of antidumping duties for non-BIA sales and the total amount of antidumping duties for BIA sales. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions to the U.S. Customs Service after publication of this amended final results of review.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: May 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–13047 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent Not To Revoke Antidumping Duty Order, In Part

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

ACTION: Notice of final results of changed circumstances antidumping duty administrative review and intent not to revoke antidumping duty order, in part.

SUMMARY: On August 27, 1997, the Department of Commerce initiated a changed circumstances antidumping duty administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China, and subsequently published the preliminary results of this review and an intent not to revoke the order, in part, in the **Federal Register** on January 29, 1998 (63 FR 4430). We received no comments regarding the preliminary results. Thus, these final results are unchanged from the preliminary results, and we are not revoking the order, in part, with regard to porcelain-on-steel tea kettles from the People's Republic of China.

EFFECTIVE DATE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Lorenza Olivas, Office of CVD/AD Enforcement 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as set forth at 19 CFR § 353.1, *et seq.*, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On May 30, 1997, respondent, Clover Enamelware Enterprises Ltd. and Lucky

Enamelware Factory Ltd. (Clover/Lucky) requested that the Department of Commerce (the Department) conduct a changed circumstances administrative review to determine, pursuant to 19 CFR § 353.25(d), whether to revoke partially the antidumping duty order on porcelain-on-steel (POS) cooking ware from the People's Republic of China (PRC) with regard to POS tea kettles.

The basis for Clover/Lucky's request was that the sole U.S. producer of POS cooking ware, General Housewares Corp. (GHC), affirmatively stated in its request for a changed circumstances review of the antidumping duty order on POS cooking ware from Taiwan, that it no longer manufactured POS tea kettles and thus had no interest in the importation or sale of POS tea kettles. Based on GHC's affirmative statement of no interest, with respect to tea kettles, submitted in the antidumping proceeding on POS cooking ware from Taiwan, the Department revoked the antidumping order on POS cooking ware from Taiwan, with respect to tea kettles. *See Porcelain on Steel Cooking Ware from Taiwan: Final Results of Changed Circumstances Antidumping Administrative Review, and Revocation in Part of Antidumping Duty Order,* 62 FR 10024 (March 5, 1997). Clover/Lucky asserted that GHC's statements in the Taiwan case should also be the basis for revoking, in part, the antidumping duty order on POS cooking ware from the PRC with respect to tea kettles.

On September 25, 1997, GHC, the petitioner and sole U.S. producer of POS cooking ware, submitted a letter expressing an interest in maintaining the order with respect to POS tea kettles from the PRC, and objected to the partial revocation of this order with respect to POS tea kettles.

On January 29, 1998, we published the preliminary results of changed circumstances antidumping duty administrative review (63 FR 4430), in which we preliminarily determined not to revoke this order, in part. We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of Review

The products covered by this antidumping duty order are POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware is not subject to this order. *See Antidumping Duty Order: Porcelain-on-Steel Cooking Ware from the People's Republic of China,* 51 FR 43414 (December 2, 1986).

The products covered by this changed circumstances review are POS tea kettles from the PRC. Imports of POS tea kettles are currently classifiable under the harmonized tariff schedule (HTS) subheading 7323.94.00.10. The HTS subheading is provided for convenience and Customs purposes. Our written description of the scope of this proceeding is dispositive. The order with regard to imports of other POS cooking ware is not affected by this changed circumstances review.

Final Results of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to § 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under § 751(b) of the Act. Section 782(h) of the Act and § 353.25(d)(1) of the Department's regulations provide that the Department may revoke an order, or revoke an order in part, if it determines that changed circumstances sufficient to warrant revocation of the order, or part of the order, exist.

The petitioner and sole U.S. producer of POS cooking ware submitted an affirmative statement of interest in this order with respect to POS tea kettles from the PRC. As we stated in out notice of initiation, the orders on POS cooking ware from Taiwan and the PRC are separate and distinct. As such, a decision on one order cannot automatically be assumed to be applicable to another order involving a different country. On the basis of the record developed in this proceeding, we determine in these final results that changed circumstances sufficient to warrant partial revocation of the antidumping duty order on POS cooking ware from the PRC with respect to POS tea kettles do not exist.

The current requirements for the cash deposit of estimated antidumping duties on all subject merchandise will remain in effect until the publication of the final results of the next administrative review.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is in accordance with §§ 751(b)(1) and (d) and § 777(i) of the Act and 19 CFR § 353.22(f)(1) of the Department's regulations.

Dated: May 8, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–13135 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review

SUMMARY: On January 9, 1998, the Department of Commerce published its preliminary results of administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China for the period December 1, 1995, through November 30, 1996 (63 FR 1434). The Department of Commerce has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930. For information on the assessment of antidumping duties for each reviewed company, and for all non-reviewed companies, see the *Final Results of Review* section of this notice.

EFFECTIVE DATE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Russell Morris, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1998, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China for the period December 1, 1995, through November 30, 1996 (63 FR 1434). Pursuant to 19 CFR § 353.22(a), this review covers only producers or exporters of the subject merchandise for which a review was

specifically requested. Accordingly, this review covers Clover Enamelware Enterprise, Ltd. of China (Clover), a manufacturer/exporter, and its third-country reseller, Lucky Enamelware Factory Ltd., in Hong Kong (Lucky).

We invited interested parties to comment on the preliminary results. Our review of the record has not led us to change our findings from the preliminary results.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department) regulations are to 19 CFR Part 353.

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel (POS) cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item 7323.94.00. HTS items numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Verification

We verified the questionnaire responses submitted by Clover and Lucky, using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information, as provided in section 782(i) of the Act. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Affiliated Parties

Clover is two-thirds owned by Lucky and, therefore, Lucky holds controlling interest in Clover. Due to Lucky's ownership interest in Clover, and the fact that the same individual is the general manager at both companies, we consider Clover and Lucky to be affiliated parties pursuant to section 771(33) of the Act. As such, and consistent with prior reviews of this order, we are assigning Clover and Lucky a single dumping margin. *See Porcelain-on-Steel Cooking Ware from the People's Republic of China; Final Results of Antidumping Administrative Review,* 62 FR 32758 (June 17, 1997). No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

Separate Rates Analysis

Lucky is located outside the People's Republic of China (PRC) and there is no PRC ownership of the company. Therefore, we determine that no separate rates analysis is required for this third-country reseller because it is beyond the jurisdiction of the PRC government. *See Final Determination of Sales at Less Than Fair Value; Disposable Pocket Lighters from the People's Republic of China* (60 FR 22359, 22361; May 5, 1995). Clover is partially owned by a PRC government company and, therefore, a separate rates analysis is necessary to determine whether this manufacturer/exporter is independent from government control.

To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market-economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.

1. Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Clover's submissions pertaining to legislative enactments and the terms of its Enterprise Legal Person Operation License demonstrate the absence of *de jure* control. (*See* Memorandum from Kelly Parkhill to Barbara E. Tillman, dated December 9, 1997, ''Separate Rate Analysis for Assignment of Separate Rate for Clover/Lucky in the 1995–1996 Administrative Review of POS Cooking Ware from the People's Republic of China'' (*Separate Rate Memorandum*), which is a public document on file in the Central Records Unit. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

2. Absence of De Facto Control

De facto absence of government control with respect to exports is based on four criteria: (1) whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. *See Silicon Carbide* at 22587.

With respect to *de facto* absence of government control, the information submitted by Clover in the questionnaire response indicates the following: (1) no government entity exercises control over its export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, utilizing profits to provide dividends to shareholders. In addition, it has the authority to seek out loans at market interest rates. This information supports the finding that there is *de facto* absence of governmental control of export functions. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

Final Results of the Review

We invited interested parties to comment on our preliminary results. We received no comments, and the final results do not differ from the preliminary results. As a result of our review, we determine the dumping margin for Clover Enamelware Enterprise/Lucky Enamelware Factory to be 0.81 percent for the period December 1, 1995 through November 30, 1996.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we intend to calculate importer-specific assessment rates. The Department will issue appraisement instructions on each exporter directly to the U.S. Customs Service. Furthermore, the following

deposit rates will be effective upon publication of this notice of final results of review for all shipments of POS cooking ware from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) for Clover/Lucky, which has a separate rate, the cash deposit rate will be the company-specific rate, which is 0.81 percent, established in the final results of this administrative review; (2) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate, which is 66.65 percent (the margin of 66.65 percent continues to be the PRC-wide rate because no companies representing the PRC entity were reviewed); (3) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These rates shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act (19 U.S.C. 1675(a)(1); 19 U.S.C. 1677f (i)) and 19 CFR 353.22.

Dated: May 8, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–13136 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico; Notice of Extension of Time Limit for Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929, or Mary Jenkins at (202) 482–1756, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the tenth administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico. The period of review is December 1, 1995, through November 30, 1996. The extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

Postponement

Under the Tariff Act of 1930 (the Act), the Department of Commerce (the Department) may extend the deadline for completion of an administrative review if it determines it is not practicable to complete the review within the statutory time limit. The Department finds that it is not practicable to complete the tenth administrative review of porcelain-on-steel cookware from Mexico within this time limit due to the complex nature of certain issues, including duty reimbursement, in this review which require further investigation.

In accordance with section 751(a)(3)(A) of the Act, the Department will extend the time for completion for the final results of this review to 180 days after the date on which notice of the preliminary results was published in the **Federal Register**.

Maria Harris Tildon,

Acting Deputy Assistant Secretary Import Administration.

[FR Doc. 98–13137 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–377–804, A–533–813, A–560–802, and A–570–851]

Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Certain Preserved Mushrooms From Chile, India, Indonesia and the People's Republic of China

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

EFFECTIVE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Katherine Johnson, Office 5, AD/CVD Enforcement Group II, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230, telephone: (202) 482–4136, or (202) 482–4929, respectively.

Postponement of Preliminary Determinations

On January 26, 1998, 63 FR 5306 (February 2, 1998), the Department initiated antidumping duty investigations on imports of Certain Preserved Mushrooms from Chile, India, Indonesia, and the People's Republic of China. The notice of initiation stated that we would issue our preliminary determinations on or before June 15, 1998.

On May 1, 1998, petitioners made a timely request pursuant to 19 CFR 351.205(e) of the Department's regulations for a 40 day postponement of the preliminary determinations, until July 27, 1998, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Petitioners requested postponements in order to provide the Department with additional time to respond to alleged deficiencies in the questionnaire responses, and to ensure that the preliminary determinations for Chile and India include below cost analyses.

Accordingly, we are postponing the preliminary determinations under section 733(c)(1)(A) of the Act for an additional 40 days. We will make our preliminary determinations no later than July 27, 1998.

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

Dated: May 8, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary Import Administration.

[FR Doc. 98–13043 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.] 050898A

Highly Migratory Species and Billfish Advisory Panels; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Atlantic Highly Migratory Species (HMS) and Billfish Advisory Panels (AP) will hold consecutive meetings, with a half- day joint meeting, to discuss issues in, and future management options for the fisheries for, Atlantic HMS.

DATES: The Billfish AP meeting will be held from 3:00 p.m. to 7:00 p.m. on May 26, and from 8:00 a.m. to 12:00 p.m. on May 27. The HMS AP meeting will be held from 8:00 a.m. to 4:00 p.m. on May 28, 1998. A joint session of the Billfish and HMS APs is scheduled for May 27 from 1:00 p.m. to 4:30 p.m. A public comment period will be held Wednesday, May 27, 1998, from 6:00 to 8:00 p.m. at the meeting location.

ADDRESSES: The APs will meet at the Islandia Marriott Long Island Hotel, 3635 Express Drive North, Happauge, NY 11788. Written comments should be submitted to, and informational materials related to the AP meeting are available from, Jill Stevenson or Liz Lauck, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Liz Lauck, telephone: (301) 713-2347, fax: (301) 713-1917.

SUPPLEMENTARY INFORMATION: The HMS and Billfish APs have been established under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* The APs will assist the Secretary of Commerce in collecting and evaluating information relevant to the development of a fishery management plan (FMP) for Atlantic tunas, swordfish, and sharks and to an amendment to the Billfish FMP. All AP meetings are open to the public and will be attended by members of the AP, including appointed members, representatives of the five Fishery Management Councils that work with HMS, and the Chair, or his representative, of the U.S. Advisory Committee to the International Commission for the Conservation of Atlantic Tunas. A public comment period is scheduled for Wednesday, May 27, 1998, from 6:00 to 8:00 p.m. at the meeting location. Comments are solicited on draft overfishing definition criteria and on rebuilding plans that will be discussed at the AP meetings. To request informational materials related to the AP discussion or to submit public comments, please see **ADDRESSES**.

Agenda items for the AP meetings include discussion of:

1. Objectives for the draft HMS FMP and draft Billfish FMP amendment;
2. Development of overfishing criteria and definitions for Atlantic HMS;
3. Rebuilding scenarios for overfished stocks of Atlantic HMS;
4. Description of the fisheries and fishing activities; and
5. Essential fish habitat requirements as they relate to HMS fisheries.
6. Safety of human life at sea.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Liz Lauck, 1315 East-West Highway, Silver Spring, MD 20910, phone (301) 713-2347, at least 7 days prior to the meeting date.

Dated: May 12, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–13130 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050898B]

Marine Mammals

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, WA 98115–0070, has been issued a permit to take large and small cetaceans and incidentally harass some pinniped species during aerial surveys for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, WA 98115–0070; and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: On January 15, 1998, notice was published in the **Federal Register** (63 FR 2366) that a request for a scientific research permit to take multiple cetacean and pinniped species had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 8, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–13048 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050198B]

Marine Mammals; Permits

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

ACTION: Issuance of permits (774–1437, 782–1446, and 559–1442); and issuance of permit amendments (887, 839, 1000).

SUMMARY: Notice is given that NMFS has issued permits that authorize takes of marine mammals for the purpose of scientific research, subject to certain conditions set forth therein, to: NMFS, Southwest Fisheries Science Center (SWFSC), P.O. Box 271, La Jolla, CA 92038; NMFS, National Marine Mammal Laboratory (NMML), 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115–0070; and Salvatore Cerchio.

Notice is also given that NMFS amended permit nos.: 887, Institute of Marine Sciences , LML, University of California, Santa Cruz, CA 95060; 839, Dr. Paul Becker, NIST, Charleston Laboratory, 219 Fort Johnson Road, Charleston, SC 29412; 977, NMFS, National Marine Mammal Laboratory (NMML) (address above) and 1000, Alaska Department of Fish and Game (ADF&G), P.O. Box 3–2000, Juneau, AK 99802.

DATES: Written or telefaxed comments must be received on or before June 17, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION:

Authority

Permits are issued under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222–227), and the Fur Seal Act of 1966 (16 U.S.C. 1151 *et seq.*).

Issuance of permits, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Permits Issued

On January 12, 1998, notice was published in the **Federal Register** (63 FR 1830) that an application had been filed by NMFS, SWFSC for a scientific research permit. Permit No. 774–1437 was issued on April 16, 1998, to take by harassment multiple cetacean species, and to import and export parts taken from these same species. On January 15, 1998, notice was published in the **Federal Register** (63 FR 2366) that the same above-named applicant had submitted a request for a scientific research permit to take by harassment multiple pinniped species. These two requests were combined under one permit. The purpose of the research is to estimate abundance and determine population structure of cetaceans in U.S. territorial and international waters, and to conduct population assessments for pinnipeds via ground/vessel surveys and photogrammetry.

On February 13, 1998, notice was published in the **Federal Register** (63 FR 7403–7404) that an application had been filed by NMFS, National Marine Mammal Laboratory, for a scientific research permit. The Permit was issued March 26, 1998 to: conduct aerial, ground, and vessel surveys annually for stock assessment of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and northern elephant seals (*Mirounga angustirostris*); capture, tag, and brand harbor seals for long term identification of individuals and information on reproductive success, survival and longevity, blood and biopsy sample them for contaminant analysis, tissue sample them for genetic analysis, and instrument them with VHF radio transmitters and/or time-depth recorders or satellite tags to document movements activity and foraging patterns; conduct the same activities on California sea lions, except they will not be tissue sampled; exported/imported to/from Canada harbor seal tissue samples; capture, tag, mark and release elephant seals; and incidentally harass animals during these activities and scat collections. Accidental mortalities are also authorized for each species to be captured. Activities will occur in Washington, Oregon.

On January 27, 1998, notice was published in the **Federal Register** (63 FR 3881–3882) that an application had been filed by Mr. Salvatore Cerchio for a scientific research permit. The Permit was issued April 30, 1998. The Permit authorizes import of humpback whale samples from Mexico.

Permit Amendments Issued

On February 18, 1998, notice was published in the **Federal Register** (63 FR 8165) that an application had been filed by NMFS, NMML, to amendment permit no. 977. The amendment was issued March 26, 1998. The amendment extends the duration to December 31, 2000, and allows an additional 500 California sea lions to be taken for research purposes.

A minor amendment was issued on March 30, 1998, for permit no. 836 issued to Institute of Marine Science, UCSC. The amendment authorizes the Holder to alter the buoyancy of 10 elephant seals by adding weights or syntactic foam, and administering tritiated or deuterated water to 10 adult males to measure water flux and energy expenditure. All animals were already authorized under permit and amendment did not require additional takes.

A minor amendment was issued on April 27, 1998, to Dr. Paul Becker, NIST to extend the expiration date to December 31, 1998. The permit authorizes collection of samples from Alaska native subsistence harvests.

On February 13, 1998, notice was published in the **Federal Register** (63 FR 7403) that an application had been filed by ADF&G, to amendment permit No. 1000. The amendment was issued March 31, 1998. The amendment authorizes the Holder to: administer oral deuterium oxide to 100 additional harbor seals being captured for other purposes; and incidentally harass annually 12,000 harbor seals.

Documents may be reviewed in the following locations:

All documents: Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

For permits 774–1437, 977, and 887: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

For permit 782–1446: Regional Administrator, Northwest Region, and Director, National Marine Mammal Laboratory (NMML), NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150) and NMML (206/526–4045);

For permits 774–1437, 839 and 1000: Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7721);

For permit 774–1437: Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432, (813/570–5301); and

For permit 559–1442: Regional Administrator, Northeast Region, NMFS, One Blackburn Dr., Gloucester, MA 01930–2298 (508/ 281–9250).

Dated: May 8, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–13050 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure

AGENCY: Technology Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure will hold a meeting on June 11–19, 1998. The Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure was established by the Secretary of Commerce to provide industry advice to the Department on encryption key recovery for use by federal government agencies. All sessions will be open to the public.

DATES: The meeting will be held on June 17–19, 1998 from 9:00 a.m. to 6:00 p.m.

ADDRESSES: The meeting will take place at the Radison Plaza Hotel, Minneapolis, MN.

FOR FURTHER INFORMATION CONTACT: Edward Roback, Committee Secretary and Designated Federal Official, Computer Security Division, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, Maryland, 20899; telephone 301–975–3696. Please do not call the conference facility regarding details of this meeting.

SUPPLEMENTARY INFORMATION:

1. Agenda

Opening Remarks
Chairperson's Remarks
News Updates (Members, Federal Liaisons, Secretariat)
Working Group (WG) Reports
Intellectual Property Issues (as necessary)
Public Participation
Plans for Next Meeting
Closing Remarks

Note: That the items in this agenda are tentative and subject to change due to logistics and speaker availability.

2. Public Participation

The Committee meeting will include a period of time, not to exceed thirty minutes, for oral comments from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the individual identified in the ''for further information'' section. In addition, written statements are invited and may be submitted to the Committee at any time. Written comments should be directed to the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899. It would be appreciated if sixty copies could be submitted for distribution to the Committee and other meeting attendees.

3. Additional information regarding the Committee is available at its world wide web homepage at: http://csrc.nist.gov/tacfipsfkmi/ .

4. Should this meeting be canceled, a notice to that effect will be published in the **Federal Register** and a similar notice placed on the Committee's electronic homepage.

Dated: May 11, 1998.

Mark Bohannon,

Chief Counsel for Technology Administration.

[FR Doc. 98–13081 Filed 5–15–98; 8:45 am]

BILLING CODE 3510–CN–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted two public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paper Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, National Service Trust, Attn: Levon Buller, (202) 606–5000, Extension 383. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (800) 833–3722 between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–7316, by June 17, 1998.

The OMB 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.

Two ICR documents have been submitted to OMB for consideration: the Corporation for National Service Enrollment Form, and the Corporation for National Service End of Term/Exit Form. Both forms are integral to AmeriCorps members earning education awards for their involvement in national service.

Enrollment Form

Type of Review: Revision.

Agency: Corporation for National and Community Service.

Title: Corporation for National Service—Enrollment Form.

OMB Number: 3045–0006.

Frequency: Annually.

Affected Public: Individuals and not-for-profit institutions.

Number of Respondents: 62,000 (the form requires 2 respondents—the AmeriCorps member and a representative of the member's project).

Estimated Time Per Respondent: 7½ minutes (total time for both respondents).

Total Burden Hours: 3,875 hours.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services: 0.

Description: The purpose of the Enrollment Form is to (1) certify that an AmeriCorps member is eligible to earn an education award, (2) ''reserve'' an educational award in the National Service Trust (necessary to project

financial obligations), and (3) gather basic demographic information on members. The Corporation proposes minor revisions to the Enrollment Form (OMB 3045–0006) in an effort to clarify instructions found on the current version of the form and to enable the Corporation to track AmeriCorps members enrolled in a new program, the Challenge Scholarship Program, started since the form was last revised in June 1997.

End of Term/Exit Form

Type of Review: Revision.

Agency: Corporation for National and Community Service.

Title: Corporation for National Service End of Term/Exit Form.

OMB Number: 3045–0015.

Frequency: Annually.

Affected Public: Individuals and not-for-profit institutions.

Number of Respondents: 62,000 (the form requires 2 respondents—the AmeriCorps member and a representative of the member's project).

Estimated Time Per Respondent: 11 minutes (total time for both respondents).

Total Burden Hours: 5,683 hours.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services: 0.

Description: The purpose of the End of Term/Exit Form is to (1) provide official certification that a Member has satisfied the requirements to receive an educational award, (2) obtain evaluative information on the member's service experience, and (3) provide the Corporation with the current address for mailing the award to the member. Upon receipt of an End of Term/Exit Form indicating that a member has successfully completed a term of national service, the education award package is sent to the member. The Corporation proposes minor revisions to the End of Term/Exit Form (OMB 3045–0015), approved in June 1997. The revisions will eliminate four open-ended questions that were of questionable value, clarify instructions for completing the form, change the name of the form, and give AmeriCorps members an opportunity to receive mailings from AmeriCorps alumni associations.

Dated: May 12, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–13085 Filed 5–15–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Cancellation of meeting.

SUMMARY: The Department of Defense (DoD) announced a meeting of the Defense Partnership Council on May 4, 1998 (63 FR 24533). This notice is to announce the cancellation of the meeting.

Dated: May 12, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–13105 Filed 5–15–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense, Department of Defense Dependents Schools (DoDDS).

ACTION: Notice of meeting.

SUMMARY: On April 28, 1998 (63 FR 23277), the Department of Defense published a notice of a meeting of the Advisory Council on Dependent's Education (ACDE) scheduled on May 28–29. This notice is to inform interested parties that the location has been changed to the Department of Defense Education Activity Conference Room (Room 902), 4040 North Fairfax Drive, Arlington, VA. All other information remains unchanged.

Dated: May 12, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–13106 Filed 5–15–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMEMT OF DEFENSE

Office of the Secretary

Department of Defense Education Benefits Board of Actuaries; Notice of Meeting

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 101, Title 10, United States Code (10 U.S.C. 2006 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the G.I. Bill. Persons desiring to: (1) Attend the DoD Education Benefits Board of Actuaries meeting or, (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Wendie Powell at (703) 696–7400 by July 23, 1998. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 14, 1998, 10:00 a.m. to 1:00 p.m.

ADDRESSES: The Pentagon, Room 1E801—Room 4.

FOR FURTHER INFORMATION CONTACT: Christopher Doyle, Deputy Chief Actuary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7407.

Dated: May 12, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–13108 Filed 5–15–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Retirement Board of Actuaries; Notice of Meeting

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 74, Title 10, United States Code (10 U.S.C. 1464 et seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to: (1) attend the DoD Retirement Board of Actuaries meeting or, (2) make an oral presentation or submit a written statement for consideration at the meeting, must notify Wendie Powell at (703) 696–7400 by July 24, 1998.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 13, 1998, 1:00 p.m. to 5:00 p.m.

ADDRESSES: The Pentagon, Room 1E801—Room 7.

FOR FURTHER INFORMATION CONTACT: Christopher Doyle, Deputy Chief Actuary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7407.

Dated: May 12, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–13107 Filed 5–15–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officers' Training Corps (ROTC) Program Subcommittee

AGENCY: U.S. Army Cadet Command.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting.

Name of Committee: Reserve Officers' Training Corps (ROTC) Program Subcommittee.

Dates of Meeting: 30 Jun 98 thru 1 Jul 98.

Place of Meeting: Sheraton Hotel, Tacoma, Washington.

Time of Meeting: 0830–1700 on 30 Jun 98 and 0830–1130 on 1 Jul 98.

Proposed Agenda: Review and discussion of the status of Army ROTC since the February 1998 meeting at the Pentagon.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Spadafora, U.S. Army Cadet Command, ATCC–TE, Fort Monroe, Virginia 23651–5000; phone (757) 727–4595.

SUPPLEMENTARY INFORMATION:

1. The Subcommittee will review the significant changes in ROTC scholarships, missioning, advertising strategy, marketing, camps and on-campus training, the Junior High School Program and ROTC Nursing.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intent to attend the 30 June 1998 meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits, the Committee chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory committee should be addressed to Mr. Roger Spadafora, U.S. Army Cadet Command, ATCC–TE, Fort Monroe, Virginia 23651–5000, telephone number (757) 727–4595.

Gregory D. Showalter,

Army Federal Register, Liaison Officer.

[FR Doc. 98–13114 Filed 5–15–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration adds a routine use and a category of individuals to the system of records notice.

DATES: This proposed action will be effective without further notice on June 10, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 1, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 12, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0215 CFSC

SYSTEM NAME:

General Morale, Welfare, Recreation and Entertainment Records *(February 22, 1993, 58 FR 10094).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

After 'MWR-type activities' add ', to include bingo games;'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Add a second paragraph 'Bingo pay-out control sheet indicating individual name, grade, Social Security Number, duty station, dates and amount of bingo monies paid, and DOT/IRS Forms W2-G (Gambling Winnings) and 5754 (Statement by Person(s) Receiving Gambling Winnings).'

* * * * *

PURPOSE(S):

Add a new paragraph 'To provide a means of paying, recording, accounting, reporting, and controlling expenditures and merchandise inventories associated with bingo games.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To the Internal Revenue Service (IRS) for the purpose of notifying the IRS of all monies and items of merchandise paid to individual winners of bingo games whose one-time winnings are $1,200 or more.'

* * * * *

RECORD SOURCE CATEGORIES:

Add 'and bingo pay-out control sheets' to entry.

* * * * *

A0215 CFSC

SYSTEM NAME:

General Morale, Welfare, Recreation and Entertainment Records.

SYSTEM LOCATION:

Major Army commands, field operating agencies, installations and activities, Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, their families, other members of the military community, certain DoD civilian employees and their families overseas, certain military personnel of foreign nations and their families, personnel authorized to use Army-sponsored Morale, Welfare, Recreation (MWR) services, youth services, athletic and recreational services, Armed Forces Recreation Centers, Army recreation machines, and/or to participate in MWR-type activities, to include bingo games; professional entertainment groups recognized by the Armed Forces

Professional Entertainment Office; Army athletic team members; ticket holders of athletic events; units of national youth groups such as Boy Scouts, Girl Scouts, and 4–H Clubs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and other pertinent information of members, participants, patrons, and other authorized users. Other ancillary information such a travel vouchers, security check results and orders will be kept in the system.

Bingo pay-out control sheet indicating individual name, grade, Social Security Number, duty station, dates and amount of bingo monies paid, and DOT/IRS Forms W2-G (Gambling Winnings) and 5754 (Statement by Person(s) Receiving Gambling Winnings).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; 26 U.S.C 6041; DOD Instruction 1015.10; and E.O. 9397 (SSN).

PURPOSE(S):

To administer programs devoted to the mental and physical well-being of Army personnel and other authorized users; to document the approval and conduct of specific contests, shows, entertainment programs, sports activities/competitions, and other MWR-type activities and events sponsored or sanctioned by the Army. Relevant information on an individual may be disclosed for bona fide purposes such as marketing and promoting MWR, entertainment programs, and to sports, educational, athletic, and similar-related organizations conducting equivalent MWR-type activities.

To provide a means of paying, recording, accounting, reporting, and controlling expenditures and merchandise inventories associated with bingo games.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Internal Revenue Service (IRS) for the purpose of notifying the IRS of all monies and items of merchandise paid to individual winners of bingo games whose one-time winnings are $1,200 or more.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, cards, magnetic tapes, discs, computer printouts, and similar media.

RETRIEVABILITY:

By name, Social Security Number, or other individual identifying characteristics.

SAFEGUARDS:

Records are kept in buildings secured during non-duty hours and accessed by only designated persons having official need therefor.

RETENTION AND DISPOSAL:

Bingo records are maintained on-site for four years and then shipped to a Federal Records Center for storage for an additional three years. After seven years, records are destroyed.

All other documents are destroyed after 2 years, unless required for current operation.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0503.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Morale and Welfare office at the installation or activity where assigned.

Individuals must provide name, rank, Social Security Number, proof of identification, and any other pertinent information necessary.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Morale and Welfare office at the installation or activity where assigned.

Individuals must provide name, rank, Social Security Number, proof of identification, and any other pertinent information necessary.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual or group receiving the service and bingo pay-out control sheets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–13092 Filed 5–15–98; 8:45 am]

BILLING CODE 5000–04–F

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

TIME AND DATE OF MEETING: 9:00 a.m., June 2, 1998.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: Status of the Department of Energy's Implementation of Board Recommendation 94–1 Improved Schedule for Remediation in the Defense Nuclear Facility Complex.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board will reconvene and continue the open meeting conducted on May 7, 1998, regarding Department of Energy's (DOE) rate of progress on actions responding to Recommendation 94–1, Improved Schedule for Remediation in the Defense Nuclear Facility Complex.

This public meeting is for the purpose of examining progress on DOE Headquarters activities to meet the objectives of Recommendation 94–1 and related integration of activities among DOE sites.

The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: May 14, 1998.

John T. Conway,

Chairman.

[FR Doc. 98–13342 Filed 5–14–98; 3:55 pm]

BILLING CODE 3670–01–M

DEPARTMENT OF ENERGY

Availability of the Draft Site-wide Environmental Impact Statement for Continued Operation of the Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Site-wide Environmental Impact Statement (SWEIS) for Continued Operation of the Los Alamos National Laboratory (LANL), DOE/EIS–0238, for public review and comment. The SWEIS provides DOE and its stakeholders an analysis of the environmental impacts resulting from ongoing and reasonably foreseeable new operations and facilities, as well as reasonable alternatives at LANL, located in north-central New Mexico.

DATES: Written comments on the Draft SWEIS are invited from the public and may be submitted through the end of the comment period which ends Wednesday, July 15, 1998 (see **ADDRESS** section for more details). Comments must be postmarked by July 15, 1998, to ensure consideration; late comments will be considered to the extent practicable. The DOE will use the comments received to help prepare the final version of the LANL SWEIS. Public hearings on the Draft SWEIS will be held as follows:

June 9, 1998 (Tuesday), Department of Energy, Los Alamos Area Office Conference Room, Los Alamos, New Mexico;

June 10, 1998 (Wednesday), Sweeney Center, Santa Fe, New Mexico;

June 24, 1998 (Wednesday), New Mexico Community College, Española, New Mexico.

The hearings will provide opportunities for information exchange and discussion among DOE, LANL, and the public, as well as submitting prepared statements. Public hearing times will be announced in local media closer to the meeting dates. For more information call (800) 898–6623.

ADDRESSES: Comments may be submitted in writing or orally to DOE by contacting: Corey Cruz, LANL SWEIS Project Manager, U.S. DOE, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185, telephone (800)898–6623 and fax (505)845–6392. Oral and written comments may also be submitted at the public meetings described in the **DATES** section. Requests for copies of the Draft LANL SWEIS or other matters regarding this environmental review should be addressed to Mr. Cruz at the address above. The Draft EIS will be available under the NEPA Analyses Module of the DOE NEPA Web Site at http://tis.eh.doe.gov/nepa/.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. Ms. Borgstrom may be contacted by calling (202) 586–4600 or by leaving a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Draft SWEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321 *et seq.*], the Council on Environmental Quality NEPA regulations [40 CFR part 1500] and the DOE NEPA regulations [10 CFR part 1021].

The Department proposes to continue operating the Los Alamos National Laboratory, located in north-central New Mexico. DOE has identified and assessed four alternatives for the operation of LANL: (1) No Action, (2) Expanded Operations (DOE's preferred alternative), (3) Reduced Operations, and (4) Greener. In the No Action Alternative, DOE would continue the historical mission support activities LANL has conducted at planned operational levels. In the Expanded Operations Alternative, DOE would increase, as needed, the level of existing operations to the highest foreseeable levels, including full implementation of the mission assignments from recent programmatic documents. Under the Reduced Operations Alternative, DOE would operate LANL at the minimum levels of activity necessary to maintain the capabilities to support its assigned DOE mission in the near term. Under the Greener Alternative, DOE would operate LANL to maximize operations in support of nonproliferation, basic science, materials science, and other nonweapons areas, while minimizing weapons activities.

The DOE's preferred alternative is Expanded Operations. The Draft LANL SWEIS compares the environmental impacts that would be expected to occur from continuing to operate existing facilities at current activity levels at LANL (the No Action Alternative) with the consequences that would be expected to occur if DOE implemented the Preferred Alternative (Expanded Operations) or one of two other operational alternatives. DOE has distributed copies of the Draft LANL SWEIS to appropriate Congressional members and committees, the State of New Mexico, American Indian tribal governments, local county governments, other federal agencies, and other interested parties. After the public comment period, which ends July 15, 1998, the Department will consider the comments received, revise the Draft SWEIS, and issue a Final SWEIS. The Department will consider the Final SWEIS, along with other considerations such as economic and technical, to make a decision on the appropriate level of operations for LANL.

Signed in Washington, DC, this 12th day of May, 1998, for the United States Department of Energy.

Gary T. Palmer,

NEPA Compliance Officer, Defense Programs.

[FR Doc. 98–13143 Filed 5–15–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE DOCKET NO. 98–17–NG]

Office of Fossil Energy, Enron Capital & Trade Resources Corp.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Enron Capital & Trade Resources Corp. (ETC) long-term authorization to import up to 42,000 Mcf per day of natural gas from Canada. The authorization is for a 10-year term commencing November 1, 1998, through October 31, 2008, or for 10 years after the commencement of deliveries if deliveries begin after November 1, 1998. This gas may be imported from Canada at the international border point near the Port of Morgan, Montana, (Monchy, Saskatchewan), or at alternative border points with transportation facilities accessible by ETC.

This Order may be found on the FE web site at http://www.fe.doe.gov., or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 12, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–13102 Filed 5–15–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Cancellation of Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Cancellation of agency information collection activities: Proposed collection; comment request.

SUMMARY: This notice rescinds the notice published in the **Federal Register** of April 24, 1998, FR Doc. 98–10938, on page 20388, soliciting comments concerning the proposed revision, and extension to the form RW–859, ''Nuclear Fuel Data Survey'', and the termination of RW–859S ''Nuclear Fuel Data Supplement''. A revised **Federal Register** notice soliciting comments will be published later.

Dated: May 11, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–13101 Filed 5–15–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–37–001]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 12, 1998.

Take notice that on May 7, 1998, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective May 30, 1998:

Substitute Second Revised Sheet No. 15

Algonquin states that the purpose of the filing is to correctly update the system map to reflect its current principal pipeline facilities and the points at which service is rendered, as required by Section 154.106 of the Commission's Regulations. Algonquin filed on April 29, 1998, Second Revised Sheet No. 15 to update the system map. It was subsequently discovered that the new lateral serving Canal Electric Company was inadvertently omitted from the revised map. The substitute tariff sheet includes the Canal lateral and delivery point, as well as the other additions reflected on Second Revised Sheet No. 15.

Algonquin states that copies of the filing were mailed to affected customers on Algonquin and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13069 Filed 5–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–513–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

May 12, 1998.

Take notice that on May 4, 1998 Columbia Gas Transmission Corporation (Columbia Gas), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030, filed in Docket No. CP98–513–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate in interstate commerce an existing point of delivery previously constructed and operated to effectuate transportation service pursuant to Section 311 of the Natural Gas Policy Act (NGPA). Columbia Gas makes such request, under its blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia Gas states that it constructed a new point ofdelivery to Columbia Gas of Pennsylvania, Inc. (Columbia Gas of PA) in Somerset County, Pennsylvania, which was placed in service on March 11, 1998. Columbia Gas avers that the cost of constructing the point of delivery was approximately $14,400. Columbia Gas further states that it installed a 3-inch tap to interconnect the facilities.

Columbia Gas states that it seeks Natural Gas Act certification for the NGPA Section 311 point of delivery, in order that it may use the delivery point to provide both part 284, Subpart B and Subpart G transportation service.

It is estimated that up to 520 dekatherms of natural gas will be delivered to the existing point of delivery daily, and up to 189,800 dekatherms annually. It is indicated that the gas volumes will be transported pursuant to Columbia Gas' Storage Service Transportation (SST) Rate Schedule. Columbia Gas avers that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13063 Filed 5–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–523–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

May 12, 1998.

Take notice that on May 6, 1998, Florida Gas Transmission Company

(FGT) 1400 Smith Street, Houston, Texas 77002, filed under Sections 157.205 and 157.216 of the Commission's Regulations to abandon and remove a meter station located in Dade County, Florida, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to abandon and remove the PGS Miami Beach Meter Station which serves as a delivery point to TECO Peoples Gas (TECO). Minor re-piping will also be made through the existing PGS Miami Meter Station. FGT states that the proposed abandonment will not result in any disruption of service to TECO, nor disadvantage any of FGT's existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a request. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13065 Filed 5–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–520–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

May 12, 1998.

Take notice that on May 5, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–520–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate as a jurisdictional facility, a two-inch tap and a two-inch meter station, located in Harrison County, Mississippi, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to operate as a jurisdictional facility in interstate commerce, a two-inch tap and a two-inch meter station previously installed and placed in service under Section 311(a) of the Natural Gas Policy Act of 1978 and Section 284.3(c) of the Commission's regulations. Koch Gateway states that the proposed certification of facilities will enable Koch Gateway to provide transportation services under its blanket transportation certificate through a tap serving Entex, Inc. (Entex), a local distribution company in Harrison County, Mississippi, for Warren Paving, Inc., an end user.

Once this delivery point is certificated as a jurisdictional facility, Koch Gateway asserts Entex will be able to receive gas shipped to this point pursuant to jurisdictional open-access transportation agreements as well as Section 311 agreements. Koch Gateway declares Entex estimates its peak day and average day requirements for the delivery point to be 1,630 MMBtu and 104 MMBtu, respectively. Koch Gateway states they were reimbursed by Entex approximately $102,000 for the construction costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13064 Filed 5–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–528–000]

Koch Gateway Pipeline Company; Notice of Application

May 12, 1998.

Take notice that on May 7, 1998, Koch Gateway Pipeline Company (Applicant), 600 Travis Street, P.O. Box 1478, Houston, Texas, 77251–1478, filed in Docket No. CP98–528–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon an obsolete transportation service for Midcoast Marketing, Inc. (Midcoast), successor by merger to Mid Louisiana Gas Company (Mid La), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon a firm transportation service formally provided to Midcoast pursuant to Applicant's Rate Schedule X–90. Applicant asserts that Midcoast concurs to the proposed abandonment and that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 2, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 of 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 the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the

matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13067 Filed 5–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–527–000; CP96–385–000; CP96–386–000, et al. and CP97–127–000]

Mountaineer Gas Company, Complainant, v. Columbia Natural Resources, Inc., Respondent, Columbia Natural Resources, Inc., Columbia Gas Transmission Corporation, Columbia Gas Transmission Corporation; Notice of Complaint

May 12, 1998.

Take notice that on May 4, 1998, Mountaineer Gas Company (Mountaineer), 414 Summer Street, Charleston, West Virginia 25332, filed a complaint in Docket No. CP98–527–000 pursuant to Section 5 of the Natural Gas Act (NGA) and Rule 206 of the Commission's Rules of Practice and Procedure. Mountaineer requests that the Commission institute an investigation into certain representations made by Columbia Natural Resources, Inc. (CNR) (or on its behalf), in Docket No. CP96–385–000 and in Docket No. CP96–386–000, *et al.*, which led to Commission approval of the abandonment of certain Columbia Gas Transmission Corporation (Columbia) gathering facilities by sale to CNR; and to re-open those aspects of Docket No. CP97–127–000 involving Groups 16, 17 and 18 in order to prevent further transfers of gathering facilities to CNR.

Mountaineer explains that in Docket No. CP96–386–000, *et al.*, Columbia filed for permission and approval to abandon, by sale to CNR, certain certificated facilities as a necessary component of the transfer to CNR of a larger, 18 system, group of gathering facilities. Mountaineer states that the application indicated that two distinct types of services were being provided by Columbia through such facilities; the first service consisting of a conventional gathering function and the second service consisting of the transportation, by displacement, of gas received on Columbia's transmission system under firm transportation rates schedules to certificated points of delivery on the gathering system. Mountaineer further states that the services then rendered by Columbia through the gathering facilities, whether conventional service or the displacement delivery service for Mountaineer and other local distribution companies, were subject to the Commission's open access transportation regulations. Mountaineer states that it withdrew its protest of Columbia's proposed abandonment after reaching an agreement in principle with CNR on the continuation of the displacement delivery service to Mountaineer previously rendered by Columbia, as part of an overall November 22, 1996 settlement of various Columbia rate and service issues.

Mountaineer states that concurrently with Columbia's abandonment application, CNR filed in Docket No. CP96–385–000, a petition requesting the Commission to disclaim jurisdiction over the gathering facilities to be transferred from Columbia. Mountaineer states that in said petition, CNR stated that it intended to provide substitute nonjurisdictional alternatives to the service provided by Columbia.

Mountaineer states that in early 1998, a dispute arose between Mountaineer and CNR concerning Mountaineer's request for a new point of delivery on the gathering facilities transferred to CNR. Mountaineer states that the purpose of the new delivery point was to permit Mountaineer to compete for a service to a new, large-volume consumer. Mountaineer states that CNR subsequently denied Mountaineer's request, leaving Mountaineer to believe that the primary, if not exclusive, basis for CNR's denial of transportation access was to eliminate Mountaineer as a competitor for this new market, so that CNR's sales function could render the service instead. Mountaineer states that CNR now maintains that the commitment it made during the abandonment proceedings in Docket No. CP96–386–000, *et al.*, such as, to continue open access transportation principles, applies solely to the gathering service it renders, and not to the displacement delivery service rendered for Mountaineer.

Mountaineer maintains that denial of open access transportation service will have serious implications for Mountaineer and its consumers. Mountaineer states that CNR's position, if unchecked, will lead to a result where the only access CNR will provide Mountaineer for new requirements is for small-volume accounts that CNR's sales function finds economically unattractive.

Mountaineer states that recent correspondence with CNR reveals that, from the inception of the abandonment process, CNR never intended to extend open access transportation principles to the displacement delivery service provided to Mountaineer. Mountaineer alleges that through its affiliate, however, CNR caused an abandonment application to be submitted that represented the contrary. Mountaineer maintains that CNR's petition did not disclose its intention to limit open access principles to gathering services only. Mountaineer alleges that CNR's misrepresentation of, or failure to disclose, its intent not to apply open access principles to Mountaineer's transportation service represents a clear violation of Section 157.5 of the regulations and that the facts and circumstances of this violation warrant an investigation.

Mountaineer further requests that the Commission reopen certain aspects of the abandonment application filed in Docket No. CP97–127–000. Mountaineer states that as a result of the auction conducted by Columbia concerning the facilities abandoned in Docket No. CP97–127–000, CNR is the prospective purchaser of the facilities in Groups 16, 17 and 18, all of which serve Mountaineer. Mountaineer states that the purchase and sale transaction for these groups has not yet reached closing and accordingly, the facilities have not yet been transferred from Columbia to CNR. Mountaineer states that these three facility groups provide Mountaineer with displacement delivery service to 26 town border stations, 18 unmeasured points of delivery for over 160 consumers and over 1700 mainline tap consumers. Mountaineer maintains that given CNR's disclosure that it will not abide by open access principles for transportation service to Mountaineer, reopening is require by the public interest.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 11, 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). 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 the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint shall be due on or before June 11, 1998.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13066 Filed 5–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–215–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

May 12, 1998.

Take notice that on May 7, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective July 1, 1998.

Natural states that the purpose of this filing is to modify Rate Schedule NSS to provide customers more flexibility in contracting for service by pipeline leg.

Natural requested any waivers which may be required to permit the tendered tariff sheets to become effective on July 1, 1998.

Naturla states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any persons desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13072 Filed 5–15–98; 8:45 am]

BILLING CODE 6717–02–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–161–003]

Puget Sound Energy, Inc.; Notice of Filing

May 12, 1998.

Take notice that on August 14, 1997, Puget Sound Energy, Inc. tendered for filing Revision Sheets to its Open Access Transmission Tariff, FERC Electric Tariff, Original Vol. 7 pursuant to the Commission's Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures, issued July 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, inaccordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 19, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13070 Filed 5–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–441–000 and ER98–1019–000; ER98–495–000, ER98–1614–000, and ER98–2145–000; ER98–496–000 and ER98–2160–000; ER98–441–001, ER98–495–001, and ER98–496–001 (consolidated)]

Southern California Edison Company California Independent System Corp., Pacific Gas & Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Pacific Gas & Electric Company, San Diego Gas & Electric Company; Notice of Informal Settlement Conference

May 12, 1998.

Take notice that an informal settlement conference will be convened in the subject proceedings on Monday, May 18, 1998, at 10:00 AM, through Wednesday, May 20, 1998. The conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to section 385.214 of the Commission's regulations.

For additional information, please contact Paul B. Mohler at (202) 208–1240, or by e-mail at paul.mohler@ferc.fed.us.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13068 Filed 5–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–99–001]

Tennessee Gas Pipeline Company; Notice of Pro Forma Compliance Filing

May 12, 1998.

Take notice that on May 7, 1998, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following pro forma tariff sheets:

Pro Forma Sheet No. 231
Pro Forma Sheet No. 232
Pro Forma Sheet No. 232A
Pro Forma Sheet No. 234
Pro Forma Sheet No. 235

Tennessee states that the proposed pro forma tariff sheets are filed in compliance with the Commission's

April 30, 1998 Notice in the above-referenced docket. Tennessee states that the pro forma tariff sheets incorporate several changes being proposed by Tennessee to address the parties' concerns raised in this docket and addressed at a technical conference on April 8, 1998. In accordance with the April 30, 1998 Notice, Tennessee requests that the Commission accept the tendered pro forma tariff sheets for filing.

Pursuant to the notice issues April 30, 1998, initial comments are due May 13, 1998, and reply comments are due May 20, 1998.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13071 Filed 5–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1438–000, et al.]

Midwest Independent Transmission System Operator, Inc., et al. Electric Rate and Corporate Regulation Filings

May 12, 1998.

Take notice that the following filings have been made with the Commission:

1. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER98–1438–000]

Take notice that on May 7, 1998, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing certain additional executed signature pages in order to supplement its January 15, 1998 filing in Docket No. ER98–1438–000.

Specifically, the Midwest ISO tendered signature pages to the ''Agreement of the Transmission Facilities Owners to organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation,'' and the ''Agency Agreement for Open Access Transmission Service offered by the Midwest ISO for Nontransferred Transmission Facilities'' executed by Central Illinois Light Company.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Company

[Docket No. ER98–2763–000]

Take notice that on April 30, 1998, Tampa Electric Company (Tampa Electric), tendered for filing updated transmission service rates under its agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the updated transmission service rates be made effective as of May 1, 1998, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. AG-Energy, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., Power City Partners, L.P.

[Docket No. ER98–2782–000]

Take notice that on May 7, 1998, AG-Energy, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P. and Power City Partners, L.P. (Applicants) tendered for filing with the Federal Energy Regulatory Commission a supplement to the Applicants' filing on April 30, 1998, requesting authority to make wholesale power sales, including sales of energy and capacity, at market-based rates. The supplemental filing contains forms of service agreements for service under the proposed rate schedules. The Applicants request an effective date of June 30, 1998.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. The Cincinnati Gas & Electric Company and PSI Energy, Inc.

[Docket No. ER98–2879–000]

Take notice that on April 30, 1998, The Cincinnati Gas & Electric Company, in compliance with the Commission's Orders dated August 16, 1993 and October 3, 1994 in Docket Nos. EC93–6–000, EC93–6–001 and ER94–1015–000 tendered for filing its fourth Annual Informational Filing.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. The Cincinnati Gas & Electric Company and PSI Energy, Inc.

[Docket No. ER98–2880–000]

Take notice that on April 30, 1998, PSI Energy, Inc., in compliance with the Commission's Orders dated August 16, 1993 and October 3, 1994 in Docket Nos. EC93–6–000, EC93–6–001 and ER94–1015–000 tendered for filing its fourth Annual Informational Filing.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service

[Docket No. ER98–2919–000]

Take notice that on May 7, 1998, Northern Indiana Public Service Company (Northern Indiana) filed a Service Agreement pursuant to its Power Sales Tariff with Amoco Energy Trading Corporation (AETC). Northern Indiana has requested an effective date of May 8, 1998.

Copies of this filing have been sent to AETC, to the Indiana Utility Regulatory Commission, and to the Indiana office of Utility Consumer Counselor.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Rochester Gas and Electric Corporation

[Docket No. ER98–2922–000]

Take notice that on May 7, 1998, Rochester Gas and Electric Corporation filed an Application for acceptance and approval of a form transmission service agreement and form power sales agreement and request for waivers in conjunction with its retail access program.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company

[Docket No. ER98–2923–000]

Take notice that on May 7, 1998 Commonwealth Edison Company (ComEd) submitted for filing one Service Agreement establishing Northern States Power Company (NSP), as non-firm transmission customer under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of April 27, 1998 for the service agreements, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served on (NSP), and the Illinois Commerce Commission.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER98–2925–000]

Take notice that on May 7, 1998, Southern California Edison Company (SCE) tendered for filing a revised Radial Lines Agreement (Revised Agreement) for Huntington Generating Station to be executed by SCE and AES Huntington Beach, L.L.C.

SCE requests waiver of the Commission's 60-day notice requirements and that the Commission accept the Revised Agreement for filing, unexecuted.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. MidAmerican Energy Company

[Docket No. ER98–2926–000]

Take notice that on May 7, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Merchant Energy Group of the Americas, Inc. (Merchant) dated April 14, 1998, and Non-Firm Transmission Service Agreements with Merchant dated April 14, 1998, and Dayton Power & Light Company dated April 22, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of April 14, 1998, for the Agreements with Merchant, and April 22, 1998, for the Agreement with Dayton, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Merchant and Dayton, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. NGE Generation, Inc.

[Docket No. ER98–2929–000]

Take notice that NGE Generation, Inc. (NGE Gen) on May 7, 1998 tendered for filing pursuant to Section 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, service agreements (collectively, the ''Service Agreements'') under which NGE Gen may provide capacity and/or energy to Merchant Energy Group of America (Merchant Energy), Northeast Energy Services, Inc. (Northeast Energy), and e prime, Inc. (e prime)(collectively, the Purchasers) in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the service agreements with Merchant Energy, Northeast Energy, and e prime become effective as of May 8, 1998.

NGE Gen has served copies of the filing upon the New York State Public Service Commission, Merchant Energy, Northeast Energy, and e prime.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Corporation

[Docket No. ER98–2930–000]

Take notice that on May 7, 1998, Duke Energy Corporation (Duke) tendered for filing with the Commission Supplement No. 12 to Supplement No. 24 to the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). Supplement No. 12 continues Duke's monthly transmission capacity rate under the interchange Agreement at $1.0758 per KW per month. Duke has proposed an effective date of July 1, 1998.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Energy Company

[Docket No. ES98–30–000]

Take notice that on April 30, 1998, Consumers Energy Company (Consumers) filed an application under Section 204 of the Federal Power Act, requesting an order for authority to issue up to $900 million of short term debt securities.

Comment date: June 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13147 Filed 5–15–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Replacement Resources Methods Report, Grand Canyon Protection Act of 1992

AGENCY: Western Area Power Administration (Western), DOE.

ACTION: Notice of availability of replacement resources methods report and executive summary.

SUMMARY: The Secretary of Energy, acting through Western, has the responsibility of marketing hydroelectric power generated at Glen Canyon Dam Powerplant. Western has been engaged in the Replacement Resources Process to identify economically and technically feasible methods for replacing power resources that are lost due to long-term operational constraints at Glen Canyon Dam Powerplant. Western announces the availability of the Replacement Resources Methods Report (Report) and the Executive Summary, which satisfies the requirement in section 1809 of the Grand Canyon Protection Act (GCP Act) of 1992, Title XVIII of Pub. L. 102–575.

ADDRESSES: To request a copy of the Report and/or Executive Summary or to provide written comments on the Report, contact: Mr. S. Clayton Palmer, Resource and Environmental Analysis Team, CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606.

FOR FURTHER INFORMATION CONTACT: Samuel D. Loftin, (801) 524–6381.

SUPPLEMENTARY INFORMATION: The Report outlines the economically and technically feasible methods that Western will use to evaluate and select resources to replace capacity made unavailable (''or lost'') due to the adoption of long-term operational criteria for Glen Canyon Dam as required by the GCP Act. The Report includes a ''proof-of-concept'' analysis of five hypothetical resource options with varying degrees of complexity. The methods are consistent with other Western resource acquisition policies, such as Western's Principles of Integrated Resource Planning (IRP). The methods are also consistent with the Salt Lake City Area/Integrated Projects Contract Amendment, the Records of Decision in the Salt Lake City Area/ Integrated Projects Power Marketing Environmental Impact Statement (EIS) and Energy Planning and Management Program EIS, Reclamation's Glen Canyon Dam EIS, pertinent Federal Energy Regulatory Commission orders,

and laws affecting DOE, Western, and the Colorado River Storage Project (CRSP).

In the Report, Western provides methods to replace lost capacity using spot market, seasonal (6 months), and mid- to long-term (1 year or more) resource acquisitions. Western will consult with firm power customers periodically about the amount and term of resource acquisitions to be made on their behalf, which Western would then acquire and deliver to them. Western will evaluate and select resources based on criteria broadly defined in the Report and follow a least-cost strategy. Greater public involvement and more complex evaluation procedures and acquisition methods will be used for long-term acquisitions rather than for seasonal acquisitions.

Western will use a screening tool and a production cost computer model to evaluate future resource offers from potential suppliers. The Report details how these evaluation tools are applied to evaluate five hypothetical resource purchases. These resource alternatives were designed to illustrate the screening and evaluation tools' abilities to survey and select from among many diverse replacement resource options and to consider transmission system constraints and possible solutions. The Report concludes that the screening criteria and evaluation tools developed will enable Western to select economically and technically feasible replacement power resources.

Public Involvement

Section 1809 of the GCP Act requires the Secretary of Energy to consult with representatives of the CRSP power customers, environmental organizations, the Colorado River Basin States, and with the Department of the Interior in this process. Western published a notice initiating the formal, public consultation process on August 8, 1994, at 59 FR 40357. On October 7, 1994, at 59 FR 51191, Western announced four regional public consultation meetings.

A 20-page, Replacement Resources Information Packet was prepared that included Western's process to complete the method identification requirement of the GCP Act. On October 20, 1994, Western mailed this information packet, along with the text of the October **Federal Register** notice, to 900-plus organizations and individuals on Western's Replacement Resources Methods mailing list, including representatives of organizations with which Western was required to consult. In November 1994, Western held four regional public involvement meetings in Salt Lake City, Utah; Denver, Colorado; Phoenix, Arizona; and Albuquerque, New Mexico. Comments from organizations and the public were accepted through December 19, 1994, the comment deadline.

Western prepared newsletters in February and October 1995 that provided updates on the status of replacement resources activities. These newsletters were distributed to Western's mailing list. On April 30, 1996, at Western's CRSP Customer Service Center's Annual Customer Meeting in Salt Lake City, Western provided an update on replacement resources activities to CRSP power customers and to representatives of the Department of the Interior, Bureau of Reclamation. This update included a discussion of public comment received by Western.

On July 2, 1996, Western published a notice of availability of a Draft Methods Report at 61 FR 34433. Notice was made to those entities who responded to Western's mailer and wanted information or copies of the Draft Report. Western held public consultation meetings at Albuquerque, Phoenix, Denver, and Salt Lake City between July 23 and July 29, 1996. At these meetings, Western presented the proposed replacement resource methods, which will be implemented with the Report. A 60-day public comment period closed on September 3, 1996. Western mailed a subsequent newsletter in December 1996, updating changes implemented by Western from the comments received during the public comment period.

Environmental Compliance

Western will comply with the National Environmental Policy Act of 1969 through an appropriate level of environmental analysis of the impacts of specific replacement resources when such specific resources are identified.

Regulatory Requirements

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: May 4, 1998.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 98–13103 Filed 5–15–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Amistad and Falcon Projects—Notice of Order Confirming and Approving an Extension of the Power Rate Formula—WAPA–81

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: This action is to extend the existing Amistad and Falcon Projects' power rate formula until June 7, 1999. Without this action, the existing power rate formula will expire June 7, 1998; and no rate formula will be in effect for this service.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Sabo, CRSP Manager, CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, telephone (801) 524–5493.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy (DOE) procedures for public participation in power rate adjustments at 10 CFR Part 903, the power rate formula for Western's Amistad and Falcon Projects was submitted to FERC for confirmation and approval on June 10, 1993. On September 29, 1993, in Docket No. EF93–5101–000 at 64 FERC ¶ 62,225, FERC issued an order confirming, approving, and placing into effect on a final basis the power rate formula for the Amistad and Falcon Projects. The rate was approved for the 5-year period beginning June 8, 1993, and ending June 7, 1998.

All of the generation from these projects is marketed by Western under the terms of Contract No. 7–07–50–P0890 dated August 9, 1977, and amended on April 10, 1986. According to the terms of the Contract, the customers, Medina Electric Cooperative, Inc. and South Texas Electric Cooperative, Inc., agreed to purchase the

output of the Amistad and Falcon Powerplants for a 50-year period, beginning when electrical service initially became available. The Cooperatives agreed to take all Amistad and Falcon Projects' power and to pay the United States annual installments that are calculated to repay the power investment costs with interest, within 50 years, and annual operation, maintenance, replacement, and administration costs of the projects.

Following review of Western's proposal within DOE, I have approved Rate Order No. WAPA–81, which extends the existing power rate formula for Amistad and Falcon Projects until June 7, 1999.

Dated: May 6, 1998.

Elizabeth A. Moler,

Deputy Secretary.

[Rate Order No. WAPA–81]

In the Matter of: Western Area Power Administration, Extension for Amistad and, Falcon Projects Power Rate Formula

Order Confirming and Approving an Extension of the Amistad and Falcon Projects' Power Rate Formula

June 7, 1998

This rate formula was established pursuant to Section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the Amistad Project and the Falcon Projects were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued pursuant to the Delegation Order and the DOE rate extension procedures at 10 CFR Part 903.

Background

In the order issued September 29, 1993, at 64 FERC ¶ 62,225, in Docket No. EF93–5101–000, FERC confirmed, approved, and placed into effect on a final basis the power rate formula for the Amistad and Falcon Projects. The rate formula was approved for the period from June 8, 1993, through June 7, 1998.

Discussion

All of the generation from these projects is marketed by Western under the terms of Contract No. 7–07–50–P0890 dated August 9, 1977, and amended on April 10, 1986. According to the terms of the Contract, the customers, Medina Electric Cooperative, Inc. and South Texas Electric Cooperative, Inc., agreed to purchase the output of the Amistad and Falcon Powerplants for a 50-year period, beginning when electrical service initially became available. The Cooperatives agreed to take all Amistad and Falcon Projects' power and to pay the United States annual installments that are calculated to repay the power investment costs with interest, within 50 years, and annual operation, maintenance, replacement, and administration costs of the projects.

On June 7, 1998, Western's Amistad and Falcon power rate formula will expire. Pursuant to 10 CFR 903.23, Western proposes to extend the existing rate formula until June 7, 1999, to determine whether it should make any changes in the present rate formula and Power Repayment Study presentation. During the early part of FY 1999, Western will begin a public rate adjustment process to this effect with the publication of a notice in the **Federal Register**.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I hereby extend for a period, effective June 8, 1998, through June 7, 1999, the existing rate formula for the Amistad and Falcon Powerplants.

Dated: May 6, 1998.

Elizabeth A. Moler,

Deputy Secretary.

[FR Doc. 98–13104 Filed 5–15–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00537; FRL–5792–4]

EPA–USDA Tolerance Reassessment Advisory Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA-USDA Tolerance Reassessment Advisory Committee (TRAC) is being established as a subcommittee under the auspices of the EPA National Advisory Council for Environmental Policy and Technology (NACEPT). The TRAC is in response to Vice President Gore's request for EPA and the U.S. Department of Agriculture (USDA) to work together to ensure the smooth implementation of the Food Quality Protection Act (FQPA).

DATES: The first set of meetings will be held on Thursday, May 28, 1998, from 9 a.m. to 5 p.m. and Friday, May 29, 1998, from 9 a.m. to 1 p.m. A background FQPA information session is being offered to the TRAC on Wednesday, May 27, 1998, from 1 p.m. to 5 p.m. The dates of the three remaining meetings are: June 22 and 23, July 13 and 14, and July 27 and 28, 1998.

ADDRESSES: The first set of meetings will be held at the Washington National Airport Hilton Hotel (Crystal City), 2399 Jefferson Davis Hwy., Arlington, VA; telephone: (703) 418–6800; and fax: (703) 418–3763. Specific locations and times of the three remaining meetings will be announced in the **Federal Register** prior to those meetings. The FQPA information session, with limited public seating, will be held in room 1126 (the ''Fishbowl''), Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA (Crystal City). The permanent record is available for inspection during normal business hours, Monday through Friday, excluding legal holidays at the U.S. Environmental Protection Agency, Crystal Mall #2, Rm. 101, 1921 Jefferson Davis Hwy., Arlington, VA, telephone: (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach or Linda Murray, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, Rm. 1119, 1921 Jefferson Davis Hwy., Arlington, VA; telephone: (703) 305–7090; e-mail: fehrenbach.margie@epa.gov or murray.linda@epa.gov.

SUPPLEMENTARY INFORMATION: FQPA, Pub. L.104–170, was passed in 1996, this new law strengthens the nation's system for regulating pesticides on food. The TRAC will be asked to provide policy guidance on sound science, ways to increase transparency in decisionmaking, strategies for a reasonable transition for agriculture, and ways to enhance consultations with stakeholders, as pesticide tolerances are reassessed, including those for organophosphates.

The TRAC is co-chaired by EPA Deputy Administrator Fred Hansen and USDA Deputy Secretary Richard Rominger. The TRAC is composed of experts that include farmers, environmentalists, public health officials, pediatric experts, pesticide companies, food processors and distributors, public interest groups, academicians, and tribal, State, and local governments.

The TRAC meetings are open to the public under section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92–463. Outside statements by observers are welcome. Oral statements will be limited to 2–3 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so before or after a TRAC meeting. These statements will become part of the permanent record and will be provided to the TRAC members. The permanent record will be available for public inspection at the address in ''Addresses'' at the beginning of this document.

List of Subjects

Environmental protection, Agriculture, Chemicals, Foods, Pesticides and pests.

Dated: May 13, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 98–13210 Filed 5–14–98; 9:43 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6014–8]

National Drinking Water Advisory Council, Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) invites all interested persons to suggest individuals to serve as members of the working groups that will be formed under the National Drinking Water Advisory Council on specific matters relating to implementation of the Safe Drinking Water Act. The Advisory Council was established to provide practical and independent advice, consultation, and recommendations to the Agency on the activities, functions and policies related to the Act as amended. At the April 29 and 30, 1998, meeting of the Council, it was decided that working groups should be formed on the following subjects: Small Systems; Shallow Injection Wells/Drinking Water Source Protection Program Integration; Public Right-to-Know; and Waterborne Disease Education. These working groups will join two established groups, Benefits and Operator Certification.

Because membership on these groups will be limited and must be representative of balanced views, selections will be made by the Director, Office of Ground Water and Drinking Water, based on drinking water expertise and demonstrated interest in drinking water policy. Any interested person or organization may suggest an individual for a position on the working groups. Candidates should be identified by name, occupation, position, address and telephone number and the working group for which they wish to be considered for membership.

Persons selected for membership are responsible for any expenses that would be incurred while attending meetings. Suggestions should be submitted to Charlene E. Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street SW, Washington, D.C. 20460, no later than May 28, 1998. The Agency will not formally acknowledge or respond to nominations. E-Mail your questions to *shaw.charlene@epamail.epa.gov* or call 202/260–2285.

Dated: May 12, 1998.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–13122 Filed 5–15–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00530A; FRL–5791–8]

Clarification of Treated Articles Exemption; Availability of Draft PR Notice; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; Extension of comment period.

SUMMARY: On April 17, 1998, EPA published in the **Federal Register** a notice of availability of proposed guidance clarifying the criteria that pesticide products must meet to be eligible for the ''treated articles exemption.'' This guidance was identified as draft Pesticide Registration (PR-X) notice entitled ''Eligibility of Pesticide Products For Exemption From Registration as Treated Articles Pursuant to 40 CFR 152.25(a)'' and is available upon request as indicated below. This notice extends to June 30, 1998 the time period in which interested parties may submit comments on the proposed guidance. This extension is being granted to give all parties an opportunity to respond more fully to the proposed clarification of the criteria for exemption.

DATES: Written comments on the proposed PR notice, identified by the docket number [OPP-00530], must be received on or before June 30, 1998.

ADDRESSES: Submit written comments identified by the docket control number OPP-00530 by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments directly to the OPP Docket Office, which is located in Room 119 of Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Comments may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions as noted below in this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: By mail: Walter Francis, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail adress: 6E, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, (703) 308-6419, fax: 703-308-4687, e-mail: francis.walter@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the draft PR Notice also are available from the EPA Home page at the Federal Register - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

For Fax on Demand, use a faxphone to call 202-401-0527 and select item (6110) for a copy of this document and the PR Notice.

I. Background

In the **Federal Register** of April 17, 1998 (63 FR 19256) (FRL–5780–7), EPA published a notice of availability of the draft PR Notice identified above. The Agency solicited comments on proposed guidance clarifying the criteria that pesticide products must meet to be eligible for the ''treated articles exemption'' pursuant to 40 CFR 152.25(a). If, after reviewing any comments, EPA determines that changes to the Notice are warranted, the Agency will revise the draft PR Notice prior to release.

Following publication of the April 17, 1998 notice, the National Paint and Coatings Association and the Treated Articles Coalition requested that EPA extend the comment period on the proposed PR Notice to enable these and other groups to more fully discuss these provisions and to coordinate data and information solicited from their member constituencies. In this fashion, a more comprehensive assessment of the potential impacts of this proposal could be determined.

In order to give all parties an opportunity to respond more fully to the proposed PR notice, this notice announces that EPA is extending the comment period. The new deadline for receipt of comments is June 30, 1998. Submit written comments to the address given earlier in this document. Submit electronic comments as noted in Unit II. of this document.

II. Public Record and Electronic Submissions

A record has been established for this action under docket number ''OPP–00530'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form or encryption. Comments will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–00530.'' Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Antimicrobial pesticides, Treated articles exemption.

Dated: May 13, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 98–13211 Filed 5–15–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6014–1]

Internet Availability of Data in the Sector Facility Indexing Project

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the Internet release of data in the Sector Facility Indexing Project (SFIP). The SFIP is a community-right-to-know and data integration pilot project that provides environmental performance data for facilities within five industrial sectors. The industrial sectors profiled within the SFIP are automobile assembly; petroleum refining; pulp manufacturing; iron and steel; and primary smelting and refining of aluminum, copper, lead, and zinc (nonferrous metals).

DATES: An Internet website containing the data in the SFIP was released on May 1, 1998 and is currently available to the public.

ADDRESSES: Data may be accessed electronically via the Internet at the following address: http://www.epa.gov/oeca/sfi

FOR FURTHER INFORMATION CONTACT: Robert Lischinsky, U.S. Environmental Protection Agency, Office of Compliance (2223–A), 401 M Street, SW, Washington, DC 20460; telephone: (202) 564–2628, fax: (202) 564–0050; e-mail: lischinsky.robert@epa.gov

SUPPLEMENTARY INFORMATION: The SFIP, a pilot program developed by EPA, integrates and provides public access to more environmental information than has ever before been available to the public in one location. The SFIP profiles approximately 650 facilities in five industrial sectors. The goals of the SFIP include the following: (1) Make environmental information about industrial facilities and regulatory compliance more accessible to the public; (2) expand the comprehensiveness and improve the accuracy of data for analyzing the environmental track record of an industrial sector; (3) provide industrial and government stakeholders with better analytical tools for permitting, reporting, compliance, bench marking, self-policing, and pollution prevention purposes; and (4) help all stakeholders take a more holistic, multi-media approach to environmentally sound performance. The five industrial sectors chosen for the pilot stage of the SFIP are automobile assembly; pulp manufacturing; petroleum refining; iron and steel production; and primary smelting and refining of aluminum, copper, lead, and zinc (nonferrous metals). For each facility, the SFIP provides information on its location, production or production capacity, surrounding population, permits held under major environmental programs, the number of inspections received, record of compliance with federal

regulations, and any chemical releases, transfers, and spills. Facility-specific reports are available in the SFIP for viewing and downloading. In addition to gathering all this information into one location for the first time, the SFIP is unique in that it structures and aggregates the data so a user can easily view, compare, and analyze information from different facilities. The SFIP includes compliance and enforcement information submitted to state and federal regulators, as well as chemical release information submitted under the federal Toxics Release Inventory (TRI). The SFIP also links data submitted to state and federal agencies by facilities regulated under the Clean Air Act, the Clean Water Act, the Resource Recovery and Conservation Act, and the Emergency Planning and Community Right-to-Know Act. Finally, statistics about the population around facilities were taken from census reports, and information about production was gathered from sources outside EPA.

To link all these data, the SFIP uses an interactive, high-speed data retrieval and integration system developed by EPA, the Integrated Data for Enforcement Analysis (IDEA) system.

EPA has been committed to providing all stakeholders an opportunity to comment formally on the SFIP in its entirety, as well as to review the project's underlying data. Therefore, from the onset of this project, the Agency embarked upon an extensive review and outreach process. Stakeholders, including environmental and community organizations, have commented on the project. Each facility included in the pilot project received a copy of its records and was given an opportunity to submit corrections. State agencies also received the information for review, since a large portion of the data is provided to EPA by state governments. EPA modified the data as appropriate, based on these comments. EPA will continue taking comments as this pilot project evolves. The Agency has set up an SFIP Hotline (617–520–3015) and has also established a ''comment page'' on the SFIP website for users to submit their comments instantly.

In addition to releasing the data electronically, EPA also will be providing a hard copy summary report of SFIP. The SFIP Progress Report is a publication that provides aggregated, pre-formatted information. A Notice of Availability will be placed in the **Federal Register** when it is ready for distribution.

Dated: May 11, 1998.

Mamie Miller,

Branch Chief, Manufacturing Branch, Manufacturing Energy & Transportation Division, Office of Compliance.

[FR Doc. 98–13116 Filed 5–15–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

General Counsel's Opinion No. 11, Interest Charges by Interstate State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of General Counsel's Opinion No. 11.

SUMMARY: The FDIC has received inquiries regarding the application of section 27 of the Federal Deposit Insurance Act to State banks operating interstate branches. This General Counsel's Opinion sets forth the Legal Division's conclusions regarding where such banks are ''located'' for purposes of section 27; when host state, as opposed to home state, laws will provide the appropriate interest rates for loans to customers; how various functions related to making loans to customers should be defined and the impact that they will have on the application of a particular state's interest rates to those loans; and the need for appropriate disclosure of the laws governing the loan to bank customers.

FOR FURTHER INFORMATION CONTACT: Barbara I. Taft, Assistant General Counsel, (202) 898–6830, Rodney D. Ray, Counsel, (202) 898–3556 or Robert C. Fick, Counsel, (202) 898–8962, Federal Deposit Insurance Corporation, Legal Division, 550 17th Street, NW, Washington, DC 20429.

Text of General Counsel's Opinion

General Counsel's Opinion No. 11; Interest Charges by Interstate Banks

By William F. Kroener, III, General Counsel

Background

Section 27 of the Federal Deposit Insurance Act (''FDI Act'') (12 U.S.C. 1831d) [1] (''section 1831d'') establishes the maximum rates that insured state-chartered depository institutions and state-licensed insured branches of foreign banks (collectively, ''State banks'') may charge their customers for most types of loans. Section 1831d is patterned after and has been construed *in pari materia* with section 5197 of the Revised Statutes (12 U.S.C. 85) (''section 85'' of the National Bank Act (''NBA'')). Like section 85, section 1831d has been construed to provide State banks with ''most favored lender'' status and to permit State banks to ''export'' interest charges allowed by the state where the lender is located to out-of-state borrowers.

Since the enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. 103–328, 108 Stat. 2338 (1994)(''Riegle-Neal Act'') and the Riegle-Neal Amendments Act of 1997, Pub. L. 105–24, 111 Stat. 238 (1997) (''Riegle-Neal Amendments Act'')(collectively, ''Interstate Banking Statutes'') questions have arisen regarding the appropriate state law for purposes of section 1831d that should govern the interest charges on loans made to customers of a State bank that is chartered in one state (the bank's home state) but has a branch or branches in another state (the host state) (an ''Interstate State Bank''). These questions have not previously been addressed by the Legal Division. Therefore, this General Counsel's Opinion sets forth the Legal Division's interpretation of section 1831d as it relates to the Interstate Banking Statutes to provide guidance in this area to State banks and the public.[2]

The Riegle-Neal Act established, for the first time, a comprehensive federal statutory scheme for interstate branching by state and national banks. In doing so, Congress recognized the potential efficiencies to be gained by an interstate branch banking structure as well as the complications that could arise in determining when an interstate bank should look to the laws of its home

[1] For the convenience of the reader, the initial reference to a provision of the FDI Act or interstate branching legislation will be made to the citation, as enacted, followed by the United States Code citation. Thereafter, the provision will be referred to by the section number contained in the United States Code. For example, the initial citation of section 27 of the FDI Act will be followed by the United States Code citation (12 U.S.C. 1831d) and the section will subsequently be referred to as ''section 1831d''.

[2] This opinion is not intended to address these issues with regard to national banks. The Office of the Comptroller of the Currency (''OCC''), which has regulatory jurisdiction over national banks, has issued several Interpretive Letters addressing these issues, in the context of national banks and section 85. *See,* OCC Interpretive Letter No. 686, September 11, 1995, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) P 81–001 (''Interpretive Letter No. 686''); OCC Interpretive Letter No. 707, January 31, 1996, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) P 81–022 (''Interpretive Letter No. 707''); OCC Interpretive Letter No. 782, May 21, 1997, *reprinted in* [Current Binder] Fed. Banking L. Rep. (CCH) P 81–209 (''Interpretive Letter No. 782''); OCC Interpretive Letter No. 822, February 17, 1998, *reprinted in* [Current Binder] Fed. Banking L. Rep. (CCH) P 81–265 (''Interpretive Letter No. 822'').

state or a host state to determine the interest rates that the bank may permissibly charge its customers.

1. Where May an Interstate State Bank Be Located for Purposes of Section 1831d?

Section 1831d(a) establishes the maximum interest charges that State banks may charge their customers for most types of loans. The interest charges are established by reference to the location of the lender. The statute provides:

> In order to prevent discrimination against State-chartered insured depository institutions, including insured savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank *is located* or at the rate allowed by the laws of the State, territory, or district where the bank *is located,* whichever may be greater. (Emphasis added.)[3]

While the FDI Act does not specifically address where a lender is located for purposes of section 1831d, the same reference to interest rates where the bank is located is contained in section 85 of the NBA, upon which section 1831d is based.[4]

Prior to the enactment of section 1831d, the United States Supreme Court recognized that a national bank, pursuant to section 85, could ''export'' interest charges allowable in the state where the bank was located to debtors domiciled outside the bank's home state.[5] In *Marquette* the Court determined that the national bank was ''located'' for purposes of section 85 in the state designated in its organization certificate and could charge interest to residents of other states at rates permitted under the laws of the state so designated.[6] Section 85 has been recognized to be the ''direct lineal ancestor'' of section 1831d, which was enacted as part of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96–221, 94 Stat. 132 (1980). Congress made a conscious choice to pattern section 1831d after section 85 to achieve competitive equality in the area of interest charges between state and national banks.[7]

Reading the two provisions *in pari materia* because of their historical background, the court in *Greenwood* determined that section 1831d provided a state bank with the ability to export interest charges to out-of-state borrowers from the state in which it was chartered (recognizing the state where the bank was chartered, Delaware, as the place where the bank was ''located'' for purposes of section 1831d).[8] Therefore, prior to the enactment of the Interstate Banking Statutes, the state where a State bank was chartered had been established as the state in which a bank was ''located'' for purposes of exporting interest rates under section 1831d(a).

Following enactment of the Interstate Banking Statutes it is possible for an Interstate State Bank to make loans to customers either from the state in which it is chartered or from an out-of-state branch. Although the courts do not appear to have addressed the issue of whether an Interstate State Bank may be located for purposes of section 1831d in the state where it is chartered and in each state where it maintains one or more branches the OCC has recently issued several Interpretive Letters indicating that an interstate national bank may be ''located'' for purposes of section 85 in the state where its main office is located, as well as in the state or states where it maintains branches. *See* Interpretive Letter Nos. 686, 707, 782 and 822.

Similarly, in my view an Interstate State Bank also may be ''located'' for purposes of section 1831d in its home state and in each state where it maintains out-of-state branches. There are at least three reasons for this view. First, the Riegle-Neal Amendment Act's applicable law clause for State banks[9], discussed in greater detail below, is an indication of Congress' recognition that maintaining a branch within a state, except as otherwise provided in section 1831a(j), constitutes a sufficient presence (i.e., location) in the state to subject the branch to host state laws, including the host state's consumer protection laws (which include applicable usury ceilings). Second, the OCC also has observed, most recently in Interpretive Letter No. 822, that there is a clear and direct relationship between section 94 of the NBA, addressing the ''location'' of a national bank for venue purposes, and section 85, addressing the ''location'' of a bank for usury purposes, based upon court decisions construing the two provisions. The language of section 1831d, which is based largely upon sections 85 and 86[10] of the NBA, has been recognized to include judicial interpretations of those provisions.[11] Finally, there is an evident congressional intent to provide State banks with competitive equality with national banks in enacting section 1831d[12] and to provide parity between State banks and national banks in enacting the Riegle-Neal Amendments Act.[13]

2. If a State Bank is Located in More Than One State, Which State's Usury Provisions Govern the Loans From the Bank?

Given that a State bank can be located in more than one state, the next question is what state's usury provisions should govern loans made by an Interstate State Bank.

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[3] The alternative interest rate that is tied to the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank is not tied to state law but it, like the rate allowed by state law, also requires a determination of where the lender is ''located''.

[4] Section 85 states, in relevant part: ''Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidence of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank *is located,* or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank *is located,* . . . .'' (Emphasis added.)

[5] *Marquette Nat'l Bank v. First Omaha Serv. Corp.,* 439 U.S. 299 (1978) (''*Marquette*'').

[6] *See also Cades v. H & R Block,* 43 F.3d 869 (4th Cir.), *cert. denied,* 515 U.S. 1103 (1995); *Christiansen v. Beneficial Nat'l Bank,* 972 F. Supp. 681 (S.D. Ga. 1997); *Basile v. H & R Block,* 897 F. Supp. 194 (E.D. Penn. 1995).

[7] *See Greenwood Trust Co. v. Commonwealth of Massachusetts,* 971 F.2d 818, 826–827 (1st Cir.), cert. denied, 506 U.S. 1052 (1993) (''*Greenwood*'').

[8] *Greenwood,* at 829; *see also Venture Properties, Inc. v. First Southern Bank,* 79 F.3d 90 (8th Cir. 1996) (Arkansas bank located in Arkansas for purposes of section 1831d).

[9] 12 U.S.C. 1831a(j)(1).

[10] Section 86 of the NBA provides the remedy for violations of section 85. Section 1831d(b) is the statutory counter-part contained in the FDI Act.

[11] *See Greenwood,* at 827; *Hill v. Chemical Bank* 799 F. Supp. 948, 952 (D. Minn. 1992) (''*Hill*'') (''The key language of (section 1831d) is substantially identical to language in sections 85 and 86 of the National Bank Act, the federal usury provisions governing national banks. Generally, similar language should be interpreted the same way, unless context requires a different interpretation. Further, Congress is presumed to be aware of judicial interpretations of statutory language when it intentionally incorporates the language of one statute into another statute.'')

[12] *See* 126 Cong. Rec. 6900 (1980) (statement of Senator Proxmire); 126 Cong. Rec. 6907 (1980) (statement of Senator Bumpers); *see also Hill,* at 952 (''Given the similarity in language and clearly expressed intent of Congress to create parity between state and national banks, (section 1831d) should be interpreted consistently with sections 85 and 86.'')

[13] *See* 143 Cong. Rec. H3089 (daily ed. May 21, 1997) (statement of Representative Roukema).

The answer to this question requires reference to the applicable law and usury savings clauses contained in the Riegle-Neal Act, the Riegle-Neal Amendments Act, which subsequently amended the applicable law clause for State banks, and to the legislative history underlying these provisions.

The Applicable Law Clause for State Banks

With the introduction of nationwide interstate branching, questions arose as to the appropriate law to be applied to out-of-state branches of interstate banks. Congress addressed this matter for national banks in section 102(b)(1) of the Riegle-Neal Act, which amended section 36 of the NBA to add a new subsection (f), which included 12 U.S.C. 36(f)(1)(A)(''the applicable law clause for national banks''), and addressed this matter for State banks in section 102(b)(3)(B) of the Riegle-Neal Act, which amended section 1831a of the FDI Act to add a new subsection (j), which included 12 U.S.C. 1831a(j)(1)(''the applicable law clause for State banks'').

As originally enacted by the Riegle-Neal Act, the applicable law clause for national banks provided for the inapplicability of specific host state laws to a branch of an out-of-state national bank under specified circumstances, including where Federal law preempted such state laws for a national bank.[14] No similar provision, however, was contained in the applicable law clause for State banks.[15] This made branches of out-of-state State banks subject to all of the laws of the respective host state. In contrast, a national bank operating with branches in various states benefitted from preemption, and hence greater uniformity than a State bank, with regard to those host state laws specified in section 36(f)(1)(A)[16] that affected their operations. This led to concerns that the nation's dual banking system might be jeopardized because State banks might opt to convert from state to national bank charters to avoid compliance with a multitude of different state laws in each state in which State banks wished to operate through interstate branches.

On June 1, 1997, the interstate branching provisions of the Riegle-Neal Act became fully effective. Shortly thereafter, on July 3, 1997, section 1831a(j) was amended by the Riegle-Neal Amendments Act to revise the applicable law clause for State banks. As amended by the Riegle-Neal Amendments Act, section 1831a(j)(1) provides:

> The laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank **to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank.** To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch. (Emphasis added.)[17]

As explained by the legislation's sponsor, Representative Roukema, the purpose of the legislation was to provide parity between State banks and national banks. In describing the amendment's effect on host state consumer protection laws, she indicated:

> * * * Moreover, it recognizes the importance of host State laws by requiring all out-of-State banks to comply with host State laws in four key areas, community reinvestment, consumer protection, fair lending, and intrastate branching, unless the State law has been preempted (with respect to) national banks. In that instance the law of the State which issued the charter will prevail.[18]

Therefore, under section 1831a(j)(1), the laws of a host state apply to branches of out-of-state State banks to the same extent such state laws would apply to a branch of an out-of-state national bank. If the laws of the host state would be inapplicable to a branch of an out-of-state national bank they are equally inapplicable to a branch of an out-of-state State bank and the home state law will generally apply to the branch of an out-of-state State bank.[19]

The Usury Savings Clause

The next question is when the host state interest provisions will apply to a branch of an out-of-state State bank. For that issue, it is necessary to consider the Riegle-Neal Act's usury savings clause and the pertinent portions of the statute's legislative history.

Section 111 of the Riegle-Neal Act (the usury savings clause), was added to the legislation prior to its enactment by an amendment sponsored by Senator Roth to address the effect of the Riegle-Neal Act on sections 85 and 1831d. The amendment was introduced by Senator Roth in response to uncertainty expressed by the Acting Chairman of the FDIC and one of the Governors of the Federal Reserve Board regarding the effect that pending drafts of the interstate banking legislation might have on the exportation of interest rates by a bank to borrowers residing in states where the bank also operated an out-of-state branch.[20] *See* 140 Cong. Rec. S12789 (daily ed. Sept. 13, 1994) (remarks of Senator Roth).

The usury savings clause provides, in pertinent part:

> No provision of this title and no amendment made by this title to any other provision of law shall be construed as affecting in any way—
>
> * * * * *
>
> (3) The applicability of (section 85) or (section 1831d) of the Federal Deposit Insurance Act.[21]

Therefore, Congress did not intend for the Riegle-Neal Act to affect the applicability of section 1831d to State banks.

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[14] Section 36(f)(1)(A)(ii) also provided for preemption of host state law where the Comptroller determines that state law discriminates between an interstate national bank and an interstate state bank.

[15] Section 36(f)(1)(A)reads in relevant part as follows:

> The laws of the host State regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State, except—
>
> (i) when Federal law preempts the application of such State laws to a national bank * * *

In the context of the law applicable to branches of out-of-state State banks, however, section 1831a(j)(1) read in relevant part as follows:

> **The laws of a host State,** including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, **shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch of a bank chartered by that State.** (Emphasis added.)

[16] The reference to ''applicable usury ceilings'' in the Riegle-Neal Act Conference Report's (''Conference Report'') discussion of host state consumer protection laws clearly indicates that the statute's reference to consumer protection laws of host states included any applicable host state usury ceilings. *See* H.R. Rep. No. 651, 103d Cong., 2d Sess., 51 (1994).

[17] Pub. L. 105–24, 111 Stat. 238 (1997).

[18] 143 Cong. Rec. H3089 (daily ed. May 21, 1997).

[19] Section 1831a(j)(3)(B), however, requires that the applicable law clause for State banks not be construed to affect the applicability of Federal law to State banks and State bank branches in a home or host state. Therefore, the reference to home state law in the applicable law clause for State banks may not dictate the result in all circumstances regarding interest charges on loans to bank customers if reference to other federal law, such as section 1831d, the usury savings clause, or the rules regarding exportation of interest charges, would lead to a different result.

[20] *See Nationwide Banking and Branching and the Insurance Activities of National Banks: Hearings Before the Senate Committee on Banking, Housing, and Urban Affairs,* 103d Cong., 1st Sess. 272 (1993) (Response to Written Questions of Senator Roth from Andrew C. Hove, Jr.); (Response to Written Questions of Senator Roth from John P. LaWare), *id.* at pp. 280–81.

[21] 12 U.S.C. 1811 (note).

Harmonization of the Applicable Law Clause for State Banks with the Usury Savings Clause

While the usury savings clause could conceivably be read to conflict with the language of the applicable law clause,[22] reference to the Riegle-Neal Act's legislative history allows the provisions to be harmonized and placed in proper context.[23]

In discussing the usury savings clause, the Conference Report states:

Section 111(3) specifically states that nothing in Title I affects sections (85) or (1831d). Accordingly, the amendments made by the (Riegle-Neal Act) that authorize insured depository institutions to branch interstate do not affect existing authorities with respect to any charges under section (85) or (1831d) imposed by national or state banks for loans or other extensions of credit made to borrowers outside the state where the bank or **branch making the loan or other extension of credit is located.**[24] (Emphasis added.)

Senator Roth explained this section of the Conference Report as follows:

The statement of the managers expressly refers to the potential of a ''branch making the loan or other extension of credit * * *'' This language underscores the widespread congressional understanding that, in the context of nationwide interstate branching, it is the office of the bank or branch making the loan that determines which state law applies. The savings clause has been agreed to for the very purpose of addressing the FDIC's original concerns and making clear that after interstate branching, section (85) and section (1831d) are applied on the basis of the branch making the loan.[25]

According to Senator Roth, for purposes of determining where a loan is ''made'' the managers of the Conference Committee recognized that in the new interstate banking environment banks with a branch or branches in other states could involve those branches in some but not all aspects of a loan transaction without the state law where the branch was located becoming applicable to the loan. In explaining the provisions Senator Roth distinguished ''ministerial functions'' [26] from other functions (subsequently referred to as ''non-ministerial functions'' [27]) related to the loan. To further explain the importance of these distinctions, in the context of the appropriate state law to apply to an interstate bank loan, Senator Roth indicated:

(It) is clear that the conferees intend that a bank in State A that approves a loan, extends the credit, and disburses the proceeds to a customer in State B, may apply the law of State A even if the bank has a branch or agent in State B and even if that branch or agent performed some ministerial functions such as providing credit card or loan applications or receiving payments.[28]

Senator Roth's comments, considered in the context of the applicable law clause for State banks, are indicative of congressional intent to recognize a parallel between existing law and the law that should be applied if a loan was made in a branch or branches of a single host state. Existing law already recognized the effect of home state law on the state laws of a borrower's residence when loans were made by national banks and State banks, respectively, to out-of-state borrowers. In the context of interstate branching, however, Congress intended to strike a balance between the application of host state and home state interest provisions by applying the same exportation principle previously recognized by the courts to loans made in a host state because the three non-ministerial functions occurred in a branch or branches of the host state.

Therefore, under the Riegle-Neal Act's usury savings clause the ability of an out-of-state State bank to export the interest charges that are permissible in the home state are preserved, even if a branch or branches of the same bank is located in the same state as the borrower. If all of the non-ministerial functions involved in making the loan are performed by a branch or branches located in a host state, however, the host state's interest provisions should be applied to the loan.

Non-Ministerial Functions Occur in Multiple States or Outside of Banking Offices

There are some situations that are not addressed by the Interstate Banking Statutes. These include loans where the three non-ministerial functions occur in different states or where some of the three non-ministerial functions occur in an office that is not considered to be the home office or branch of the bank (collectively, ''banking offices''). The OCC recently addressed these issues in Interpretive Letter 822. With regard to loans where the three non-ministerial functions occur in banking offices located in different states and the loans cannot be said to have been ''made'' in a host state under the criteria discussed in the legislative history of the Riegle-Neal Act, the OCC concluded that the law of the home state could always be chosen to apply to the loans because such a result will avoid throwing ''confusion'' into the complex system of modern interstate banking by having no rate to apply and because the bank is always the lender, regardless of where certain functions occur.

The other situation addressed in Interpretive Letter 822 is where any of the non-ministerial functions occur in a host state but not in a branch. This could occur, for example, where a loan is approved in a back office but the proceeds of the loan are disbursed in a branch in a host state.

In these and similar situations, the OCC concluded that home state rates may be used. Alternatively, in those situations the interest rates permitted by the host state where a non-ministerial function occurs may be applied, if based on an assessment of all of the facts and circumstances, the loan has a clear nexus to the host state.[29]

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[22] As enacted by the Riegle-Neal Act, as indicated earlier, the applicable law clause for State banks made branches of out-of-state State banks subject to the laws of the host state. Also, as indicated earlier, concerns had been expressed over the impact that the application of host state laws regarding consumer protection might have on the ability of an out-of-state bank to export interest charges authorized by its home state to a state where the bank maintained a branch.

[23] In this respect, the analysis tracks that employed by the courts. *See Weinberger* v. *Hynson,* 412 U.S. 609, 631–32 (1973) (''It is well established that our task in interpreting separate provisions of a single Act is to give the Act 'the most harmonious, comprehensive meaning possible' in light of the legislative policy and purpose. (Citations omitted).''); *Dierksen* v. Navistar Internat'l Transportation Corp., 912 F. Supp. 480, 486 (D. Kansas 1996) (''A primary rule of construction of a statute is to find the legislative intent from its language, and where the language used is plain and unambiguous and also appropriate to an obvious purpose the court should follow the intent as expressed by the words used. (citation omitted). It is the duty of the court, insofar as practical, to reconcile different statutory provisions so as to make them consistent, harmonious and sensible. (Citation omitted). Allegedly repugnant statutes are to be read together and harmonized, if at all possible, to the end that both may be given force and effect. (Citation omitted).'')

[24] H.R. Rep. No. 651, 103d Cong., 2d Sess., 63 (1994).

[25] 140 Cong. Rec. S12789 (daily ed. Sept. 13, 1994).

[26] These include providing loan applications, assembling documents, providing a location for returning documents necessary for making a loan, providing loan account information, and receiving payments.

[27] The non-ministerial functions are the decision to extend credit, the extension of credit itself, and the disbursal of the proceeds of the loan.

[28] 140 Cong. Rec. S12789–12790 (daily ed. Sept. 13, 1994).

[29] The non-ministerial functions, according to Senator Roth's discussion of the Conference Report, are factors to be considered in determining which state's law should be applied to a loan. *See* Roth statement, at S12789:

The rationale for this conference amendment (substituting loan servicing for disbursal of loan proceeds in the agency authority contained in section 101) is that the actual disbursal of proceeds—as distinguished from delivering previously disbursed funds to a customer—is so closely tied to the extension of credit that **it is a factor in determining, in an interstate context, what State's law to apply.** (Emphasis added.)

I agree with the OCC Chief Counsel's analysis on these issues and her observations in Interpretive Letter 822 regarding the significance of an appropriate disclosure to customers that the interest to be charged on the loan is governed by applicable federal law and the law of the relevant state which will govern the transaction.

The Non-Ministerial Functions

The OCC identified three non-ministerial functions for national banks in Interpretive Letter No. 822 based upon the Riegle-Neal Act's legislative history. An inquiry is required to determine the location where each of the non-ministerial functions occur. Briefly stated, the OCC determined that ''approval'' (i.e., the decision to extend credit) occurs where the person is located who is charged with making the final judgment of approval or denial of credit, and the site of the final approval is the location where it is granted. ''Disbursal'' means actual physical disbursal of the proceeds of a loan, as opposed to the delivery of previously disbursed funds to the customer. Disbursal can occur in various ways, including delivery to the customer in person or crediting proceeds to the customer's account at a branch, but does not include delivering the funds to an escrow or title agent who, in turn, disburses them to the customer or for the customer's benefit. ''Extension of credit'' means the site from which the first communication of final approval of the loan occurs.

While the need for such inquiries as to non-ministerial functions may not be initially apparent, I believe that Senator Roth's distinction for purposes of the ''disbursal'' function between ''the actual disbursal of proceeds'' and ''delivering previously disbursed funds to a customer'' is indicative of the type of inquiry Congress intended in order to identify non-ministerial functions which effect where a loan is made for purposes of determining the state law to be applied to a loan. The same definitions should be equally applicable to State banks under section 1831d.

Conclusion

An Interstate State Bank can be ''located'' for purposes of section 1831d in the state in which it is chartered, as well as the states where the bank's out-of-state branch or branches are located. The Interstate Banking Statutes do not affect the ability of an Interstate State Bank to export interest rates on loans made to out-of-state borrowers from that bank's home state, even if the bank maintains a branch in the state where the borrower resides. If an out-of-state branch or branches of an Interstate State Bank in a single host state performs all the non-ministerial functions (approval of an extension of credit, extension of the credit, and disbursal of loan proceeds to a customer) related to a loan, it ''makes'' the loan to the customer for purposes of the Interstate Banking Statutes and the loan should be governed by the usury provisions of the host state. If the three non-ministerial functions occur in different states or if some of the non-ministerial functions occur in an office that is not considered to be the home office or branch of the bank, then home state rates may be used. Alternatively, in those situations the interest rates permitted by the host state where a non-ministerial function occurs may be applied, if based on an assessment of all of the facts and circumstances, the loan has a clear nexus to the host state. To avoid uncertainty regarding which state's interest rates apply to a loan Interstate State Banks should make an appropriate disclosure to the customer that the interest to be charged on the loan is governed by applicable federal law and the law of the relevant state which will govern the transaction.

Authorized to be published in the **Federal Register** by Order of the Board of Directors dated at Washington, DC, this 9th day of May, 1998.

Federal Deposit Insurance Corporation,

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–13084 Filed 5–15–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011317–003.

Title: PONL/BHP–IMTL Space Charter Agreement.

Parties: P&O Nedlloyd Limited (''PONL'') BHP–IMTL.

Synopsis: The proposed Agreement modification (1) substitutes P&O Nedlloyd Limited for its commonly-owned affiliate, P&O Nedlloyd B.V. (formerly named Nedlloyd Lijnen BV) as party to the Agreement; (2) changes the name of the Agreement to reflect the foregoing substitution; (3) deletes U.S. Atlantic and Gulf ports, as well as the ports in New Zealand, Chile, Peru, and Panama from the scope of the Agreement; and (4) makes other non-substantial changes to the Agreement.

Dated: May 12, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–13057 Filed 5–15–98; 8:45 am]

BILLING CODE 6730–01–M

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 June 12, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Summit Bancorp, Inc., Medway, Massachusetts; to become a bank holding company by acquiring 100

percent of the voting shares of Summit Bank, Medway, Massachusetts.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Florida Banks, Inc., Jacksonville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Tampa, Tampa, Florida.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Town Bankshares, Ltd., Delafield, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Delafield State Bank, Delafield, Wisconsin (in organization).

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. U.S. Bancorp, Minneapolis, Minnesota; to acquire at least 86.83 percent of the voting shares of Northwest Bancshares, Inc., Vancouver, Washington, and thereby indirectly acquire Northwest National Bank, Vancouver, Washington.

Board of Governors of the Federal Reserve System, May 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–13129 Filed 5–15–98; 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 June 2, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Orchard Valley Financial Corporation, Englewood, Colorado; to acquire MegaBank Financial Corporation, Englewood, Colorado; and thereby indirectly acquire MegaBank of Englewood, Colorado, Englewood, Colorado, and thereby engage in the operation of a savings association, pursuant to § 225.28(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–13128 Filed 5–15–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Thursday, May 21, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 14, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–13236 Filed 5–14–98; 11:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Transaction No.	ET requisition status	Party name
13–APR–98	19981597	G	Premark International, Inc.
		G	Ms. Ilse G. Traulsen.
		G	Traulsen & Co., Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
	19982311	G	Gryphon Holdings Inc.
		G	Castle Harlan Partners II, L.P.
		G	The Reinsurance Company of Hartford.
		G	F/I Insurance Agency, Inc.
		G	First Reinsurance Co. of Hartford.
		G	Oakley Underwriting Agency, Inc.
	19982329	G	BTR Plc (a U.K. company).
		G	Chicago Metallic Corporation.
		G	California Finished Metals, Inc.
	19982347	G	Churchill Downs Incorporated.
		G	Tinkham Veale II.
		G	Racing Corp. of America.
	19982354	G	Aurora Equity Partners, L.P.
		G	3–D Investments, Incorporated.
		G	Label Express, L.L.C.
	19982356	G	Robert F.X. Sillerman.
		G	TBA Entertainment Corporation.
		G	New Avalon, Inc.
		G	TBA Media, Inc.
		G	New Avalon, Irvine Meadows, L.P.
	19982365	G	Health Management Associates, Inc.
		G	Regional Healthcare, Inc.
		G	Regional Healthcare, Inc.
	19982366	G	Sony Corporation.
		G	Thomas L. Griffin.
		G	Sunbow Entertainment, LLC.
	19982381	G	Vacation Properties International.
		G	Andre S. Tatibouet.
		G	Hotel Corporation of the Pacific.
	19982382	G	Andre S. Tatibouet.
		G	Vacation Properties International, Inc.
		G	Vacation Properties International, Inc.
	19982386	G	TEPPCO Partners, L.P.
		G	Duke Energy Corporation.
		G	Duke Energy Field Services, Inc.
	19982387	G	Consolidated Graphics, Inc.
		G	Mark Woodman.
		G	Web Graphics, Inc.
		G	Serco Forms, LLC.
		G	Mercury Web Printing, Inc.
		G	Gilprin, LLC.
		G	Printing, Inc.
	19982388	G	Ivex Packaging Corporation.
		G	Ultra Pac, Inc.
		G	Ultra Pac, Inc.
	19982390	G	Harvest States Cooperatives.
		G	CENEX, Inc.
		G	CENEX, Inc.
	19982392	G	American Lawyer Media Holdings, Inc.
		G	Meridien Venture Partners.
		G	Legal Communications, Inc.
	19982396	G	Budget Group, Inc.
		G	Frederick G. Hilbish.
		G	Paul West Ford, Inc.
	19982399	G	OmniOffices, Inc.
		G	Ron Whitehouse.
		G	HQ Entities.
	19982402	G	The Interpublic Group of Companies, Inc.
		G	The Jack Morton Company.
		G	The Jack Morton Company.
	19982404	G	Ripplewood Partners, L.P.
		G	FS Equity Partners IV, L.P.
		G	Advance Holding Corporation.
	19982406	G	Saputo Group Inc.
		G	Avonmore Waterford Co-operative Society Limited.
		G	Waterford Food Products, Inc. & Avonmore Cheese, Inc.
	19982407	G	The Chase Manhattan Corporation.
		G	Vestar/LPT Limited Partnership.
		G	Vestar/APT Investment Corp.
	19982410	G	New England Electric System.
		G	PAL Energy Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	PAL Energy Corporation.
	19982420	G	Bruckmann, Rosser, Sherill & Co., L.P.
		G	Charles E. Hasty.
		G	CH Industries, Inc.
	19982424	G	OCM Principal Opportunities Fund, L.P.
		G	Berwind Group Partners.
		G	Berwind Railway Service Company, L.P.
	19982425	G	Metals USA, Inc.
		G	Kenneth J. Riskind.
		G	Fullerton Metals Company.
	19982430	G	Packaged Ice, Inc.
		G	Suiza Foods Corporation.
		G	Reddy Ice Corporation.
	19982431	G	Community Newspaper Holdings, Inc.
		G	Media General, Inc.
		G	Medica General Newspapers, Inc.
	19982434	G	Schuff Steel Company.
		G	E. Chris Addison.
		G	Addison Structural Services, Inc.
	19982435	Y	CVC European Equity Partners, L.P.
		Y	BTR plc.
		Y	BTR plc.
	19982440	G	Phycor, Inc.
		G	Dr. Prem Reddy.
		G	PrimeCare International, Inc.
	19982442	G	TI Group plc.
		G	James L. Hutchings.
		G	Hutchings International Enterprises, Inc.
		G	S & H Fabricating and Engineering, Inc.
	19982445	G	PRIMEDIA, Inc.
		G	Hollinger, Inc.
		G	Southam Business Communications U.S.A. Inc.
	19982447	G	Pursell Industries, Inc.
		G	IMC Golbal, Inc.
		G	IMC Vigoro.
	19982454	G	Michael C. Slade.
		G	NBTY, Inc.
		G	NBTY, Inc.
	19982455	G	NBTY, Inc.
		G	Michael C. Slade.
		G	Nutrition Headquarters, Inc., Lee Nutrition, Inc., Nutro Labor.
14–APR–98	19982183	G	Buford Group, Inc.
		G	Tele-Communications, Inc.
		G	TCI Cablevision of Texas.
	19982339	G	Aetna Inc.
		G	New York Life Insurance Company.
		G	NYLCare Health Plans, Inc.
	19982343	G	GAP Coinvestment Partners, L.P.
		G	Baan Company N.V.
		G	Baan Company N.V.
	19982351	G	Conseco, Inc.
		G	General Acceptance Corporation.
		G	General Acceptance Corporation.
	19982362	G	The First American Financial Corporation.
		G	Data Tree Corporation.
		G	Data Tree Corporation.
	19982368	G	Duke Energy Corporation.
		G	Wing Corporation.
		G	Sola Corporation.
		G	Mesa Pipe Line Company.
	19982385	G	AMADEUS Global Travel Distribution S.A.
		G	AMADEUS Global Travel Distribution, S.A.
		G	AMADEUS System One, L.L.C.
	19982389	G	Thomas H. Stoner.
		G	American Radio Systems Corporation.
		G	American Tower Systems Corporation.
	19982412	G	CIBER, Inc.
		G	The Summit Group, Inc., shareholders.
		G	The Summit Group, Inc., shareholders.
	19982432	G	Lernout & Hauspie Speech Products N.V. Inso Corporation.
		G	Inso Florida Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	Inso Dallas Corporation.
	19982437	G	First Data Corporation.
		G	First Data Corporation.
		G	First Data Merchant Services Corporation.
	19982449	G	The Prudential Insurance Company of America.
		G	William B. Synder.
		G	Merastar Corporation.
	19982458	G	Level 3 Communications, Inc.
		G	XCOM Technologies, Inc.
		G	XCOM Technologies, Inc.
15–APR–98	19982077	G	Siebel Systems, Inc.
		G	Scopus Technology, Inc.
		G	Scopus Technology, Inc.
	19982393	G	BASF Aktiengesellschaft.
		G	Micro Flo Co.
		G	Micro Flo Co.
	19982398	G	Hicks, Muse, Tate & Furst Equity Fund, III, L.P.
		G	AT&T Corp.
		G	LIN Broadcasting Corporation.
		G	LCH Communications, Inc.
		G	LIN Michigan Broadcasting Corporation.
	19982441	G	Aurora Equity Partners L.P.
		G	G&K Services, Inc.
		G	G&K Services Linen Co.
		G	G&K Services Co.
	19982470	G	Metals USA, Inc.
		G	146670 Canada, Inc.
		G	Ideal Metal Inc.
	19982473	G	Dorel Industries, Inc. (a Canadian Company).
		G	Ameriwood Industries International Corporation.
		G	Ameriwood Industries International Corporation.
16–APR–98	19982224	G	Republic Industries, Inc.
		G	Lewis and Margaret Webb.
		G	Webb Automotive Group, Inc.
	19982225	G	Lewis and Margaret Webb.
		G	Republic Industries, Inc.
		G	Republic Industries, Inc.
	19982247	G	Lyondell Petrochemical Company.
		G	Occidental Petroleum Corporation.
		G	Oxy Petrochemicals Inc., PDG Chemical Inc.
	19982285	G	OM Group, Inc.
		G	Dow Chemical Company (The).
		G	Dow Chemical Company (The).
	19982314	Y	Southdown, Inc.
		Y	Medusa Corporation.
		Y	Medusa Corporation.
	19982395	G	Budget Group, Inc.
		G	J. Paul West.
		G	Paul West Ford, Inc.
	19982400	G	Sea Containers Ltd.
		G	GE SeaCo SRL.
		G	GE SeaCo SRL.
17–APR–98	19982397	G	Premiere Technologies, Inc.
		G	American Teleconferencing Services, Ltd.
		G	American Teleconferencing Services, Ltd.
20–APR–98	19982178	G	Mitsui & Co., Ltd. (a Japanese corporation).
		G	Brightpoint, Inc.
		G	Brightpoint, Inc.
	19982305	G	United Rentals, Inc.
		G	Robert W. Jones and LaVina R. Jones.
		G	Valley Rentals, Inc.
	19982384	G	Mac-Gray Corporation.
		G	Gerald E. Pulver.
		G	Amerivend Corporation.
		G	Amerivend Southeast Corporation.
	19982391	G	Arrow Electronics, Inc.
		G	SBM Holdings, Inc.
		G	SBM Holdings.
	19982403	G	Dover Downs Entertainment, Inc.
		G	Grand Prix Association of Long Beach, Inc.
		G	Grand Prix Association of Long Beach, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
	19982418	G	Platinum Technology, Inc.
		G	Logic Works, Inc.
		G	Logic Works, Inc.
	19982457	G	Coopers & Lybrand, L.L.P.
		G	Shattuck Hammond Partners Inc.
		G	Shattuck Hammond Partners Inc.
	19982459	G	DENTSPLY International, Inc.
		G	Leo A. and Gerlinde R. Dohn.
		G	GAC International, Inc.
	19982462	G	The Chase Manhattan Corporation.
		G	Rhone-Poulenc S.A.
		G	Rhodia Inc.
		G	Rhodia Canada Inc.
	19982471	G	Nippon Telegraph and Telephone Corporation.
		G	Verio Inc.
		G	Verio Inc.
	19982519	Y	Robert I. Goldman.
		Y	CoreStates Financial Corp.
		Y	CoreStates Financial Corp.
21–APR–98	19982466	G	Lowell W. Paxson.
		G	Christian Communications of Chicagoland, Inc.
		G	Christian Communications of Chicagoland, Inc.
	19982469	G	The Walt Disney Company.
		G	William D. Cayton.
		G	The Big Fights, Inc.
	19982475	G	Christian Communications of Chicagoland, Inc.
		G	Lowell W. Paxson.
		G	Cocola Media Corporation of San Francisco.
	19982476	G	Apollo Investment Fund III, L.P.
		G	MTL Inc.
		G	MTL Inc.
	19982477	G	Time Warner Inc.
		G	Glen King Parker.
		G	The Institute for Econometric Research, Inc.
		G	Mutual Funds Magazine Advertising Sales, Inc.
	19982479	G	Cash America International, Inc.
		G	Doc Holliday's Pawnbrokers & Jewellers, Inc.
		G	Doc Holliday's Pawnbrokers & Jewellers, Inc.
	19982483	G	AMVESCAP PLC.
		G	Liechenstein Global Trust, AG.
		G	LGT Holding Luxembourg.
		G	LGT PLC, LGT Bank of Liechenstein.
		G	LGT Verwaltungs Gmbh.
		G	Liechenstein Global Trust, AG.
	19982484	G	Potlatch Corporation.
		G	Anderson-Tully Veneers, L.P.
		G	Biomass Partners, L.P. (''BP'').
		G	Anderson-Tully Management Services LLC (''AT LLC'').
		G	Anderson-Tully Lumber Company (''AT Lumber'').
		G	Anderson-Tully Lumber Company (''AT Lumber'').
		G	Biomass Management Corporation (''BMC'').
	19982485	G	NCO Group, Inc.
		G	FCA International Ltd.
		G	FCA International Ltd.
	19982486	G	Fortis AG S.A.
		G	John Alden Financial Corporation.
		G	John Alden Financial Corporation.
	19982487	G	Fortis AMEV N.V.
		G	John Alden Financial Corporation.
		G	John Alden Financial Corporation.
	19982489	G	Consolidated Capital Corporation.
		G	BCP Partners, LLC.
		G	United Service Solutions, Inc.
	19982490	G	Honeywell Inc.
		G	CBS Corporation.
		G	Westinghouse Security Electronics, Inc.
	19982491	G	Cumulus Media LLC.
		G	John M. Borders.
		G	Louisiana Media Interest, Inc.
	19982493	G	Steven J. Lund.
		G	Nu Skin Asia Pacific, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	Nu Skin Asia Pacific, Inc.
	19982494	G	Brooke B. Roney
		G	Nu Skin Asia Pacific, Inc.
		G	Nu Skin Asia Pacific, Inc.
	19982495	G	Blake M. Roney
		G	Nu Skin Asia Pacific, Inc.
		G	Nu Skin Asia Pacific, Inc.
	19982496	G	Sandie N. Tillotson.
		G	Nu Skin Asia Pacific, Inc.
		G	Nu Skin Asia Pacific, Inc.
	19982497	G	The Atlantic Foundation.
		G	Baan Company N.V.
		G	Baan Company N.V.
	19982498	G	The Faith Family B Partnership. Ltd.
		G	International Proteins Holding Corp.
		G	International Proteins Holding Corp.
	19982501	G	Bureau Veritas S.A.
		G	Angelo M. Fatta.
		G	ACTS Testing Labs, Inc.
	19982502	G	Metal Management, Inc.
		G	Paul I. and Rena Haveson, (husband and wife).
		G	R&P Holdings, Inc.
	19982503	G	Warburg Pincus Ventures LP.
	19982503	G	Suzanne Sheuerman.
		G	ExTerra Credit Recovery, Inc.
	19982505	G	FS Equity Partners III, L.P.
		G	Davis M Rembert, Jr.
		G	United Fuels Corporation.
	19982509	G	BCE Inc.
		G	interWave Communications International Ltd.
		G	interWave Communications International Ltd.
	19982511	G	Masco Corporation.
		G	General Accessory Manufacturing Company.
		G	General Accessory Manufacturing Company.
	19982516	G	Big Flower Holdings, Inc.
		G	John J. Reilly.
		G	Enteron Group, Inc., an Illinois corporation.
	19982520	G	BSI Holdings, Inc.
		G	David N. Hill.
		G	Ameralum, Inc.
	19982522	G	David L. Turock.
		G	Howard Jonas.
		G	IDT Corporation.
	19982523	G	Howard S. Jonas.
		G	David Turock.
		G	InterExchange, Inc.
	19982525	G	DLJ Merchant Banking Partners II, L.P.
		G	Ronald Hughes.
		G	H&S Graphics, Inc. and Preface, Inc.
	19982528	G	Aurora Equity Partners L.P.
		G	Richard Luneburg.
		G	FDR Services Corp.
	19982529	G	Aurora Equity Partners L.P.
		G	Donald Luneburg.
		G	FDR Services Corp.
	19982530	G	Triax Midwest Associates, L.P.
		G	Jonas Spacelink Income/Growth Fund 1–A, Ltd.
		G	Jonas Spacelink Income/Growth Fund 1–A, Ltd.
	19982532	G	Media/Communications Partners III Limited Partners.
		G	Bloomington Broadcasting Corporation.
	19982532	G	Bloomington Broadcasting Acquisition Corporation.
	19982537	G	Viad Corp.
		G	MoneyGram Payment Systems, Inc.
		G	MoneyGram Payment Systems, Inc.
	19982540	G	Applied Power Inc.
		G	Ridgway and Cynthia Leedom.
		G	Product Technology, Inc.
	19982543	G	Ralcorp Holdings, Inc.
		G	Capital Partners (A Limited Partnership).
		G	Flavor Holdings, Inc.
	19982547	G	Sylvan Learning Systems, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	Aspect International Language Schools, B.V.
		G	Aspect International Language Schools, B.V.
22–APR–98	19982264	G	Budget Group, Inc.
		G	Questor Partners Funds, LP.
		G	Ryder TRS, Inc.
	19982265	G	Questor Partners Fund, L.P.
		G	Budget Group, Inc.
		G	Budget Group, Inc.
	19982413	G	Hollywood Park, Inc.
		G	Casino Magic Corp.
		G	Casino Magic Corp.
	19982419	G	Newell Company.
		G	Sara Jane Kasperzak.
		G	Calphalon Corporation.
	19982467	G	Gerald W. Schwartz.
		G	Trident Automotive plc.
		G	Trident Automotive plc.
	19982492	G	Keith R. Halls.
		G	Nu Skin Asia Pacific, Inc.
		G	Nu Skin Asia Pacific, Inc.
	19982512	G	FirtEnergy Corp.
		G	William C. McAllister.
		G	Colonial Mechanical Corporation.
	19982517	G	United HealthCare Corporation.
		G	Healtheon Corporation.
		G	Healtheon Corporation.
	19982518	G	SmithKline Beecham plc.
		G	Healtheon Corporation.
		G	Healtheon Corporation.
	19982527	G	Continuum Health Partners, Inc.
		G	The LICH Corporation.
		G	The Long Island College Hospital.
	19982539	G	The General Electric Company, p.l.c.
		G	Alcatel Alsthom.
		G	Cegelec ESCA Corporation.
		G	Cegelec Automation, Inc.
		G	Cegelec AEG Automation Systems Corporation.
	19982541	G	AirNet Systems, Inc.
		G	Robert Mitzman.
		G	Q International Courier, Inc.
	19982542	G	Robert Mitzman.
		G	AirNet Systems, Inc.
		G	AirNet Systems, Inc.
24–APR–98	19973608	G	Hicks, Muse, Tate & Furst Equity Fund III, L.P.
		G	Robert F.X. Sillerman.
		G	SFX Broadcasting, Inc.
	19980158	G	Sony Corporation.
		G	Cineplex Odeon Corporation (a Canadian corporation).
		G	Cineplex Odeon Corporation; Plitt Theaters, Inc.
	19980165	Y	The Seagram Company Ltd.
		Y	Sony Corporation (a Japanese corporation).
		Y	LTM Holdings, Inc.
	19982324	G	Synetic, Inc.
		G	Point Plastics, Inc.
		G	Point Plastics, Inc.
	19982325	Y	Mr. Philip Stolp.
		Y	Synetic, Inc.
		Y	Synetic, Inc.
	19982394	G	Mr. Joaquin Viso and Mrs. Olga Lizardi.
		G	Eli Lilly & Company.
		G	Eli Lilly Exports S.A.
	19982401	G	The Chase Manhattan Corporation.
		G	Praecis Pharmaceuticals Incorporated.
		G	Praecis Pharmaceuticals Incorporated.
	19982411	G	General Electric Company.
		G	GE SeaCo SRL.
		G	GE SeaCo SRL.
	19982414	G	ADE Corporation.
		G	Dr. Christopher Koliopoulos.
		G	Phase Shift Technology, Inc.
	19982415	G	Dr. Christopher Koliopoulos.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	ADE Corporation.
		G	ADE Corporation.
	19982416	G	Grupo Industrial Bimbo, S.A., de C.V.
		G	Mrs. Baird's Bakeries, Inc.
		G	Mrs. Baird's Bakeries, Inc.
	19982422	G	Veeco Instruments Inc.
		G	Virgil Elings.
		G	Digital Instruments, Inc.
	19982423	G	Virgil Elings.
	19982423	G	Veeco Instruments Inc.
		G	Veeco Instruments Inc.
	19982439	G	Tyssen-Bornemisza Continuity Trust.
		G	COMSAT Corporation.
		G	COMSAT RSI, Inc.
	19982446	G	AirTouch Communications, Inc.
		G	Mario J. Gabelli.
		G	Rivgam Communications, L.L.C.
	19982448	G	Glen Raven Mills, Inc.
		G	A. Dewarvin Fils & Cie S.A.
		G	Dickson S.A.
	19982513	G	France Telecom.
		G	Robert Behar.
		G	Hero Productions, Inc., Hero Satellite Services, Inc.
	19982514	G	France Telecom.
		G	Alejandro Sawicki.
		G	Hero Productions, Inc., Hero Satellite Services, Inc.
	19982515	G	Canadian Fracmaster Ltd.
		G	John R. Stanley.
		G	TransTexas Gas Corporation.
	19982533	G	Aspect Telecommunications Corporation.
		G	EG&G Venture Partners.
		G	Voicetek Corporation.
	19982534	G	Illinova Generating Company.
		G	Northeast Utilities.
		G	COE Tejona Corporation.
	19982544	G	Leandro P. Rizzuto.
		G	CTS Corporation.
		G	Dynamics Corporation of America.
		G	Waring Products Division.
	19982548	G	Code Hennessy & Simmons III L.P.
		G	AmeriTruck Distribution Corp.
		G	Thompson Bros., Inc.
	19982549	G	Stratos Global Corporation.
		G	ICG Communications, Inc.
		G	Maritime Telecommunications Network, Inc./Maritime Cellular.
	19982552	G	Vestar Capital Partners III. L.P.
		G	Maurice Bidermann.
		G	Bidermann Industries, U.S.A., Inc.
	19982554	G	MidAmerican Energy Holdings Company.
		G	American Mutual Holding Company.
		G	AmerUS Home Services, Inc.
	19982556	G	U.S. Liquids Inc.
		G	USA Waste Services, Inc.
		G	City Environmental, Inc.
		G	Northern A–1 Environmental.
		G	City Environmental Services of Florida, Inc.
	19982603	G	Helix Technology Corporation.
		G	Granville-Phillips Company.
		G	Granville-Phillips Company.

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay or
Parcellena P. Fielding, Contact Representatives
Federal Trade Commission, Premerger Notification Office, Bureau of Competition Room 303 Washington, D.C. 20580 (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–13086 Filed 5–15–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 952–3235]

Bogdana Corporation, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 17, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S–4002, Washington, D.C. 20580. (202) 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 12, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Bogdana Corporation; and Joseph L. Gruber and Bogda Gruber, Individually and as officers of Bogdana Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged deceptive representations for two dietary supplements: Cholestaway, capsules or wafers purported to lower serum cholesterol; and Flora Source, a powdered supplement purported to replace natural intestinal flora, thereby boosting the immune system and providing other health benefits. Advertisements for the products included 30-minute television infomercials, 30-minute radio infomercials, 60-second television commercials, and catalogs.

According to the FTC complaint, by using the trade name ''Cholestaway,'' and through the advertisements, the respondents made claims that Cholestaway: significantly lowers serum cholesterol levels; significantly lowers serum cholesterol levels without changes in diet; significantly lowers serum cholesterol levels and causes significant weight loss even if users eat foods high in fat, including fried chicken and pizza; substantially reduces or eliminates the body's absorption of dietary fat; lowers low density lipoprotein cholesterol and improves the high density lipoprotein cholesterol to low density lipoprotein cholesterol ratio; is effective in the treatment of hardening of the arteries and heart disease; causes significant weight loss; causes significant weight loss without changes in diet; significantly reduces blood triglyceride levels; significantly reduces elevated blood pressure; and is scientifically proven to lower serum cholesterol levels and reduce elevated blood pressure significantly; and that testimonials from consumers appearing in the advertisements for cholestaway reflect the typical or ordinary experience of members of the public who use the product. The complaint alleges that the respondents did not have a reasonable basis for any of these representations at the time they were made.

The complaint also alleges that the respondents misrepresented radio infomercials for Cholestaway to be independent radio programs rather than commercial messages.

The complaint further alleges that the respondents made claims, without a reasonable basis, that Flora Source: replaces the natural intestinal flora that are lost due to illness, prescription drugs or antibiotics, thereby reducing the risk of developing illnesses such as chronic fatigue syndrome (Epstein-Barr syndrome) and other immunosuppression diseases, including AIDS: improves the body's absorption of nutrients, including B vitamins; enhances the body's immune response and is effective in the treatment of immunosuppression diseases, including AIDS; prevents weight gain; and is effective in the prevention or treatment of anorexia and gastrointestinal disorders and symptoms, including food sensitivities, constipation, diarrhea, dyspepsia, abdominal pain, bloating and gas.

The consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the order prohibits the respondents from making the representations about Cholestaway challenged in the complaint, unless they possess and rely upon competent and reliable scientific evidence that substantiates the representation. Part II of the order contains similar provisions with regard to the challenged representations about Flora Source.

Part III prohibits respondents from making any representation about the efficacy, performance, safety or benefits of any food, dietary supplement or drug unless they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Part IV prohibits the respondents from using the name ''Cholestaway'' or any other name that represents that the product will lower serum cholesterol levels unless they have substantiation.

Part V prohibits the respondents from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

Part VI prohibits the respondents from representing that the experience represented by a user testimonial or endorsement of the product is the typical or ordinary experience of users of the product unless the representation is substantiated or they disclose what the generally expected results would be or that consumers should not expect the same results.

Part VII prohibits the respondents from disseminating any advertisement that misrepresents that it is not a paid advertisement, and requires disclosures, during television ads fifteen minutes in length or longer and radio ads five minutes or longer, that the program is a paid advertisement.

Part VIII allows the respondents to make representations for any drug that are permitted in labeling for that drug

under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA.

Part IX allows the respondents to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts X through XII and XIV require the respondents to keep copies of advertisements making representations covered by the order; to keep records concerning those representations, including materials that they relied upon when making the representations; to provide copies of the order to certain of the corporate respondents' personnel; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission. Part XV provides that the order will terminate after twenty (20) years under certain circumstances.

Part XIII requires that the Grubers notify the Commission of any change in their business or employment.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–13140 Filed 5–15–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 971–0039]

Fastline Publication, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 17, 1998.

ADDRESSES: Comments should be directed to: FTC/Office or the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington DC 20580.

FOR FURTHER INFORMATION CONTACT: Willian Baer or Willard Tom, FTC/H–375, Washington, D.C. 20580. (202) 326–2932 or 326–2786.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 11, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Fastline Publications, Inc. (''Fastline'') and Mid-America Equipment Retailers Association (''Mid-America''). The agreement would settle allegations that Fastline and Mid-America violated Section 5 of the Federal Trade Commission Act by agreeing not to advertise or publish prices for new farm equipment in the *Fastline Kentucky Farm Edition*.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the proposed consent order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by Fastline or Mid-America that the law has been violated as alleged in the complaint.

The Complaint

Fastline publishes, among other things, picture buying guides for new and used farm equipment, which are mailed free to farmers and ranchers in over 40 states. Farm equipment advertised in Fastline's buying guides ranges from relatively inexpensive lawn mowers to heavy duty farm equipment such as tractors, plows, planters, cotton pickers, and combines costing tens of thousands of dollars. Fastline's principal source of revenue is the farm equipment dealers who advertise in its buying guides. Fastline currently publishes 20 monthly editions of its farm equipment buying guides, serving 41 states. Farm equipment dealers view the *Fastline Kentucky Farm Edition* as a key vehicle for advertising to farmers located in Kentucky.

Mid-America is a trade association for farm equipment dealers. It was formed in 1992 through the merger of the Indiana Implement Dealers Association, Inc., and the Kentucky Farm and Power Equipment Retailers Association (the ''Kentucky Retailers Association''). About 90 percent of the farm equipment dealers in Kentucky and Indiana are members of Mid-America.

In early 1991, several Kentucky farm equipment dealers complained to Fastline about dealers advertising prices, including discount prices, for new farm equipment in the *Fastline Kentucky Farm Edition*. The price advertisements were, among other things, facilitating downward pressure on prices for new farm equipment. In protest, several dealers withheld their advertising from the *Fastline Kentucky Farm Edition* until Fastline agreed not to publish advertisements that included prices for new farm equipment.

Price advertisements for new farm equipment began to reappear in the *Fastline Kentucky Farm Edition* by the end of 1991. In early 1992, Fastline was invited to the annual meeting of the Kentucky Retailers Association, during which several of its members expressed their dislike for price advertising and threatened to withdraw or otherwise cancel their advertisements in the *Fastline Kentucky Farm Edition* if Fastline continued to publish advertisements that included prices for new equipment. Fastline, threatened with the loss of substantial advertising

revenue, acquiesced and stopped accepting advertisements that included prices for new equipment. Following the merger of the Kentucky and Indiana trade associations, Mid-America sought and obtained Fastline's reaffirmation of the agreement not to publish prices for new equipment in the *Fastline Kentucky Farm Edition*.

These agreements have injured consumers by: (1) reducing price competition among farm equipment dealers for new farm equipment; (2) depriving consumers of truthful and nondeceptive price information; and (3) depriving consumers of the benefits of competition.

The Proposed Consent Order

Fastline and Mid-America have signed a consent agreement containing a proposed order. Part II of the proposed order would enjoin Mid-America from impeding the advertising of prices or other terms of sale for farm equipment or parts. Additionally, Mid-America would be enjoined from participating in or assisting in any boycott regarding the advertising or prices or other terms of sale for farm equipment or parts.

Part III of the proposed order would enjoin Fastline from agreeing to prohibit or restrict the advertising or prices or other terms of sale for farm equipment or parts. Notwithstanding this provision, however, the proposed order would not prevent Fastline from adopting and enforcing reasonable guidelines with respect to advertisements that Fastline reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

Part IV of the proposed order would require Mid-America to amend its by-laws to incorporate by reference Paragraph II of the order, and distribute a copy of the amended by-laws to each of its members. In addition, the proposed order would require Mid-America to distribute copies of the proposed order and accompanying complaint to: (a) Persons whose activities are affected by the order; or who have responsibilities with respect to the subject matter of the order, and (b) each of its members.

Part V of the proposed order would require Fastline to distribute copies of the order and accompanying complaint to persons whose activities are affected by the order, or who have responsibilities with respect to the subject matter of the order. In addition, the proposed order would require Fastline to publish annually for each of the next five years in each edition of its farm equipment buying guides a copy of the NOTICE attached to the order.

Parts VI, VII, and VIII of the proposed order impose certain reporting requirements in order to assist the Commission in monitoring compliance with the order.

The proposed consent order would terminate twenty (20) years after the date it is issued.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–13141 Filed 5–15–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 952–3235]

Western Direct Marketing Group, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violation of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 17, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW. Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S–4002, Washington, DC 20580. (202) 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 12, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Western Direct Marketing Group (''WDMG'') and Western Intentional Media Corporation (''WIMC'').

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdrawn from the agreement or make final the agreement's proposed order.

This matter involves alleged deceptive representations for Cholestaway, a dietary supplement marketed by Bodgana Corporation, purported to lower serum cholesterol. Advertisements for the product included 30-minute television infomercials.

WDMG is the successor corporation to Television Marketing Group, the advertising agency for the Cholestaway television infomercials. MIMC is WDMG's corporate parent.

According to the FTC complaint, through the infomercials, the respondent made claims that Cholestaway: significantly lowers serum cholesterol levels; significantly lowers serum cholesterol levels without changes in diet; significantly lowers serum cholesterol levels and causes significantly weight loss even if users eat foods high in fat, including fried chicken and pizza; substantially reduces or eliminates the body's absorption of dietary fat; lowers low density lipoprotein cholesterol and improves the high density lipoprotein cholesterol to low density lipoprotein cholesterol ratio; is effective in the treatment of hardening of the arteries and heart diseases; causes significant weight loss; causes significant weight loss without changes in diet; significantly reduces blood triglyceride levels; significantly reduces elevated blood pressure; and is scientifically proven to lower serum cholesterol levels and reduce elevated blood pressure significantly; and that

testimonials from consumers appearing in the advertisements for Cholestaway reflect the typical or ordinary experience of members of the public who use the product. The complaint alleges that the respondents did not have a reasonable basis for any of these representations at the time they were made.

The consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the order prohibits the respondents from making the representations challenged in the complaint, unless they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Part II prohibits respondents from making any representations about the efficacy, performance, safety or benefits of any food, dietary supplement of drug unless they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Part III prohibits the respondents from mispresenting the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

Part IV prohibits the respondents from representing that the experience represented by a user testimonial or endorsement of the product is the typical or ordinary experience of users of the product unless the representation is substantiated or they disclose what the generally expected results would be or that consumers should not be expect the same results.

Part V allows the respondents to make respondentations for any drug that are permitted in labeling for that drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA.

Part VI allows the respondents to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts VII through X require the respondents to keep copies of advertisements making representations covered by the order; to keep records concerning those representations, including materials that they relied upon making the representations; to provide copies of the order to certain of the respondents' personnel; to notify the Commission of changes in corporate structure; and to file complaint reports with the Commission. Part XI provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and its is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–13142 Filed 5–15–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Financial Status Reporting Form (SF–269) with Supplemental Form (ADD–02) for Developmental Disabilities Council Program.

OMB No.: 0980–0212.

Description: Developmental Disabilities Council Program funds are awarded contingent on fiscal requirements in Part B of the Developmental Disabilities Assistance and Bill of Rights Act. The SF–269, mandated in the revised OMB Circular A–102, provides no breakouts necessary for proper stewardship. The proposed alternative would breakout the necessary information, but would do so in a consolidated manner that makes reporting easier. It will allow proactive compliance monitoring by the Government to catch problems early.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of respondents per respondent	Average burden hours per response	Total burden hours
ADD–02	55	2	90	990
Estimated Total Annual Burden Hours: 990				

In Compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 13, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–13111 Filed 5–15–98; 8:45 am]

BILLING CODE 4104–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Voluntary Surveys of Program Partners to Implement Executive Order

12862 in the Administration for Children and Families.

OMB No. 0980–0266.

Description: Under the provisions of the Federal Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Administration for Children and Families (ACF) is requesting clearance for instruments to implement Executive Order 12862 within the ACF. The purpose of the data collection is to obtain customer satisfaction information from those entities who are funded to be our partners in the delivery of services to the American public. ACF partners are those entities that receive funding to deliver services or assistance from ACF programs. Examples of partners are States and local governments, territories, service providers, Indian Tribes and Tribal organizations, grantees, researchers, or other intermediaries serving target populations identified by and funded directly or indirectly by ACF. The surveys will obtain information about how well ACF is meeting the needs or our partners in operating the ACF programs.

Respondents: State, Local, Tribal Govt. or Not-for-Profit Institutions

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Governments	51	10	1	510
Head Start grantees & Delegates	200	1	.5	100
Other Discretionary Grant Programs	200	10	.5	1,000
Indian Tribes & tribal Organizations	25	10	.5	50
Estimated Total Annual Burden Hours: 1,660				

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment in the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the qualify, utility, and clarify of the information to be collected; and (d) ways to minimize the burden of the collection on information on respondents, including through the use of automated collection techniques or other forms on information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 13, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–13112 Filed 5–15–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0513]

Agency Information Collection Activities; Orphan Drugs: Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by June 17, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attention: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Orphan Drugs—21 CFR Part 316—(OMB No. 0910–0167—Reinstatement)

Sections 525 through 528 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360aa through 360dd), give FDA statutory authority to: (1) Provide recommendations on investigations required for approval of marketing applications for orphan drugs; (2) designate eligible drugs as orphan drugs; (3) set forth conditions under which a sponsor of an approved orphan drug obtains exclusive approval; and (4) encourage sponsors to make orphan drugs available for treatment on an ''open protocol'' basis before the drug has been approved for general marketing. The implementing regulations for these statutory requirements have been codified under part 316 (21 CFR part 316) and specify procedures that sponsors of orphan drugs use in availing themselves of the incentives provided for orphan drugs in the act and set forth procedures FDA will use in administering the act with regard to orphan drugs. Section 316.10 specifies the content and format of a request for written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of marketing applications. Section 316.12 provides that, before providing such recommendations, FDA may require results of studies to be submitted for review. Section 316.14 contains provisions permitting FDA to refuse to provide written recommendations under certain circumstances. Within 90 days of any refusal, a sponsor may submit additional information specified by FDA. Section 316.20 specifies the content and format of an orphan drug

application which includes requirements that an applicant document that the disease is rare (affects fewer than 200,000 persons in the United States annually) or that the sponsor of the drug has no reasonable expectation of recovering costs of research and development of the drug. Section 316.26 allows an applicant to amend the application under certain circumstances. Section 316.30 requires submission of annual reports, including progress reports on studies, a description of the investigational plan, and a discussion of changes that may affect orphan status. The information requested will provide the basis for an FDA determination that the drug is for a rare disease or condition and satisfies the requirements for obtaining ophan drug status. Secondly, the information will describe the medical and regulatory history of the drug. The respondents to this collection of information are biotechnology firms, drug companies, and academic clinical researchers. FDA estimates the burden of this collection of information as follows:

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
316.10, 316.12, and 316.14	0	0	0	0	0
316.20, 316.21, and 316.26	90	1.78	160.20	125	20,025
316.22	5	1	5	2	10
316.27	5	1	5	4	20
316.30	450	1	450	2	900
316.36	.2	3	.6	15	9
Total Burden Hours	.....	.....	.....	.....	20,964

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The information requested from respondents represents, for the most part, an accounting of information already in possession of the applicant. It is estimated, based on the frequency of requests over the past 5 years, that 90 persons or organizations per year will request orphan drug designation and that no requests for recommendations on design of preclinical or clinical studies will be received. Based upon FDA experience over the last decade, FDA estimates that the effort required to prepare applications to receive consideration for sections 525 and 526 of the act (§§ 316.10, 316.12, 316.20, and 316.21) is generally similar and is estimated to require an average of 95 hours of professional staff time and 30 hours of support staff time per application. Estimates of annual activity and burden for foreign sponsor nomination of a resident, agent, change in ownership or designation, and inadequate supplies of drug in exclusivity, are based on total experience by FDA with such requests since 1983.

Dated: May 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–13042 Filed 5–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0286]

Environmental Assessments and Findings of No Significant Impact

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has reviewed environmental assessments (EA's) and issued findings of no significant impact (FONSI's) relating to the 167 new drug applications (NDA's) and supplemental applications listed in this document. FDA is publishing this notice because Federal regulations require public notice of the availability of environmental documents.

ADDRESSES: The EA's and FONSI's may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, or a copy may be requested by writing the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy B. Sager, Center for Drug Evaluation and Research (HFD–357), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5629.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act of 1969 (NEPA), Congress declared that it will be the continuing policy of the Federal Government to ''use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans.'' (See 42 U.S.C. 4331(a).) NEPA requires all Federal agencies to include in every proposal for major Federal actions significantly affecting the quality of the human environment, a detailed statement assessing the environmental impact of, and alternatives to, the proposed action and to make available to the public such statements. (See 42 U.S.C. 4332, 40 CFR 1506.6, and 21 CFR 25.51(b).)

FDA implements NEPA through its regulations in part 25 (21 CFR part 25). Under those regulations, actions to approve NDA's, abbreviated new drug applications (ANDA's), and supplements to existing approvals ordinarily require the preparation of an EA. (See § 25.20(l).)

FDA approved 167 NDA's and supplemental NDA's and ANDA's for the products listed in the following table:

Drug	Application Number
Klonopin (clonazepam) Tablets	17–533/S–023
Ativan (lorazepam) Injection	18–140/S–003
Rythmol (propafenone hydrochloride) Tablets	19–151/S–002
Novantrone (mitoxantrone hydrochloride) for Injection	19–297/S–014
Actigall (ursodiol) Capsules	19–594/S–016
Humatrope (somatropin) for Injection	19–640/S–013 and S–018
Asacol (mesalamine) Tablets	19–651/S–005
Tilade (nedocromil sodium) Inhalation Aerosol	19–660/S–015
Zoladex (goserelin acetate) Implant	19–726/S–018
Prilosec (omeprazole) Capsules	19–810/S–036
Soriatane (acitretin) Capsules	19–821
Zoloft (sertraline hydrochloride) Tablets	19–839/S–002 and S–011
Corlopam (fenoldopam mesylate) for Injection	19–922
Zofran (ondansetron hydrochloride) Tablets	20–103/S–005
Astelin (azelastine hydrochloride) Nasal Spray	20–114
Migranal (dihydroergotamine mesylate) Nasal Spray	20–148
Lovenox (enoxaparin sodium) Injection	20–164/S–008
Nicoderm (nicotine) Transdermal	20–165/S–011
Imdur (isosorbide mononitrate) Tablets	20–225
Normiflo (ardeparin sodium) Injection	20–227
Tegretol-XR (carbamazepine) Tablets	20–234
Lescol (fluvastatin sodium) Capsules	20–261/S–012
Junior Strength Advil (ibuprofen) Tablets	20–267
Genotropin (somatropin) for Injection	20–280/S–008
Coreg (carvedilol) Tablets	20–297/S–001
Kytril (granisetron hydrochloride) Tablets	20–305
Nizoral A–D (ketoconazole) Shampoo	20–310
Agrelin (anagrelide hydrochloride) Capsules	20–333
Famvir (famciclovir) Tablets	20–363/S–012
Niaspan (niacin) Tablets	20–381
Zanaflex (tizanidine hydrochloride) Tablets	20–397
Zofran (ondansetron hydrochloride) Injection	20–403
Avita (tretinoin) Cream	20–404
Lanoxin (digoxin) Tablets	20–405
Prevacid (lansoprazole) Capsules	20–406/S–010 and S–011
Gastromark (ferumoxsil) Suspension	20–410
Genesa (arbutamine hydrochloride) Injection	20–420
Orgaran (danaparoid sodium) Injection	20–430
Pulmicort (budenoside) for Inhalation	20–441
Imodium A–D (loperamide hydrochloride) Tablets	20–448
Pandel (hydrocortisone buteprate) Cream	20–453
Galzin (zinc acetate) Capsules	20–458
Nasalcrom (cromolyn sodium) Nasal Spray	20–463
Nasacort AQ (triamcinolone acetonide) Nasal Spray	20–468/S–002
Zyflo (zileuton) Tablets	20–471
Retin–A Micro (tretinoin) Gel	20–475
Vanceril (beclomethasone dipropionate) Inhalation Aerosol	20–486
Alphagen (brimonidine tartrate) Solution	20–490
Fareston (toremifene citrate) Tablets	20–497
Transderm Scop (scopolamine) Transdermal	20–501
Hydrochlorothiazide Capsules	20–504
Topamax (topiramate) Tablets	20–505
Aphthasol (amlexanox) Paste	20–511
Lupron Depot (leuprolide acetate) for Injection	20–517/S–002
Retrovir (zidovudine) Tablets	20–518
Loprox (ciclopirox) Gel	20–519
Condylox (podofilox) Gel	20–529
Duract (bromfenac sodium) Capsules	20–535
Norplant II (levonorgestrel) Implant	20–544
Flovent (fluticasone propionate) for Inhalation	20–549
Valtrex (valacyclovir hydrochloride) Caplets	20–550/S–003
Fosamax (alendronate sodium) Tablets	20–560/S–003
Quadramet (samarium sm–153 lexidronam pentasodium) for Injection	20–570
Flomax (tamsulosin hydrochloride) Capsules	20–579
Cotazym (pancrelipase) Capsules	20–580
Follistim (follitropin) for Injection	20–582
Depacon (valproate sodium) Injection	20–593
Tazorac (tazarotene) Gel	20–600
Junior Strength Motrin (ibuprofen) Tablets	20–601
Zofran (ondansetron hydrochloride) Solution	20–605
Imodium (loperamide hydrochloride/simethicone) Tablets	20–606
Arthrotec (diclofenac sodium/misoprostol) Tablets	20–607

Drug	Application Number
Dovonex (calcipotriene) Solution	20–611
Pytest (C–14 urea) Capsules	20–617
Betoptic Pilo (betaxolol hydrochloride/pilocarpine hydrochloride) Suspension	20–619
Copaxone (copolymer–1) for Injection	20–622
Anzemet (dolasetron mesylate) Tablets	20–623
Anzemet (dolasetron mesylate) Injection	20–624
Imitrex (sumatriptan) Nasal Spray	20–626
Meridia (sibutramine hydrochloride monohydrate) Capsules	20–632
Levaquin (levofloxacin) Tablets	20–634
Levaquin (levofloxacin) Injection	20–635
Seroquel (quetiapine fumarate) Tablets	20–639
Gabitril (tiagabine hydrochloride) Tablets	20–646
Diastat (diazepam) Gel	20–648
Edex (alprostadil) for Injection	20–649
Teslascan (mangafodipir trisoodium) Injection	20–652
Alora (estradiol) Transdermal	20–655
Sporanox (itraconazole) Solution	20–657
Requip (ropinirole hydrochloride) Tablets	20–658
Butenafine Hydrochloride Cream	20–663
Dostinex (cabergoline) Tablets	20–664
Diovan (valsartan) Capsules	20–665
Mirapex (pramipexole) Tablets	20–667
Lexxel (enalapril maleate/felodipine) Tablets	20–668
Zagam (sparfloxacin) Tablets	20–677
Clinimix E Sulfite-free (amino acid with electrolytes in dextrose with calcium) Injection	20–678
Ortho Tri-Cyclen (norgestimate/ethinyl estradiol) Tablets	20–681
Glyset (miglitol) Tablets	20–682
Alesse (ethinyl estradiol/levonorgestrel) Tablets	20–683
Lumenhance (manganese chloride tetrahydrate) Solution	20–686
Patanol (olopatadine hydrochloride) Solution	20–688
Posicor (mibefradil dihydrochloride) Tablets	20–689
Aricept (donepezil hydrochloride) Tablets	20–690
Serevent (salmeterol xinafoate) for Inhalation	20–692
Sporanox (itraconazole) Capsules	20–694
Raxar (grepafloxacin hydrochloride) Tablets	20–695
Effexor XR (venlafaxine hydrochloride) Capsules	20–699
Muse (alprostadil) Suppository	20–700
Crinone (progesterone) Gel	20–701
Lipitor (atorvastatin calcium) Tablets	20–702
Claritin EZ (loratadine) Tablets	20–704
Rescriptor (delavirdine mesylate) Tablets	20–705
Emadine (emedastine difumarate) Solution	20–706
Skelid (tiludronate disodium) Tablets	20–707
Lupron Depot (leuprolide acetate) for Injection	20–708
Paxil (paroxetine hydrochloride) Suspension	20–710
Zyban (bupropion hydrochloride) Tablets	20–711
Carbatrol (carbamazepine) Capsules	20–712
Nicotrol (nicotine) for Inhalation	20–714
Vicoprofen (hydrocodone bitartrate/ibuprofen) Tablets	20–716
Prelay (troglitazone) Tablets	20–719
Rezulin (troglitazone) Tablets	20–720
Aldara (imiquimod) Cream	20–723
Femara (letrozole) Tablets	20–726
Uniretic (moexipril hydrochloride/hydrochlorothiazide) Tablets	20–729
Clinimix Sulfite-free (amino acid in dextrose) Injection	20–734
Teveten (eprosartan mesylate) Tablets	20–738
Baycol (cerivastatin) Tablets	20–740
BSS (balanced salt) Solution	20–742
Noritate (metronidazole) Cream	20–743
Tilade (nedocromil sodium) Inhalation Solution	20–750
Crinone (progesterone) Gel	20–756
Avapro (irbesartan) Tablets	20–757
Irbesartan/hydrochlorthiazide Tablets	20–758
Trovan (trovafloxacin mesylate) Tablets	20–759
Trovan (alatrovafloxacin mesylate) Injection	20–760
Nasonex (mometasone furoate) Nasal Spray	20–762
Propulsid Quicksolv (cisapride) Tablets	20–767
Zomig (zolmitriptan) Tablets	20–768
Viracept (nelfinavir mesylate) for Solution	20–778
Viracept (nelfinavir mesylate) Tablets	20–779

Drug	Application Number
Cipro (ciprofloxacin) for Suspension	20–780
Allegra-D (fexofenadine hydrochloride/pseudoephedrine hydrochloride) Tablets	20–786
Cardizem (diltiazem hydrochloride) for Injection	20–792
Floxin (ofloxacin) Solution	20–799
Fortovase (saquinavir) Capsules	20–828
Prograf (tacrolimus) Capsules	50–708
Prograf (tacrolimus) Capsules	50–708/S–008
Helidac (bismuth subsalicylate tablets, metronidazole tablets, and tetracycline hydrochloride capsules)	50–719
Cellcept (mycophenolate mofetil) Tablets	50–723
Amphotec (amphotericin B) Cholesteryl Sulfate for Injection	50–729
Zithromax (azithromycin) for Injection	50–733
Idamycin-PFS (idarubicin hydrochloride) Injection	50–734
Neoral (cyclosporine) Capsules	50–735
Neoral (cyclosporine) Solution	50–736
Neoral (cyclosporine) Capsules	50–737
Neoral (cyclosporine) Solution	50–738
Omnicef (cefdinar) Capsules	50–739
Ambisome (amphotericin B) Liposome for Injection	50–740
Stromectol (ivermectin) Tablets	50–742
Bactroban (mupirocin calcium) Cream	50–746
Omnicef (cefdinir) Suspension	50–749
Primsol (trimethoprim hydrochloride) Solution	74–374/S–002

As part of its review of each of the NDA's and supplements listed in this table, FDA reviewed an EA. In each instance, FDA found that the approval of the NDA or supplement will not significantly affect the human environment. In accordance with the Council on Environmental Quality regulations in 40 CFR 1501.4(e) and FDA regulations in § 25.41, FDA prepared a FONSI for each NDA and supplement. This notice announces that the EA's and FONSI's for these human drug products may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. For a fee, copies of these EA's and FONSI's may be obtained by writing the Freedom of Information Staff (address above). The request should identify by the application number the EA's and FONSI's requested. Separate requests should be submitted for each application number. Additional information regarding the submission of freedom of information requests is available on the Internet at http://www.fda.gov/opacom/backgrounders/foiahand.html.

Dated: May 7, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–13045 Filed 5–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0486]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 11, 1997 (62 FR 65274), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct
or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0045. The approval expires on April 30, 2001.

Dated: May 7, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–13044 Filed 5–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–339]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions;

(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Provider Cost Report Reimbursement Questionnaire and Supporting Regulations in 42 CFR 405.465, 405.481, 413.20, and 413.24; *Form No.:* HCFA–339 (OMB# 0938–0301); *Use:* The Medicare Provider Cost Report Reimbursement Questionnaire must be completed by all providers to assist in preparing an acceptable cost report, to ensure proper Medicare reimbursement, and to minimize subsequent contact between the provider and its fiscal intermediary. It is designed to answer pertinent questions about key reimbursement concepts found in the cost report and to gather information necessary to support certain financial and statistical entries on the cost report. In addition, it provides an audit trail for the fiscal intermediary. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, local and tribal government; *Number of Respondents:* 30,607; *Total Annual Responses:* 30,607; *Total Annual Hours:* 1,239,584.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 11, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–13158 Filed 5–15–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the Merit Review Ad Hoc Subcommittee of the National Advisory Council on Alcohol Abuse and Alcoholism.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Merit Review Ad Hoc Subcommittee of the National Advisory Council on Alcohol Abuse and Alcoholism.

Date of Meeting: June 3, 1998.

Time: 8:00 p.m. to adjournment.

Place of Meeting: Pooks Hill Marriott Hotel, Bethesda, MD 20814.

Contact Person: Mark Green, Ph.D., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–2860.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: May 12, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–13148 Filed 5–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute on Alcohol Abuse and Alcoholism Initial Review Group:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Clinical and Treatment Subcommittee.

Dates of Meeting: June 18–19, 1998.

Time: June 18, 8:30 a.m. to recess. June 19 8:30 a.m. to adjournment.

Place of Meeting: Holiday Inn Oceanfront, Palm Meeting Room, Hilton Head Island, South Carolina, 29938.

Contact Person: Elsie D. Taylor, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–9787.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Biochemistry, Physiology and Medicine Subcommittee.

Dates of Meeting: June 18–19, 1998.

Time: June 18, 3:30 p.m. to recess. June 19, 8:30 a.m. to adjournment.

Place of Meeting: Radisson Suite Resort, Hilton Head Island, 12 Park Lane, Hilton Head, South Carolina, 29928.

Contact Person: Ron Suddendorf, Ph.D., 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–2926.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: May 12, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–13149 Filed 5–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: NIAID Malaria Research and Reference Reagent Repository.

Date: May 27, 1998.

Time: 8:00 a.m. to Adjournment.

Place: Holiday Inn, Georgetown, Mirage I Meeting Room, 2101 Wisconsin Avenue, N.W., Washington, D.C. 20037, (202) 338–4600.

Contact Person: Dr. Anna Ramsey-Ewing, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C37, Bethesda, MD 20892, (301) 435–8536.

Purpose/Agenda: To evaluate contract proposals.

Name of SEP: Malaria: Clinical Research and Trial Preparation Sites in Endemic Areas.

Date: May 28–29, 1998.

Time: 8:00 a.m. to Adjournment.

Place: Holiday Inn, Georgetown, Mirage I Meeting Room, 2101 Wisconsin Avenue, N.W., Washington, D.C. 20037, (202) 338–4600.

Contact Person: Dr. Anna Ramsey-Ewing, Scientific Review Adm., 6003 Executive Boulevard Solar Bldg., Room 4C37, Bethesda, MD 20892, (301) 435–8536.

Purpose/Agenda: To evaluate contract proposals.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 11, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–13150 Filed 5–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the Diabetes and Digestive and Kidney Diseases Special Grant Review Committees, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) for June 1998.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee B.

Date: June 9, 1998.

Time: 8:00 a.m.—Adjournment.

Place: HOLIDAY INN BETHESDA, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, Telephone: (301) 652–2000.

Contact Person: Ned Feder, M.D., Scientific Review Administrator, Natcher Building, Room 6AS–25S, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8890.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee C.

Date: June 18, 1998.

Time: 8:30 a.m.—Adjournment.

Place: EMBASSY SUITES HOTEL, 1300 Jefferson Davis Highway, Crystal City, Virginia 22202, Telephone: (703) 979–9799.

Contact Person: Daniel Matsumoto, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8894.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee D.

Date: June 12, 1998.

Time: 8:00 a.m.—Adjournment.

Place: DOUBLETREE HOTEL, 1750 Rockville Pike, Rockville, Maryland 20852, Telephone: (301) 230–6783.

Contact Person: Ann A. Hagan, PH.D., Scientific Review Administrator, Natcher Building, Room 6AS–37F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8886.

Purpose/Agenda: To review and evaluate research grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: May 11, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–13151 Filed 5–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–5–01 P.

Date: June 22–24, 1998.

Time: 7:30 PM.

Place: Radisson Hotel Dallas, 1893 West Mockingbird Lane, Dallas, Texas 75235, Telephone: (214) 634–8850.

Contact: Francisco O. Calvo, Ph.D., Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8897.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: May 11, 1998.

Anna Snouffer,

Acting NIH Committee Management Officer, NIH.

[FR Doc. 98–13152 Filed 5–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meeting.

Purpose/Agenda: To review and evaluate contract proposals.

Name of Committee: NIDA Special Emphasis Panel (contract Review—''NIDA Notes'').

Date: May 14, 1998.

Time: 9:30 a.m.

Place: Parklawn Building, Conference A, 3rd Floor, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Mr. Lyle Furr, Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Program)

Dated: May 12, 1998.

Anna Snouffer,

Acting NIH Committee Management Officer.

[FR Doc. 98–13153 Filed 5–15–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Refugee Resettlement Program: Availability of FY 1998 Targeted Assistance and Social Services Discretionary Funding

AGENCY: Office of Refugee Resettlement, ACF, DHHS.

ACTION: Notice of availability of FY 1998 Targeted Assistance discretionary funds to States and of the availability of FY 1998 Social Services discretionary funds for services to refugees.

SUMMARY: This program announcement governs the availability of and award procedures for $9,900,000 in FY 1998 Targeted Assistance discretionary grants (TAG) for services to refugees.[1] Further, this announcement governs the availability of, and award procedures for approximately $1,300,000 in FY 1998 Social Services discretionary funds for the Community and Family Strengthening (CFS) Program.

Applicants may request a project period of up to two years, with an initial budget period of one year. Where awards are for multiple-year project periods, applications for continuation grants will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, successful progress of the project, and ACF's determination that this would be in the best interest of the government.

The Office of Refugee Resettlement (ORR) will accept competing applications for grants pursuant to the Director's discretionary authority under section 412(c)(1) of the Immigration and Nationality Act (INA), as amended by section 311 of the Refugee Act of 1980 (Pub. L. 96–212), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c) of the INA, as cited above; and the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605).

This Program Announcement consists of three parts:

Part I covers supplemental information on available funds, legislative authorities, eligible applicants, and the priority areas to be considered.

Part II, Priority Areas Under Which Grants and Cooperative Agreements Will Be Awarded, describes the four priority areas under which ORR is requesting applications. Grants and cooperative agreements will be awarded for the purposes described below under TAG and under the Social Services CFS program. ORR will make awards in the following priority areas:

(1) Targeted assistance
(2) Microenterprise development
(3) Self-sufficiency services to offset the impact of large refugee families on local communities
(4) Refugee community and family strengthening social services.

Each Priority Area below includes the following sections which provide area-specific information to be used to develop an application for ORR funds: A. Purpose, B. Allowable Activities, and C. Review Criteria.

Part III, General Application Information and Guidance, describes application procedures for Priority Areas 1 through 4 and should be consulted in developing an application for *any* of the priority areas. It also contains information on the availability of forms, where and how to submit an application, instructions for completing the SF–424, the intergovernmental review, and reporting requirements.

CLOSING DATE: The closing date for submission of applications is July 10, 1998. Applications postmarked after the closing date will be classified as late and will not be considered in the current competition.

FOR FURTHER INFORMATION REGARDING THIS ANNOUNCEMENT, CONTACT: Kathy Do, TAG Program Manager, at (202) 401–4579 for information regarding Priority Areas 1, and 3; for Priority Area 2, please contact Marta Brenden, Refugee Microenterprise Program Manager, at (202–205–3589) or e-mail: mbrenden@acf.dhhs.gov; and for Priority Area 4, contact Anna Mary Portz, CFS Program Manager, telephone (202) 401–1196, or e-mail: aportz@acf.dhhs.gov. You may address correspondence to the contact person as follows: Administration for Children and Families, ORR/Division of Community Resettlement, 370 L'Enfant Promenade, SW, 6th Floor, Washington, DC 20447.

Part I

SUPPLEMENTARY INFORMATION:

Legislative Authority

Targeted assistance discretionary grants are awarded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs

[1] In addition to persons who meet all requirements of 45 CFR 400.43, ''Requirements for documentation of refugee status,'' eligibility for targeted assistance includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term ''refugee'' is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the targeted assistance program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), 1991 (Pub. L. 101–513), and 1998 (Pub. L. 105–118).

Background

Section 412(c)(1)(A) of the INA authorizes the Director of ORR ''to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director * * * health, social adjustment services, social services, educational and other services.''

The targeted assistance discretionary program reflects the requirements of section 412(c)(2)(A) of the INA, which provides authority for the Director of ORR ''to make grants to States for assistance to counties and similar areas in the States where, because of factors such as unusually large refugee populations (including secondary migration), high refugee concentrations, and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of available resources for services to refugees.'' Paragraph (2)(B) states, ''Grants shall be made available * * * (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity.''

The Department's FY 1998 Appropriation (Pub. L. 104–134) provides $415,000,000 for refugee and entrant assistance activities to be distributed by formula and through discretionary grants for special projects.

The Office of Refugee Resettlement has available an additional $5,000,000 in FY 1998 funds for the targeted assistance discretionary program through the Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–107). These funds are to augment the discretionary program for localities most impacted by the influx of refugees such as Laotian Hmong, Cambodians and Soviet Pentecostals, and are included in this announcement.

Services Provided Through ORR Discretionary Programs Are Not Restricted to Refugees Arriving Within the Last Five Years

Availability of Funds

Approximately $11.2 million will be awarded in FY 1998 through this Announcement. ORR expects to award approximately $4,300,000 in FY 1998 TAG discretionary funds in Priority Area 1: Targeted Assistance Grants (TAG), through 15–20 grants and cooperative agreements ranging from $150,000 to $300,000 per budget period. In Priority Area 2: Microenterprise, ORR anticipates making three individual new awards ranging from $150,000 to $250,000 and totaling approximately $600,000 from TAG funds. In Priority Area 3: Self-Sufficiency Services for Impacted Communities, ORR expects to make approximately 5 awards totaling $5 million, with no single grant or cooperative agreement exceeding $3,500,000. ORR expects to award a total of $1,300,000 in FY 1998 Social Services discretionary funds in Priority Area 4: Community Family Strengthening (CFS), to approximately 10 projects ranging from $80,000 to $250,000.

The Catalog of Federal Domestic Assistance (CFDA) Number Assigned to This Announcement is 93.576

The Director reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government. Applicants may be required to reduce the scope of selected projects to accommodate the amount of the approved grant award. Where ORR anticipates substantial involvement with the grantee during the performance of the project, the award action will include a cooperative agreement.

A State may not budget or retain for State administration more than 5% of a TAG discretionary grant award. Where the State chooses to implement the projects by awarding funds through county governments, States and counties may each retain a maximum of 5% of the funds awarded for administration.

Eligible State applicants may apply for more than one of Priority Areas 1–4 as described above; however each State should submit one application (e.g. a single SF 424A) with a full component description labeled by Priority Area including a budget justification and narrative for each distinct project. In addition, component budgets should be individually detailed on the SF 424B and the aggregate Total should correlate to the Estimated Funding on the SF 424A. Applicants applying for microenterprise development activities under Priority Areas 1 or 3 are referred to Priority 2 of this announcement for guidance in the preparation of the relevant section of their application.

Eligible Applicants and Grantees

States are the eligible recipients of TAG funds. Therefore, applications in Priority Areas 1–3 described below are restricted to States or their representatives. Applications will be considered from all States, regardless of whether any communities in the State qualify for funding under the formula TAP grant program.

Eligible TAG applicants are (a) those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5, and (b) an agency which has State-wide responsibility for an alternative to the State-administered program in lieu of the State under a Wilson/Fish grant.

Eligible Applicants for Priority Area 4 Are any Public or Private, Nonprofit Organization

Current CFS grantees whose projects end by September 30, 1998 are encouraged to participate under Priority Areas 1, 2, 3 or 4, as appropriate.

Coalitions—Refugee programs and local organizations, which have not already done so, are encouraged to build coalitions for the purpose of providing services funded under this announcement. The activities funded by these grants are intended to serve as a catalyst to bring the community together to address the economic and social problems of refugee families and the refugee community. The goal in all cases should be to build and strengthen the community's capacity to serve its members in improving the quality of life and standard of living for refugee families.

ORR strongly encourages single applications from partnerships or consortia of three or more eligible organizations. Applicants must demonstrate that wherever potential

partners for collaboration exist, the applicant, at a minimum, has planned the proposed activities in collaboration with these potential partners. Partners may be in the refugee services provider community of organizations and institutions or in mainstream services organizations, e.g., adult basic education providers, child care coalitions, women's shelters. Collaboration might also include the Mayor's office, school parent-teacher groups, local police departments, and other mainstream community service organizations.

The process of coalition-building is key to strengthening cooperation and coordination among the local service providers, community leaders, Mutual Assistance Associations, voluntary agencies, churches, and other public and private organizations involved in refugee resettlement or community service. ORR intends that this process will be part of local efforts to build strategic partnerships among these groups to expand their capacity to serve the social and economic needs of refugees and to give support and direction to ethnic communities facing problems in economic independence and social adjustment.

In this context, ORR is defining partnership as a formal negotiated arrangement among organizations that provides for a substantive collaborative role for each of the partners in the planning and conduct of the project. Applications which represent a coalition of providers should include a signed partnership agreement stating a commitment or an intent to commit or receive resources from the prospective partner(s) contingent upon receipt of ORR funds. The agreement should state how the partnership arrangement relates to the objectives of the project. The applicant should also include: Supporting documentation identifying the resources, experience, and expertise of the partner(s); evidence that the partner(s) has been involved in the planning of the project; and a discussion of the role of the partner(s) in the implementation and conduct of the project.

Part I Priority Areas Under Which Grants and Cooperative Agreements Will Be Awarded

PRIORITY AREA 1: Targeted Assistance Grants (TAG)

A. Purpose

The purpose of funding for TAG grants is to encourage States to address special services needs which cannot be met with the formula social services or targeted assistance grants.

The objective of the activities proposed should be self-sufficiency for refugees and refugee families. A project may include a combination of outcomes designed to assist families to increase income and/or to avoid or end reliance on public assistance. Services should be linguistically and culturally appropriate and service providers should demonstrate staff capacity in this regard.

ORR is particularly interested in projects which propose to serve special refugee populations including youth, women, and Former Political Prisoners.

B. Allowable Activities

Listed below are examples of services. They are not intended to limit potential applicants in their consultation with the refugee communities to plan and design projects. Where projects include ELT technical assistance services, for example, ORR would anticipate substantial Federal involvement in the selection of service-recipient agencies and programs and in the selection of materials and subjects for the Internet web-site.

Applicants may propose all or some combination of the following or may propose other strategies to address refugee self-sufficiency:

Specialized English Language Training (ELT)

—Specialized classes for specific industries in conjunction with employers.

—Specialized instruction in pre-employment competency-based ELT for targeted groups, e.g., limited English speaking individuals with non-transferrable job skills, homebound women, pre-literate refugees, and the elderly.

—Occupational and vocational English language training, particularly in collaboration with specific employers and with their active participation; ELT at sites of employment; ELT as part of an integrated employment program (e.g., one stop services).

Specialized Training and Employment-Related Activities

—Training specific to the employment job opportunities through an employer or industry in the community. These activities should be jointly designed with the employer and show employer contribution and commitment to employing the trainees, e.g., training of bilingual education aides for the school system, training of health aides for placement in the health care system.

—On-the-job training and short-term skills training targeted to the local job market;

—Incentives for refugees to seek and maintain employment and to avoid welfare;

—Job placement and post-placement services to help refugees retain employment or sustain self-sufficiency. Examples include supportive services, such as transportation, interpreter assistance, access to childcare resources (e.g. kinship day care or care of dependents in the household), and job upgrades.

—Income generation through self-employment projects including assistance in small business creation or expansion, business training and technical assistance, credit in the form of microloans, and the administrative costs of managing a microloan fund.

Community Education

—Classes in parenting skills, including information about U.S. cultural and legal issues, e.g., corporal punishment, generational conflict, and child abuse.

—Assistance to parents in connecting with the school system and other local community organizations.

—Orientation to health care and assistance for accessing low-cost health service, including orientation on health insurance, health maintenance organizations, preventive health measures, and the availability of health services for low income families.

Community Centers and Organizing

—Assistance to refugee communities to enhance their ability to assimilate and acculturate to their new life in the U.S.

—Mentoring and Peer Support Programs, such as, pairing participant individuals or families with community volunteers. Programs should target refugees who are not otherwise receiving core services, and mentoring should target identified needs and provide peer support for resolution of problems. The purposes are to solve individual, family, and community problems with the support of peers and to solve common problems through group action.

—Operating community centers for the delivery of services to refugee individuals and families. Centers may also be used for recreation, child care, information and referral services, and community gatherings. (Costs related to construction or renovation will not be considered, and costs for food or beverages are not allowable).

Combating Violence in Families

—Information and training in preventing domestic violence, child abuse, sexual harassment and coercion,

roles of men and women in U.S. culture, and techniques for protection.

—Linkages to mainstream service-providers to ensure access to culturally appropriate services

—Training and providing bi-lingual staff for women's shelters.

Crime Prevention/Victimization

—Activities designed to improve relations between refugees and the law enforcement communities: (a) Public service officers or community liaisons; (b) neighborhood storefronts and/or watch programs; (c) refugee business watch program; (d) cross cultural training for the law enforcement community (police departments, court system, mediation/dispute resolution centers).

Note: Law enforcement activities, such as hiring sworn police officers (except those who are public service officers or community liaison officers), fingerprinting, incarceration, etc., are outside the scope of allowable services under the Refugee Act and will not be considered for funding. Other unallowable activities are those limited to, or principally focused on, parole counseling, court advocacy, and child protection services.

English Language Training (ELT) Technical Assistance

—For programs and teachers to assess and improve employment-related ELT and curriculum, or to develop programs (e.g., work-site ELT, performance-based ELT, family literacy).

—Training for ELT teachers in identifying issues of cultural and social adjustment, learning disabilities, and mental health, and in developing appropriate curricula to accommodate learning needs of the students.

—Multi-site consultation and information sharing training sessions where similar agencies and/or agencies serving similar groups of refugees can share experiences. This might include a component designed to bring together ELT providers and employment specialists, case managers, voluntary agency staff, and public health professionals, for the purpose of developing strategies for effective working relationships.

—Management of an ELT resource center including an Internet web-site.

All services should be planned around the refugees' availability (i.e., evening hours or other times not in conflict with work hours).

C. Priority 1—Applications Review Criteria

Each application in Priority 1, regardless of the number of projects therein, will be rated and scored by an independent review panel using the following criteria.

1. Target Population and Strategies (10 points)

Description of the targeted refugee population and its impact on the overall community.

The description of the target refugee population(s) includes their number, national origin, year of arrival, and other pertinent information. A comparison of the size of the target refugee population in relation to the size of the general population in the community is included.

2. Project Design and Approach (25 points)

Quality, appropriateness, and anticipated impact of proposed services. Rationale for the proposed activities as an effective approach in addressing the problem described.

The applicant clearly describes the services that will be provided and documents the extent to which other sources of funding, including TAP formula funds and other Federal, State, or local funding, are not sufficient or available to address the impact. The proposal adequately discusses how requested funds and proposed activities will relate to other funded services.

3. Timeline and Expected Outcomes (25 points)

Extent to which the timeline and expected outcomes of the project are appropriate and reasonable in relation to the funding cycle and the proposed activities.

The applicant has clear projected outcomes, e.g., if employment services are proposed, the number of refugee active participants, number expected to enter employment, the expected average hourly wage at employment entry, the number of jobs with health benefits, and the number who are employed 90 days following employment entry.

4. Organizational's Capability (25 points)

Demonstrated organizational experience, track record, and project management capability. Staff resumes or job descriptions are included. Organizational charts depict agency and staff roles and responsibilities.

5. Cost Effectiveness (15 points)

Reasonableness of budget proposed. Detailed budget and narrative justification, including State and/or local government administration. Unit costs for project services and expected outcomes are justified and reasonable.

Priority Area 2: Microenterprise Development

A. Purpose

The purpose of this program is to use microenterprise development to assist refugees in becoming economically independent and to help refugee communities in developing employment and capital resources.

State applicants will be expected to have identified local agencies interested in providing services under this Priority Area, prior to submitting requests for microenterprise development funds.

Successful grantees and subgrantees will be expected to coordinate their policies and procedures for developing and administering refugee microenterprise projects with the existing refugee microenterprise services network.

B. Allowable Activities

Microenterprise applicants may request funds to provide business technical assistance, business training, credit in the form of microloans, and administrative costs for managing a microloan fund to assist refugees to start or expand microbusinesses. Business targets may be start-ups, expansions, or both.

Microloans consist of small amounts of credit, generally in sums less than $10,000, extended to low-income entrepreneurs for start-up or very small microentreprises. Typically, refugee borrowers should have few personal assets or savings and should not qualify for commercial loans.

Applicants should be familiar with and describe a profile of the refugee participants including employment and welfare status, length of time in the United States, interest in microbusinesses and English language proficiency. Applicants should be familiar with the capital needs and capital market gaps for refugee entrepreneurs and demonstrate how they will gain access to credit through this project.

States intending to subgrant activities under this category must require the submission of the following documents for each subgrantee prior to the award of a subgrant:

a. A copy of the IRS Tax Exemption Certificate and identification of IRS code citation of tax exempt status (nonprofit agencies only).

b. Copies of the last two fiscal year financial statements, including balance sheets and income statements.

c. A monthly cash flow chart for the loan fund for the three year period beginning October 1, 1998.

In addition to the above, States intending to continue microenterprise development in agencies which previously were funded for this purpose by ORR should include past microenterprise outcomes, such as business starts, business survivability, loan default rates, reductions in clients' welfare utilization, job creation, reported business income, and business expertise acquired through the project's intervention.

C. Priority 2—Application Review Criteria

Each project component in Priority 2 will be rated and scored by an independent review panel using the following criteria.

1. Quality of the description of the prospective refugee participants' profile with respect to welfare utilization, English language proficiency, length of time in the U.S., interest in microbusinesses, and the description of local capital needs and capital market gaps for refugee microentrepreneurs. (20 points)

2. Adequacy and appropriateness of the planning process and resulting program approach or design: project goals and structure (policies, procedures, activities); training and technical assistance; loan fund and lending criteria and fees, if included in the design; whether the business targets are start-ups, expansions, or both; affiliate agencies; and credit enhancements, such as loan loss reserves. (30 points)

3. Demonstrated organizational and management capacity, and experience serving refugees and other economically disadvantaged populations; description of experience in management of loan funds, collaboration with the specific refugee community(ies) and coalition building among refugee and non-refugee service providers. (20 points)

4. Extent to which the expected outcomes and unit costs of the project are appropriate, consistent with reported nationwide performance in microenterprise projects, and reasonable in relation to the proposed activities; the impact of loan funds, business income, and business assets on clients' welfare status, if applicable. Projected outcomes for business income, business survivability and reductions in welfare utilization. (20 points)

5. Appropriateness and reasonableness of the proposed budget, including the relative distribution of funds for administrative costs, training or technical assistance, and loan capital. Application should include project timelines and a narrative justification supporting each budget line item. (20 points)

Priority Area 3: Self-Sufficiency Services to Offset the Impact of Large Refugee Families on Local Communities

A. Purpose

The purpose of this priority area is to promote services which enhance the ability of large refugee families to gain increases in household incomes significantly above the poverty level, and to reduce or offset the impact of refugee populations on local communities in States most heavily impacted by the influx of Laotian Hmong, Cambodian or Soviet Pentecostal refugees. To be competitive under this section, States must demonstrate and document a significant impact on local communities by the presence of a very large number of refugees in one of these three populations. That number is expected to exceed 15,000 refugees for a State to be able to substantiate its evidence of local impact. States may also document a significantly high proportion of refugees in one of these three groups relative to the area's non-refugee population.

A State that intends to apply for funds must also present evidence in its application of the severity of the impact by this population on a local community, (e.g., on local school districts, child care facilities, or family counseling services).

No State will be awarded more than $3.5 million for these projects. The application should present a plan for the provision of services designed to assist refugee households in generating income and alleviating poverty. Funding decisions will be based on the quality of the plan and the evidence presented for likely success in achieving measurable goals, as well as on the determination of need in such areas as refugee impact on community services and documentation of refugee welfare dependency.

B. Allowable Activities

The types of projects which ORR may fund under this competitive area include, but are not limited to, the following:

- Employment services, such as job development, placement, and post-placement services. Projects may target the non-primary wage earner of families in a coordinated strategy to achieve a combined family income in excess of the poverty level.
- Vocational English Language Training, on-the-job-training, and skills training. Services may target assisting hard-to-place refugees, such as those over the age of 50, or non-primary wage earners to gain skills as child care providers, recreational aides, health care aides, etc.
- Services to assist refugees in the generation of income apart from employment, such as self-employment. Projects may include assistance in small business creation and expansion, business training and technical assistance, credit in the form of microloans, and the administrative costs of managing a microloan fund.
- Projects which enhance the relationships between refugee households and services such as school-to-work programs, teen pregnancy prevention, domestic violence intervention, day care development, parenting, and youth-at-risk programs.

All services must be culturally and linguistically compatible and be planned around refugees' ability to attend activities (e.g. evening hours or other times not in conflict with work hours).

C. Priority 3—Application Review Criteria

Applications for this priority area will be reviewed and ranked against the following criteria:

1. Purpose and Extent of Impact on Local Community (40 points)

The description of the purposes for which funding is needed is sufficiently detailed and appropriate to this priority area.

Level, extent, and nature of the impact of Laotian Hmong, Cambodians and Soviet Pentecostal refugees on the State or local community targeted and description of the targeted population.

A description of the extent of the impact in the State and/or community for which the project is targeted. For purposes of this Priority Area only, and consistent with the purpose described above, discussions of impact must be limited to the impact of large populations of Laotian Hmong, Cambodians and Soviet Pentecostals. This impact statement must include a description of the target refugee population, including the numbers, national origins, and other pertinent information, and geographic location(s) for which funding is requested. It should also describe the extent to which refugees have significantly changed aspects of community life, with implications for long-term adjustment.

2. Project Design, Methodology, Timeline (20 points)

Appropriateness of the project design, methods of service delivery, and projected timelines to the needs of the targeted community(ies). Clear

description of the activities proposed to address the impact on local communities.

Projects which are expected to build new, or make use of existing, partnerships with other government or nonprofit agencies should describe the partnerships, as well as the partner agencies and their qualifications for participation in this program (e.g., history of outcomes in similar programs).

3. Project Outcomes (20 points)

The extent to which the expected outcomes and unit costs of the project are appropriate and reasonable in relation to the proposed activities and budget. A description of expected project outcomes and the estimated unit costs of the services are provided. This should focus on measurable outcomes, such as increases in household income, welfare grant terminations, etc., rather than on process outcomes, e.g., numbers of people to be served, number of sessions to be conducted.

If funding is to be used to expand or continue an existing project, discuss the outcomes to date of that project.

14. Budget (20 points)

Reasonableness of budget proposed. An estimated line-item budget and narrative justification, including State and/or local government administration.

Priority Area 4) Community and Family Strengthening (CFS)

A. Purpose

While employment and economic independence continue to be ORR's primary concern and the focus of the formula social services and targeted assistance funding, this Priority Area provides an opportunity for States and nonprofit organizations to request funding for activities which supplement and complement employment-related services by strengthening refugee families and communities.

ORR views the participation of the target population as particularly important. Project designing must include representatives of the target population. For example, a project designed to assist single mothers needs to be designed in consultation with single mothers.

Cultural and Linguistic Compatibility. All applicants should demonstrate existing refugee community support for their agency and their proposed project. If the applicant works in an area where no other organizations work with refugees, and a coalition with other organizations is not possible, this should be explained and documented. Applicants and all private partners should provide evidence that their governing bodies, boards of directors, or advisory bodies are representative of the refugee communities being served, and have both male and female representation.

In all cases, regardless of the nature of the organization proposed to provide services or conduct activities funded under this announcement, the services/activities must be conducted by staff linguistically and culturally compatible with the refugee families or communities to be served. In addition, the applicant must describe how proposed providers will have access to the families and to the community to be served. If interpreters are proposed in the first budget period, applicant must demonstrate how these staff will be used and whether they will be trained to become bi-lingual service providers during the project period.

Cost-sharing. This announcement is intended to encourage service planners and providers to consider the various unmet needs of refugee families and communities relative to existing services, the capacity of the service-providing network, and ultimately the community's capacity to continue the activity without additional ORR resources beyond the three-year project period of this announcement. Long-range viability may depend on: Linkages to activities funded by other sources, the availability of expertise in the community, the relatedness of proposed activities to existing activities, the willingness of the community to participate actively in assuring the success of the activity—including volunteer commitment, and the likelihood of tangible results.

Because funding under this program announcement is limited, applicants are urged to plan for the use of these funds in conjunction with other Federal, State, and private funds available to assist the target populations and to carry out similar programs and activities (cost-sharing). To this end, successful applicants will propose and commit to a minimum cost-sharing of 10% of the original budget period (first year) costs. In subsequent year continuation applications, the grantee will be asked to document receipt of non-Federal funds from other sources. The requirement will be not less than 25% of the full budget for the second year award. For example, if the original budget is $150,000, the federal share for that year may be $135,000 (90%). The second year the federal award might be $112,500 and the grantee would be required to provide at a minimum cost-sharing of $37,500, 25% of the full budget, in cash or in-kind support. Only in unusual circumstances will the Director of ORR entertain a request from the grantee to reduce or waive the cost-sharing requirement.

B. Allowable Activities

ORR will consider applications for services which an applicant justifies, based on an analysis of service needs and available resources, as necessary to address the social and economic problems of refugee families and of the refugee community. It should be clear how the proposed activity fits into the existing network of services; how it responds to the particular needs of families in that community or to a broader need of the community of families; who is committed to do what in order to accomplish this goal; and what is the goal or expected outcome of the activity.

The specific services proposed may be as diverse as the refugee populations and the resettlement communities themselves. Some examples follow which are not intended to be a comprehensive list but are intended to stimulate planning and community discussion. It will be the task of the local planning processes to determine what is needed to address the economic and social adjustment needs of families and the community. Activities and services proposed should be planned in conjunction with existing services and should supplement and complement these services. Special attention should be given in the planning process to the services available to all citizens, including community institutions which serve the elderly, youth and special needs populations.

Non-Allowable Activities: Funds will not be awarded to applicants who propose to engage in activities of a distinctly political nature or which are designed primarily to promote the preservation of cultural heritage, or which have an international objective. ORR supports refugee community efforts to preserve cultural heritage, but believes these are activities which communities should conduct without recourse to ORR resources.

SOME EXAMPLES OF ALLOWABLE ACTIVITIES:

Community Education

—Activities designed to inform the refugee community about issues essential to effective participation in the new society.

—Classes in parenting skills, including information about U.S. cultural and legal issues, e.g., corporal punishment, generational conflict, and child abuse.

—Assistance to parents in connecting with the school system and other local community organizations.

—Orientation to health care and assistance for accessing low-cost health service, including orientation on health insurance, health maintenance organizations, preventive health measures, and the availability of health services for low income families.

Specialized English Language Training

—Specialized classes for specific industries in conjunction with employers.

—Specialized classes for groups outside the regular classes, e.g., homebound women, elderly. Use of volunteers is encouraged. Accessibility of site and time is important.

Mentoring Programs and Peer Support

—Pairing participant individuals or families with community volunteers. Programs should target refugees who are not otherwise receiving core services, and mentoring should target needs they identify.

—Assisting subgroups to form a common bond for resolution of peer-specific problems. The purposes are to solve individual, family, and community problems with the support of peers and to solve common problems through group action.

Combating Violence in Families

—Information and training against domestic violence, child abuse, sexual harassment and coercion, roles of men and women in U.S. culture, and techniques for protection.

—Linkages to mainstream service-providers to ensure access to culturally appropriate services.

—Training and/or bi-lingual staff for women's shelters.

Crime Prevention/Victimization

—Activities designed to improve relations between refugees and the law enforcement communities: (a) Public service officers or community liaisons; (b) neighborhood storefronts and/or watch programs; (c) refugee business watch programs; (d) cross cultural training for the law enforcement community (police departments, court system, mediation or dispute management centers).

Note: Law enforcement activities, such as hiring sworn police officers (except those who are public service officers or community liaison officers), fingerprinting, incarceration, etc., are outside the scope of allowable services under the Refugee Act and will not be considered for funding. Other unallowable activities are those limited to, or principally focused on, parole counseling, court advocacy, and child protection services.

Refugee Community Centers and Organizing

—Operating community centers for the delivery of services to refugee individuals and families. Centers may also be used for recreation, information and referral services, childcare, and community gatherings. (Costs related to construction or renovation will not be considered, and costs for food or beverages are not allowable).

—Communities might be organized for housing cooperatives, for youth activities, for services to elderly, for volunteer mentoring services, for crime prevention.

The above are only examples of services. They are not intended to limit potential applicants in community planning.

These examples are listed and generically described without regard to the population to be served. It will be necessary in the application to describe more specifically the target population. For example, one activity might be appropriately designed to serve only homebound women. Another might be designed for teenagers and their parents. Another might be for elderly. Some might be targeted for all members of the family. Applications should correlate a planned activity with specific target audiences and discuss the relationship between the proposed activities and the target population.

C. Application Review Criteria

1. Need and Scope (25 points)

Profile of refugee community and target population by geographic area or ethnic group of the refugee community to be served, including numbers, ethnicity, welfare utilization pattern, number of refugee families in the community, family characteristics, and an assessment of attitudes of the refugees and the general community toward each other. Clarity of description and soundness of rationale for selection of targeted community or population.

Adequacy and quality of data provided and quality of the analysis of data provided in the application with special regard to ethnic group, refugee families, women, youth, or the aged.

Clarity and comprehensiveness of needs identification and problem statement and of the description of the local context in which grant activities are proposed.

Comprehensiveness of description of existing services and community network and explanation of how the proposed services complement what is already in place.

Evidence of consultation with target population.

2. Proposed Strategy and Program Design (30 points)

Soundness of strategy and program design for meeting identified needs.

Identification of projected performance outcomes and proposed milestones measuring progress, as appropriate to the services proposed by the end of the first budget period and over the entire requested project period. (ORR encourages applicants, to the extent possible, to develop innovative quantifiable measures related to the desired service impact for purposes of monitoring and project assessment.)

The quality of the outcomes proposed and the potential for achieving the outcomes within the grant's project period. The potential of the project to have a positive impact on the quality of the lives of refugee families and communities.

Adequate detail in the description of linkages with other providers and roles of collaborating agencies in project implementation.

Extent to which the need described is expected to be met and/or to which the services will be augmented, supplemented, or integrated with existing services.

The extent to which the award is projected to be augmented or supplemented by other funding during and beyond (i.e., in the second and any subsequent year of) the grant period, or can be integrated into other existing service systems.

3. Applicant/Coalition Capability (25 points)

Validity and reasonableness of the proposed coalition arrangement to perform the proposed activities. Commitment of coalition partners in implementing the activities as demonstrated by letters or the terms of the signed agreement among participants. (Where potential coalition partners are documented to be unavailable, the applicant will not be penalized under this criteria. However, the applicant should describe any consultation efforts undertaken and consultation with the refugee community.)

Experience of the applicant coalition in performing the proposed services.

Adequacy of gender balance and constituent representatives of board members of participant organizations or of the proposed project's advisory board.

Adequacy of assurance that proposed services will be delivered by staff linguistically and culturally appropriate to the target population.

Qualifications of the individual organization staff and any volunteers.

Detailed description of the administrative and management features of the project including a plan for fiscal and programmatic management of each activity, proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart.

A description of information collection (participant and outcome data) and monitoring proposed.

4. Budget and Financial Management (20 points)

Reasonableness of budget and narrative justification in relation to the proposed activities and anticipated results.

Adequacy of proposed monitoring and information collection.

Realistic plan for the continuation of services with a phase-out of ORR grant funding over the multi-year project period. Extent to which the application makes provision for cost-sharing (e.g. leveraging ORR funds with non-Federal funds or in-kind support) to maintain the full budget during the overall project. If available, the value of such leveraged funds or in-kind support and any preliminary commitments.

Part III. General Application Information and Guidance Forms and Certifications

Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. An application with an original signature and two copies is required.

If an application represents a consortium (that is, the applicant includes other types of agencies among its membership), the single organization identified as applicant by the Authorized Representative's signature on the SF–424, Box 18.d, will be the grant recipient and will have primary administrative and fiscal responsibilities. An applicant entity must be a public or private nonprofit organization.

All applications which meet the stipulated deadline and other requirements will be reviewed competitively and scored by an independent review panel of experts in accordance with ACF grants policy and the criteria stated above. The results of the independent review panel scores and explanatory comments will assist the Director of ORR in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by the reviewers. Highly ranked applications are not guaranteed funding since other factors are taken into consideration, including: Comments of reviewers and of ACF/ORR officials; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; and investigative reports. Final funding decisions will be made by the Director of ORR.

Availability of Forms and Certifications

ORR published a copy of the Standard Form 424 with instructions for submitting an Application for Federal Assistance in the **Federal Register**, December 9, 1997 (FR Vol. 62, No. 236, pgs. 64870–64883). Copies of the **Federal Register** are available on the Internet and at most local libraries and Congressional District Offices for reproduction. The SF424 is also available through the ACF Internet at http://www.acf.dhhs.gov/ (at ''Select a Topic,'' choose ''Grant Related Forms and Documents,'' then click on ''Go'').

If copies are not available at these sources, they may be obtained by sending a written or faxed request to the following: Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone: (202) 401–9251, Fax: (202) 401–5487.

Budget and Budget Justification

Provide line item detail and detailed calculations for each project budget by object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification with each project that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. According to the instructions for completing the SF–424A and the preparation of the budget and budget justification, ''Federal resources'' refers only to the ACF/ORR grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel: Costs of employee salaries and wages. Justification—Identify the project director and for each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies.

Fringe Benefits: Costs of employee fringe benefits unless treated as part of approved indirect cost rate. Justification—Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). Justification—For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF/ORR-sponsored meetings should be detailed in the budget.

Equipment: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Justification—For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies: Costs of all tangible personal property other than that included under the Equipment category. Justification—Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, etc. Contracts with secondary recipient organizations, including delegate

agencies (if applicable), should be included under this category.

Justification—All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if procurement without competition is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Justify any anticipated procurement action that is expected to be awarded without competition and to exceed the simplified acquisition threshold fixed at 41 USC 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as requests for proposal or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development, and administrative costs.

Justification—Provide computations, a narrative description and a justification for each cost under this category.

Indirect Costs: This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

Justification—An applicant proposing to charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the agreement, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income: The estimated amount of income, if any, expected to be generated from this project.

Justification—Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Non-Federal Resources: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification—The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Certifications

Applicants must provide the following certifications.

a. Certification regarding lobbying if anticipated award exceeds $100,000.

b. Certification regarding environmental tobacco smoke. By signing and submitting the applications, applicant provides certification that they will comply with the requirements of the Pro-Children Act of 1994 (Pub. L. 103–227, Part C-Environmental Tobacco Smoke) and need not mail back the certification with the application.

c. Certification regarding debarment, suspension, and other Ineligibility. By signing and submitting the applications, applicant provides certification that they are not presently debarred, suspended or otherwise ineligible for this award and therefore need not mail back the certification with the application.

d. Drug-Free Workplace Act of 1988.

Deadline

1. Mailed applications shall be considered as meeting this announced deadline if they are sent on or before the deadline date and received by ORR in time for the independent review. Applications should be mailed to: Office of Refugee Resettlement, Administration for Children and Families, Division of Community Resettlement, 370 L'Enfant Promenade, SW., Sixth Floor, Washington, DC. 20447, *Attention: TAG/CFS*.

Applicants must ensure that a legibly dated U.S. Postal Service postmark, or a legibly dated, machine produced postmark of a commercial mail service appears on the envelope/package containing the application(s). An acceptable postmark from a commercial carrier is one which includes the carrier's logo/emblem and shows the date the package was received by the commercial mail service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand-carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., at the Administration for Children and Families, Office of Refugee Resettlement, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend the deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

4. Once an application has been submitted, it is considered as final and no additional materials will be accepted by ACF.

Nonprofit Status

Applicants other than public agencies must provide evidence of their nonprofit status with their applications. Either of the following is acceptable evidence: (1) A copy of the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code; or (2) a copy of the currently valid IRS tax exemption certificate.

Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100,

''Intergovernmental Review of Department of Health and Human Services Programs and Activities.''

As of June 15, 1997, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions need take no action in regard to E.O. 12372: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau.

All remaining jurisdictions participate in the E.O. process and have established Single Points of Contact (SPOCs).

Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them to the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that ORR can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Division of Community Resettlement, 6th Floor, 370 L'Enfant Promenade, SW., Washington, DC. 20447.

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

All information collections within this Program Announcement are approved under the following currently valid OMB control numbers: 424 (0348–0043); 424A (0348–0044); 424B (0348–0040); Disclosure of Lobbying Activities (0348–0046); Uniform Project Description (0970–0139) Expires 10/31/00.

Public reporting burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Applicable Regulations

Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

Reporting Requirements

Grantees are required to file the Financial Status Report (SF–269) semi-annually and Quarterly Program Performance Reports (OMB Approval No. 0970–0036). Funds issued under these awards must be accounted for and reported upon separately from all other grant activities.

Although ORR does not expect the proposed components/projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures by budget line item.

The official receipt point for all reports and correspondence is the ORR Division of Community Resettlement. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Project Officer named in the award letter. The mailing address is: ORR, 370 L'Enfant Promenade SW, Sixth Floor, Washington, DC 20447.

A final Financial and Program Report shall be due 90 days after the budget expiration date or termination of grant support.

Dated: May 6, 1998.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 98–13099 Filed 5–15–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces the Spring 1998 meeting of the Great Lakes Panel on Aquatic Nuisance Species of the Aquatic Nuisance Species Task Force. Topics to be addressed during the meeting are identified.

DATES: The Great Lakes Panel on Aquatic Nuisance Species will meet from 1:00 p.m., Tuesday, June 9, 1998, to 2:30 p.m. on Wednesday, June 10, 1998.

ADDRESSES: The meeting will be held at the Holiday Inn—North Campus, 3600 Plymouth Road, Ann Arbor, Michigan.

FOR FURTHER INFORMATION CONTACT: Matt Doss, Great Lakes Commission at 734–665–9135, or Bob Peoples, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Great Lakes Panel on Aquatic Nuisance Species of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the meeting include: reports of ANS Task Force activities nationally and Federal legislation; reports on several ANS issues and initiatives such as the Great Lakes Ballast demonstration project, model guidelines for ANS prevention and control, proposed national voluntary ballast water guidelines, and the Chicago Waterways, Dispersal Barrier Project; a review of panel funding for fiscal year 1999; breakout sessions of the Panel's Information/Education, Research Coordination, and Policy and Legislation Committees to develop 1999 work plans; model State ANS legislation; and reports from Panel members.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 840, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and the Great Lakes Commission, 400 Fourth Street, Ann Arbor, Michigan, 48103–4816, and will be available for public inspection during regular hours, Monday through Friday, within 30 days following the meeting.

Dated: May 12, 1998.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force Assistant Director-Fisheries.

[FR Doc. 98–13076 Filed 5–15–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. Pursuant to 25 CFR 83.9(a) notice is hereby given that the: Chi-cau-gon Band of Lake Superior Chippewa of Iron County, 32 West Minkler, Iron River, Michigan 49935, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on February 12, 1998, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) of the Federal regulations, third parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street, NW., MS 4603–MIB, Washington, DC 20240, (202) 208–3592.

Dated: May 11, 1998.

Nancy Jemison,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 98–13080 Filed 5–15–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–010589, COC–020027, COC–021250]

Public Land Order No. 7329; Partial Revocation of Public Land Order Nos. 1189, 1637, and 1800; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes three public land orders insofar as they affect 279.21 acres of National Forest System lands withdrawn to protect Forest Service campgrounds and recreation sites. These sites were never developed. The revocation is needed to permit disposal of the lands under the General Exchange Act of 1922. The lands continue to be closed to mining by a Forest Service exchange proposal. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: June 2, 1998.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order Nos. 1189, 1637, and 1800, which withdrew National Forest System lands to protect campgrounds and recreation sites, are hereby revoked insofar as they affect the following described lands:

White River National Forest

Sixth Principal Meridian

T. 4 S., R. 78 W.,
sec. 4, lots 3 to 6, inclusive, lots 11 and 12.
sec. 9, lots 4, 23, and lots 25 to 29, inclusive.
T. 5 S., R. 78 W.,
sec. 34, lot 9;
sec. 35, lots 21 and 26.

The areas described aggregate 279.21 acres in Summit County.

2. At 9 a.m. on June 2, 1998, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: May 11, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–13193 Filed 5–15–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–08–1230–00; 8300]

Arizona: The Crossroads and Empire Landing Campgrounds Located on the Parker Strip (California); Establishment of Fees and Supplementary Rules, During FY 1998 and Subsequent Years

AGENCY: Lake Havasu Field Office, Arizona; Bureau of Land Management, Interior.

ACTION: Implementation and increase of fees and supplementary rules of overnight camping and day use at the Crossroads & Empire Landing Campgrounds on the California side of the Colorado River, between Parker, AZ, and Parker Dam, CA.

SUMMARY: The Bureau of Land Management (BLM) Lake Havasu Field Office announces the implementation and increase of fees at the Crossroads & Empire Landing Campgrounds. To be instituted during FY 1998, as a federal fee campground under the authorities described in 36 CFR part 71. The purpose of the fee implementation and increase to the offset management and maintenance costs of facility and equipment repair, volunteer expenses, and sewage disposal. The fee is being established to safely and properly accommodate the increasing costs of operating and maintaining a public campground while helping provide natural resource protection through improved management of this use. The fee implementation assures that the campground will be available for public use year after year.

EFFECTIVE DATE: May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Myron McCoy Outdoor Recreation Planner, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona, 86406, telephone (520) 505–1200; e-mail memccoy@az.blm.gov.

SUPPLEMENTARY INFORMATION: Authority for the campground fee implementation is contained in Title 43, Code of Federal Regulations, Part 8360, Subpart 8365, Sections 2 and 2–3. Authority for the payment of fees is in Title 36, Code of Federal Regulations, Subpart 71. Authority for including this project in the Fee Demonstration Pilot Program is contained in the Omnibus Budget Reconciliations Act of 1993 (Public Law 103–66) and the FY 1996 Appropriations Act (Public Law 104–134). The authority for establishing supplementary rules is contained in Title 43, Subpart 8365, Section 1–6. The campground fee implementation supplementary rules have been developed to manage continued use of the site until a management plan can be completed. These rules will be available in the local office having jurisdiction over the site affected, and will be posted at the site. Violations of supplementary rules are punishable as class A misdemeanors.

The following is the legal descriptions for the Campgrounds:

Crossroads: San Bernardino Meridian

T. 2 N., R. 26 E.,
Sec. 35, SW¼SW¼.

Empire Landing: San Bernardino Meridian

T. 2 N., R. 26E.,
Sec 36, NE¼NW¼.

Supplemental Rules

Recreation Use Permit

—Camping and day use permits are required for any use of the designated site for each vehicle used as a primary means of transportation. The fee for camping and day use permits will be as posted. Golden Age/Access cardholders qualify for half price discounts. The fee for a use permit will be in accordance with the fee schedule, requirements, and procedures established under the Recreation Fee Demonstration Pilot Program and are payable in U.S. funds only.
—Permit envelope receipts must be displayed (on the vehicle dashboard) and presented upon demand to an authorized BLM officer. Should the occupants be away from the campsite, the receipt must be visibly displayed in a conspicuous place.
—Permits may not be reassigned or transferred.
—An authorized BLM officer may revoke, without reimbursement, any permit when the permittee violates any BLM rule or regulation. Any permittee whose permit is revoked must remove all property and leave the campsite within 1 hour of notice.
—Camping checkout time is 2 pm of the following day.
—All pets must be on a leash and attended at all times. Leashes can not be longer than 8 feet.
—Motorized vehicles not registered for street use are not allowed to be driven in the campground.
—Fireworks are not allowed.

Site Occupation

—The maximum stay limit is 14 consecutive days, and 28 days in a calendar year.
—Eight persons are the maximum capacity allowed per site, per night.
—A camp site is considered occupied after the appropriate permit fee has been paid and the permittee has taken possession of the site by leaving personal property at the site.
—No person shall occupy a camp site in violation of instructions from a BLM official or when there is reason to believe that the unit is occupied by another camper.

Quiet Hours

—Quiet hours are from 9 p.m. to 7 a.m. in accordance with applicable state time zone standards.

Campfires

—Fires must be confined to barbecue, stove, grill, fireplace or other facility provided for such purpose.

Wood Collection

—Cutting or collecting any firewood is prohibited, including dead and down wood and all other vegetative material.

Firearms

—All firearms must remain unloaded and locked in vehicles at all times while occupying the campsite.

Sanitation

—Holding and sewage tank disposal is allowed at the dump station provided at Empire Landing Campground. Dumping waste water or emptying portable toilets in vault toilets is prohibited.
—Anyone using a campsite must keep their site free or litter and trash during the period of occupancy and remove all personal equipment and clean their sites upon departure.
—Persons bringing or allowing pets in camp areas shall be responsible for proper removal and disposal, in sanitary facilities, or any waste produced by these animals.

Alcoholic Beverages

The following are prohibited:

—The sale or gift of alcoholic beverage to a person under 21 years of age.
—The possession of an alcoholic beverage by a person under 21 years of age.
—The consumption of an alcoholic beverage by a person under 21 years of age.

Authority and Penalties

This notice is published under the authority of Title 43, Code of Federal Regulations, Subpart 8365, Section 1–6.

Dated: May 8, 1998.

Robert M. Henderson,

Acting Field Manager.

[FR Doc. 98–12934 Filed 5–15–98; 8:45 am]
BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 9, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 2, 1998.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Montgomery County

United States Post Office and Courthouse—Montgomery, Church St. between Moulton and Lee Sts., Montgomery, 98000611

ARKANSAS

Chicot County

First Baptist Church (Ethnic and Minority Settlement of the Arkansas Delta MPS, AR 159 S, 1 mi. S of Eudora, Eudora, 98000645

Clark County

Rose Hill Cemetery, 1200 Block of Main St., Arkadelphia, 98000613

Crittenden County

Hamilton Apartments, 113 W. Danner St., West Memphis, 98000618

Jefferson County

O'Bryant, W.E., Bell Tower, 1200 N. University Dr., campus of the University of Pine Bluff, Pine Bluff, 98000622
St. Peter's Cemetery, Morgan Rd., S of New Gascony, Pine Bluff vicinity, 98000617

Lafayette County

Burton, P.D., House, 305 Chestnut, Lewisville, 98000612

Lee County

Plummer, John A., House, 269 Pearl St., Marianna, 98000646

Lonoke County

Utley, Dr. E.F., House, 401 W. Pine St., Cabot, 98000623

Ouachita County

Burkett, Capt. John T., House, 607 Ouachita Cty. Rd. 65, Frenchport vicinity, 98000620

Polk County

Elks Lodge, 500 Mena St., Mena, 98000616

Pulaski County

Harris House, 6507 Fourche Dam Pike, Little Rock, 98000644
Lamb—McSwain House, 2124 Rice St., Little Rock, 98000621

Scott County

Forrester, C.E., House, 102 Danville Rd., Waldron, 98000614

Stone County

Noricks Chapel School (Stone County MPS), Misenheimer Rd., 10 mi. SE of Mountain View, Mountain View vicinity, 98000615

Washington County

Black Oak Cemetery, Cty. Rd. 243, 4 mi. SW of Greenland, Greenland vicinity, 98000619

COLORADO

Denver County

Denver Medical Depot, 3800 York St., Denver, 98000650

FLORIDA

Monroe County

Lignumvitae Key Archeological and Historical District, Address Restricted, Islamorada vicinity, 98000652

Sarasota County

Worth's Block, 1490 Main St., Sarasota, 98000651

ILLINOIS

La Salle County

Corbin Farm Site (Archeological Sites of Starved Rock State Park MPS), Address Restricted, Utica vicinity, 98000654
Hotel Plaza Site (Archeological Sites of Starved Rock State Park MPS), Address Restricted, Utica vicinity, 98000656
Little Beaver Site (Archeological Sites of Starved Rock State Park MPS), Address Restricted, Utica vicinity, 98000655
Shaky Shelter Site (Archeological Sites of Starved Rock State Park MPS), Address Restricted, Utica vicinity, 98000657

KANSAS

Osage County

Banner Hereford Farm, 19355 S. Berryton Rd., Scranton vicinity, 98000659

LOUISIANA

Evangeline Parish

Tate House (Louisiana's French Creole Architecture MPS), 1425 LA 29, Ville Platte vicinity, 98000661

St. Martin Parish

Reymond House, 7250 Goodwood Blvd., Baton Rouge, 98000663

NEW YORK

Delaware County

Walton Grange #1454—Former Armory, 57 Stockton Ave., Walton, 98000666

Wayne County

First Presbyterian Church of Ontario Center, 1638 Ridge Rd., Ontario Center, 98000665

OHIO

Franklin County

Grant, A. G., Homestead, 4124 Haughn Rd., Grove City, 98000667

OKLAHOMA

Oklahoma County

Norton—Johnson Buick Company, 117–125 NW 13th St., Oklahoma City, 98000668

OREGON

Clatsop County

Astoria Downtown Historic District, Boundary roughly from the Columbia R. to Exchange St and from Seventh St. to Seventeenth St., Astoria, 98000631

Jackson County

Hargadine Cemetery (Historic Cemeteries of Ashland MPS) Sheridan and Walnut Sts., Ashland, 98000627
Welch, Mathias, House, 162 N. Second St., Central Point, 98000625
Whited, Harry L., House, 321 N. Main St., Ashland, 98000626

Josephine County

Clark—McConnell House, 961 SE 8th St., Grants Pass, 98000628
Dimmick—Judson House, 906 NE Eighth St., Grants Pass, 98000629
Klamath County Goeller, Fred, House, 234 Riverside Dr., Klamath Falls, 98000624

Linn County

Albany Municipal Airport, 3510 Knox Butte Rd., Albany, 98000630

RHODE ISLAND

Bristol County

Juniper Hill Cemetery, 24 Sherry Ave., Bristol, 98000632

TEXAS

Anderson County

Gatewood—Shelton Gin (Palestine, Texas MPS) 304 E. Crawford, Palestine, 98000637
Lincoln High School (Palestine, Texas MPS) 920 W. Swantz St., Palestine, 98000636
Mount Vernon African Methodist Episcopal Church (Palestine, Texas MPS) 913 E. Calhoun St., Palestine, 98000635
Reagan, John H., Monument (Palestine, Texas MPS) Reagan Park; vicinity of Park and Crockett Sts., Palestine, 98000633

Redlands Hotel

(Palestine, Texas MPS) 400 N. Queen St, Palestine, 98000634

UTAH

Box Elder County

Washakie LDS Ward Chapel, Along Samarie Lake Canal, Washakie, 98000641

Davis County

Harris, Thomas and Caroline, House (Centerville MPS) 275 South 200 East, Centerville, 98000639

Salt Lake County

Jensen, Joseph F. and Isabelle, House (Sandy City MPS) 428 East 8800 South, Sandy, 98000640

Utah County

Baxter, David and Drusilla, House (Orem, Utah MPS) 206 W. 1600 N., Orem, 98000653
Carter—Terry—Call House (Orem, Utah MPS) 815 E. 800 S., Orem, 98000658
Clinger—Booth House (Orem, Utah MPS) 468 S. Main St., Orem, 98000660
Cordner, Alexander and Nellie P., House (Orem, Utah MPS) 415 S. 400 E., Orem, 98000649
Cordner, William James and Edna, House (Orem Utah MPS) 440 S. State St., Orem, 98000647
Cordner—Calder House (Orem, Utah) 305 S. 900 E., Orem, 98000648
Cullimore, William J. and Lizzie, House (Orem, Utah MPS) 396 W. 1600 N., Orem, 98000643
Davis, Joshua House (Orem, Utah MPS) 1888 S. Main St., Orem, 98000642
Dimick, Cecil I. and Mildred H., House, (Orem, Utah MPS) 575 West 800 North, Orem, 98000638
Gappmayer, Roy H. and Florence B., House (Orem, Utah MPS) 95 E. 1200 S., Orem, 98000672
Knight—Finch House (Orem, Utah MPS) 212 S. State St., Orem, 98000673
Lewis, John S. and Izola, House (Orem, Utah MPS) 343 E. 720 S., Orem, 98000671
McBride, Sims, Garage (Orem, Utah MPS) 600 N. State St., Orem, 98000664
Olsen, Lars and Christina, House (Orem, Utah MPS) 417 S. 800 E., Orem, 98000669
Skinner, Alfred and Rosy, House (Orem, Utah MPS) 232 W. 800 S., Orem, 98000662
Stratton House—Orem City Hall (Orem, Utah MPS) 870 W. Center St., Orem, 98000674

WISCONSIN

Waukesha County

Freewill Baptist Church, 19750 W. National Ave., New Berlin, 98000670

[FR Doc. 98–13133 Filed 5–15–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Concessions Management Policy and Concessions Management Directives and Standards

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Reclamation Act of 1902, as amended and supplemented; the Federal Water Projects Recreation Act of 1965, as amended; and the Reclamation Project Act of 1939, the Bureau of Reclamation (Reclamation) has implemented internal Concessions Management Policy. In addition, Reclamation has implemented two sets of internal Concessions Management Directives and Standards which covers concessions managed by Reclamation and those managed by non-Federal partners. Copies of the policy and the directives and standards are available to the public upon request.

ADDRESSES: See Supplementary Information for addresses where copies of the Concessions Management Policy and Concessions Management Directives and Standards are available.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Lovejoy at (303) 445–2913.

SUPPLEMENTARY INFORMATION: Concessions are commercial services that support public recreational uses of

Reclamation lands and waters by providing facilities, goods, and services.

The basic purpose of the concessions policy is to provide principles, objectives, and direction for the development and management of concessions on Reclamation lands. The policy is concerned with good business practices, protecting resources, providing an equitable return to the Government, and protecting the interest of the public while ensuring facilities are safe, sanitary, accessible, and the services are reasonably priced. The policy affects all new concessions contracts, renewals, and the sale or transfer of existing contracts.

Since 1993, the policy has been developed with input from Department of the Interior offices, other Federal agencies, congressional representatives, State and local governments, the public concessionaires, and groups and organizations who expressed interest in proposed drafts of the concession management policy and directives and standards.

Availability of Policy and Directives and Standards

Copies are available through any Reclamation office; listed below are the addresses of major offices:

1. Bureau of Reclamation, Commissioner's Office, W–5000, 1849 C Street NW, Washington, DC 20240.

2. Bureau of Reclamation, Commissioner's Office, D–5300, Denver Federal Center, PO Box 25007, Lakewood, CO 80225.

3. Bureau of Reclamation, Pacific Northwest Region, 1150 N. Curtis Road, Suite 100, Boise, ID 83706.

4. Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Sacramento, CA 95825.

5. Bureau of Reclamation, Lower Colorado Region, PO Box 61470, Nevada

Highway and Park Street, Boulder City, NV 89005.

6. Bureau of Reclamation, Upper Colorado Region, 125 S. State Street, Room 6107, Salt Lake City, UT 84138.

7. Bureau of Reclamation, Great Plains Region, Federal Office Building, 316 N. 26th Street, Billings, MT 59101.

Copies are also available from Reclamation web pages at http://www.usbr.gov/recman.

Dated: April 28, 1998.

Henry Sandhaus,

Acting Director, Program Analysis.

[FR Doc. 98–13159 Filed 5–15–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice Inviting Proposals for Promoting Employer Participation in School-to-Work (STW) Systems

SUMMARY: This notice contains all of the necessary information and forms to apply for grant funding. The Departments of Labor and Education jointly are accepting proposals for a new award in FY 97, as authorized under section 403 of the School-to-Work Opportunities Act of 1994 (the Act). This award will provide for coordination of the overall effort to engage employers in STW activities, the identification and collaboration with national business leaders to advocate for and promote the visibility of business participating in STW, the provision of technical assistance to business leaders, the dissemination of products and information related to employer participation in STW, and the marketing and dissemination of research findings related to employer participation in STW. The Departments believe that a targeted approach to employer involvement through a unified, singular and strategically managed award, has the potential to increase the number of employers participating in STW systems, build their capacity to influence and benefit from STW partnerships, and increase the ability of other STW stakeholders to develop effective, sustainable partnerships with employers.

DATES: Applications will be accepted commencing May 18, 1998. The closing date for receipt of applications is July 2, 1998, at 4 P.M., (Eastern Time) at the address below.

ADDRESSES: Applicants shall be mailed to U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Patricia Glover, Reference: SGA/DAA 98–005, 200 Constitution Avenue, N.W., Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Ms. Patricia A. Glover, Grants Management Specialist, Division of Acquisition and Assistance, Fax (202)219–8739. This is not a toll-free number. All inquiries should include the SGA number (DAA 98–005) and a contact name and phone number. This solicitation will also be published on the Internet, and the Employment Administration's Home Page at http://www.doleta.gov. Award notifications will also be published on this Home Page.

Employer Technical Support Coordination Solicitation

I. Purpose

To invite proposals to coordinate an array of national efforts to engage employers in STW and to provide technical support to STW partners that will increase and maximize employer participation in these partnerships.

II. Background

The School-to-Work Opportunities Act was signed into law by the President on May 4, 1994. Jointly administered by the Departments of Labor and Education, this Act is a new approach to education that seeks to better prepare all American Youth for careers in high skill, high wage jobs and to strengthen the linkages between what is learned in school with work. Under the Act, venture capital grants are provided to States and local communities to undertake systemic reform. Grants are for a limited duration with the Federal investment declining over time. These investments are intended to support the one-time costs of States and local communities to restructure learning experiences for all students. The Act also provides a set-aside of funds for national activities to support School-to-Work system building nationwide. These funds are used for technical assistance and capacity building, for outreach, and for research and evaluation. Section 403 of the Act, relating to training and technical assistance, specifically directs the Secretaries to ''work in cooperation with * * * employers and their associations * * * to increase their capacity to develop and implement effective School-to-Work programs.''

III. Statement of Work

Employer Participation in STW

Changes in the economy, technology and global competition are driving forces behind efforts to improve the academic performance and career preparedness of today's youth. Among its purposes, the National School-to-Work Act was enacted to: ''utilize workplaces as active learning environments in the educational process by making employers joint partners with educators in providing opportunities for all students to participate in high quality, work-based learning experiences.'' Work based learning is one of the three key components within a STW system (school-based learning and connecting activities are the other two). At the early stages of STW implementation, one of the key considerations was to build employer

participation in STW at such a scale and depth as to provide the vast number of work-based learning opportunities necessary for all of the nation's students to experience meaningful connections between the classroom and the workplace. Thus, an unprecedented scale of employer commitment and involvement in education is critical for the implementation and sustainability of STW systems. Employers participate in STW systems through a number of different activities involving students, teachers and with State and local governing bodies. *The Employer Participation Model,* published by the National Employer Leadership Council (NELC), outlines more than 50 different opportunities for employer involvement in STW. State and local communities are actively working to engage employers in becoming partners and active participants within their STW systems.

Status of Employer Investments

To date, the two Departments through the National School-to-Work Office have made a number of investments to support employer knowledge and participation in aspects of emerging STW systems. A major investment included support for the establishment and development of the National Employer Leadership Council (NELC), the purpose of which has been to enlist the leadership of highly visible CEOs of major companies in order to promote STW at the highest levels of corporate business. Another significant investment included one through an existing ETA grant to the National Alliance of Business (NAB). The purpose of this project was to promote participation in STW through ETA's workforce development infrastructure featuring a partnership comprised of NAB, NELC, the Association of Private Industry Councils, and the National Employer Council. The National STW Office also invested in specific outreach activities and publications targeted to business entities and employers. Recently, the National STW Office released a solicitation in which up to 5 awards will be made to national industry and trade associations. The successful applicants will be expected, through their membership infrastructures, to capture for STW participation a critical mass of employers in growth industries and/or those with high potential for providing jobs with career pathways for new job entrants.

Additional investments have been made in research and evaluation to collect data on employer participation. These studies support the notion that the investments made to date are having a modest impact, but there is still a long way to go before employer participation can be considered at a scale sufficient to sustain STW systems. One recent study conducted by Mathematica Policy Research revealed that employers are playing an active role in local partnerships, participating widely in governing in and more than a quarter of the cases are actually chairing these bodies. They are offering varied forms of work-base learning opportunities, hosting teacher internships and contributing to curriculum development. However, according to the Mathematica report, partnerships still face significant challenges as they try to recruit the numbers of employers needed. The report concludes that ''Employer recruiting will have to expand participation manyfold beyond the 1996 levels if the goals states are setting for workplace activity are to be realized.'' Other research shows, however, that employers are ready and eager to participate in STW and that their numbers are expanding. The National Employer Leadership Survey conducted by the Center on Educational Quality of the Workforce illustrated a clear desire by employers to participate in and provide appropriate leadership to STW. Significantly, another study conducted through the NELC shows that there is economic incentive to do so. Preliminary data from its Return on Investment Study shows a quantitative value of STW participation ranging from $.44 to over $5 for every dollar invested. In addition, companies are likely to experience non-monetary returns on investment such as increased employee morale when they participate in STW.

There are other encouraging indications that employer participation is beginning to accelerate. Part II of the National Employer Survey released in November 1997 revealed that over one in four employers with 20 or more employees are involved in STW. However, the survey also shows that mentoring and job shadowing are the predominant modes of participation and that larger companies participate in greater numbers than small companies. Thus, to further take STW to scale and build employer capacity there need to be efforts to (1.) continue to broaden the number of employers; (2.) expand the nature of employer participation to include more in-depth participation through such activities as internships; and (3.) increase the number of small and medium sized businesses participating in STW. Although investments to date have built awareness of STW in the business community and an encouraging level of employer involvement, we now need to build greater depth and capacity in employer participation. STW initiatives need to engage companies of all sizes and all industries in order to build capacity beyond basic awareness and peripheral participation.

Government Performance and Results Act (GPRA)

GPRA requires that each government entity develop goals and objectives against which performance can be measured. Building strong employer participation in STW is chief among the objectives the Departments have established for the National School-to-Work Office. The Departments have identified two indicators of achievement for this objective: 1. by fall 2000, 600,000 employers will engage in at least one recognized STW activity; and 2. by fall 2000, 40% of all employers participating in STW systems will offer work-based learning opportunities. As of December 1995, the most recent data available, 150,000 employers nationally were engaged in at least one STW activity. When the next Progress Measures report is issued this number is likely to be significantly higher. However, it is apparent that strategic approaches for recruitment of employers remains an urgent necessity. There is a need to develop prototype products and to work with key organizations to raise critical awareness of STW among employers. In addition, the Departments recognize the importance of supporting the development, testing, dissemination and implementation of various approaches to employer participation in order to meet the GPRA objectives. This solicitation represents a major component of the Departments' strategy to achieve its objective of building employer participation in STW.

Required Areas of Effort

Reaching a critical mass of employers participating in STW will require concentrated and strategic effort. This effort will require: that both private and public sector employers increase their knowledge of the breadth of STW participation options; that employer participation is easily facilitated; that other stakeholders are ready and knowledgeable enough to partner with employers; that employers are able to influence other institutions for their own benefit; that employers help infuse STW into other workforce development and community systems; that there is research—both hard evidence and anecdotal examples—to demonstrate the conditions under which there is a return on investment when they participate;

and that investments in employer participation grow and leverage other resources. Based on lessons learned from previous investments in awareness building and research, the Departments believe it necessary to approach building the levels of employer participation by requiring the successful applicant for this solicitation to demonstrate concerted effort in the following four areas of concentrated activity.

1. *Building employer knowledge base about STW and cultivating corporate leadership.* This area required effort includes but is not limited to those activities that (1) address perceived barriers to employer participation in STW; (2) provide more information to employers; (3) organize employer events (such as employer conferences) regarding STW; (4) highlight effective and best practices; (5) publicly recognize commendable examples of employer participation in STW; (6) disseminate research findings pertinent to employer participation in STW; and (7) generally provide outreach to the employer community and promote participation in STW. The Departments are particularly interested in activities that instruct and sustain employers in leading efforts to promote and implement STW systems' leadership at the national, state, and local levels.

The Departments have determined that these activities proceed most effectively when they are guided by business leaders who have demonstrated their commitment to STW and their willingness to promote the program within the larger business community. As discussed above, several employer groups, such as the NELC, NAB, NAPIC, and NEC, have substantially increased the visibility of STW in the business community. Accordingly, the Departments expect the successful applicant to: (1) operate an active national advisory council of business leaders, including representatives from employer groups such as those listed above; (2) describe, with specificity, the roles and activities of the advisory council; and (3) identify the business leaders who have committed themselves to serve on the council.

2. *Organizing and participating in strategic alliances with national business groups and organizations.* This area of required effort involves activities designed to maximize the coordination of STW-related initiatives. The Departments recognize that national organizations which represent and serve a wide variety of businesses and business interests have been demonstrating increasing interest in STW. Some of these groups have established STW initiatives of varying scope and intensity. As a result, there are several simultaneous national efforts to inform about STW and to engage them in STW initiatives. The Departments believe that where possible, coordinated alliances between these groups would strengthen the overall impact of these efforts. Accordingly, the Departments are interested in activities that would strategically convene divergent business efforts to increase knowledge of, and participation in STW, that includes serving when necessary as the collective voice of business in the ongoing dialogue around STW issues.

3. *Providing technical assistance to State STW systems in cultivating employer participation.* States need various degrees of assistance in recruiting employers to actively participate in STW. Also, previous experience indicates that employer involvement becomes tenuous when employers are in a ready posture to participate, but STW systems are not fully ready to engage employers. The Departments are therefore interested in direct technical assistance to selected State STW systems that will help these systems expand and intensify employer participation. Examples of such technical assistance include helping states develop strategic plans for developing employer leadership, assisting states develop products and tools for working with employers as well as for organizations working with employers, and dissemination of products and materials for engaging employer leadership in State systems.

4. *Providing support and coordination to national industry specific STW initiatives.* The Departments are in the process of awarding up to 5 new awards (Reference # : SGA/DAA 98–003) to provide support to industry groups and trade associations to undertake outreach, technical assistance, and other activities to engage and build capacity of employers in their industry to participate in STW systems. The Departments believe that, through industry-specific initiatives, industry groups representing high growth industries and/or those that have a high potential for providing jobs with career pathways for new job entrants can build a strong base of employer participation in STW. Accordingly, it is expected that the successful applicant for this solicitation will convene the successful offerors from SGA/DAA 98–003 on a quarterly basis and coordinate their efforts to share activities and results across industries. This requirement is to insure that the National STW Office's investments in employer engagement are closely allied and are strategically consistent.

IV. Eligible Applicants

National business organizations or associations, or a national consortium of business organizations experienced in business partnership management and School-to-Work. Potential applicants, however, should note the Departments' priority in seeking an organization with a thorough knowledge of School-to-Work, familiarity with *The Employer Participation Model,* demonstrated competence in promoting and supporting education/business partnerships, and a strong knowledge base concerning the needs, circumstances and conditions of businesses that participate in School-to-Work. In preparing the proposal, please use the following headings and respond to the information in each of the following categories.

1. Project Description. Summarize the scope of the project, outline how its activities will relate to the four broad areas of activity described in the previous section, provide succinct and measurable project objectives, and show how the objectives will help the Departments meet the STW goals and objectives established pursuant to GPRA.

2. Operational Plan. Provide a detailed work plan that includes a description of the proposed activities matched to the objectives presented in the Project Description, with accompanying time lines, and the targeted audiences for each of these activities. Provide an organizational structure and clear management plan detailing the staff and organizational resources to be devoted to the project. The offeror should demonstrate how the proposed work will contribute to bringing STW to scale and how it will lead to sustainability. Indicators demonstrating whether the work plan is likely to help bring STW to scale include:

- Showing the impact usefulness at the national, state, and local levels and demonstrating a strong ''outreach'' effort to enhance this impact;
- Articulating how the planned activities will build linkages between business and other STW stakeholders;
- Connecting to, and collaborating with, other organizations and initiatives designed to promote employer participation in STW;
- Identifying, developing, and disseminating materials for professional development in the area of effective employer engagement in STW; and
- Building linkages with industry groups and organizations which, through their membership, are in a position to promote broader employer participation in STW, in particular, those industry/trade consortiums funded by the National School-to-Work Office. Indicators demonstrating whether the plan demonstrates sustainability after the federal investment has ended include:
- Identifying both federal and non-federal funding sources a that amplify the federal investment and outlast it;

- Describing in business terms how the plan addresses business problems or needs;
- Inviting other entities with similar experiences and interests to identify related products, resources, findings and interests in order to take advantage of activities in the larger arena of STW implementation; and
- Building upon existing, or creating new *coalitions* that maximize business involvement and participation in STW.

3. Connecting to related initiatives and entities. The offeror should demonstrate how its proposed plan of activities will build upon existing or create new coalitions that maximize business involvement and participation in STW; and/or connect with other entities with similar experiences and interests to identify related products, resources, funding and interests in order to take advantage of activities in the larger arena of STW implementation, and/or involve the public and private sectors in ways that capitalize on, and connect to, existing infrastructures and overall workforce development systems.

4. Results. The offeror should provide specific and quantifiable outcomes that are anticipated from the proposed plan of activities and that are measured with STW GPRA performance indicators. The proposed outcomes should be sufficiently rigorous to allow the Departments to meet its performance objectives and indicators established pursuant to GPRA. In identifying outcomes, the offeror should also explain how it will collect data, document results and use these results to inform its ongoing workplan.

5. Capability. The offeror should demonstrate the capability of the organization and the key staff assigned to undertake the work plan, including examples of prior related efforts that demonstrate success in providing outreach and capacity building efforts to employers and employer organizations.

V. Funding Availability and Period of Performance

The Departments expect to make one award under this competition. The award will be for $750,000. The period of performance will be for 12 months from the date the grant is awarded. The Departments may, at their option, provide additional funds for another 24 months, depending on fund availability and performance of the awardee.

VI. Application Submittal

Applicants must submit four (4) copies of their proposal, with original signatures. The applications shall be divided into two distinct parts: Part I—which contains Standard Form (SF) 424, ''Application for Federal Assistance,'' (Appendix A) and ''Budget Information Sheet,'' (Appendix B) . All copies of the SF 424 MUST have original signatures of the designated fiscal agent. Applicants shall indicate on the SF–424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(C) 4 of the Interal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The Catalog of Federal Domestic Assistance number is 17.249. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Part II shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this notice. Applicants must describe their plan in light of each of the Evaluation Criteria. No cost data or reference to price shall be included in this part of the application. Applicants MUST limit the program narative section to no more than 30 double-spaced pages, on one side only. This includes any attachments. Applications that fail to meet the page limitation requirement will not be considered.

VII. Late Applications

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) Was sent by registed or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., and application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) Was sent by the U.S. Postal Service Express Mail Next Day Service to addresses not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and federal holidays. The term ''post marked'' means a printed, stamped or otherwised placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

VIII. Hand Delivered Proposals

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, Hand-delivered applications must be received by 4:00 p.m., (Eastern Time), on the closing date.

Telegraphed and/Faxed Applications Will Not Be Honored

Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and *Must Be Received* by the above specified date and time.

IX. Review Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The government may elect to award the grants with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF–424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

X. Evaluation Criteria

1. The extent to which the offeror outlines a clear and detailed plan of operation. (40 points)

- Is the plan specific as to the activities proposed and how these activities will result in broad employer participation?
- Are the outcomes proposed specific and realistic?
- Is the plan specific as to staff assignments and level of effort?
- Do the activities directly relate to the four areas of required effort?
- Does the application demonstrate how the proposed work will contribute to expanding the scope and breadth of employer participation in STW?
- How will the proposed activities lead to sustainability of the federal investment to engage employers in STW systems?
- How will the proposed outcomes help the Departments to meet its performance objectives and indicators established pursuant to the GPRA?

2. The extent to which the applicant demonstrates the capability and capacity to meet the requirements of this solicitation. (30 points)

- Does the organization have clear links to the employer and business communities?
- Does the applicant identify specific corporate entities and leaders (e.g., individuals associated with particular business groups) who have committed to actively participate on a national advisory council; and does the organization clearly delineate the roles and activities of this advisory body?

- Has the applicant demonstrated the ability to recruit business leaders, who represent a mix of industry types, sizes and geographic locations, for its proposed STW activities?
- Are the personnel assigned to the effort well qualified to carry out the activities represented in the operational plan?
- Are the organization and assigned staff well positioned to provide the range of technical assistance to employers, employer partners and STW systems as required?
- Does the organization demonstrate the capacity to perform the range of required activities on a national scale?

3. The extent to which applicant demonstrates the willingness and ability to engage and convene other related national initiatives that seek to inform and develop employer participation in STW. (20 points)

- Does the applicant propose specific activities that are likely to result in strategic alliances with other business groups?
- Does that applicant show relevant past experience in collaborating with national business groups?
- Does this experience span a range of industry sizes and types?

4. The overall utility of the applicant's plan to evaluate its activities and use its results to inform its ongoing plan. (10 points)

- Is the plan for evaluation clearly tied to clear objectives and specific outcomes?
- Is there a clear mechanism for adjusting the workplan based on results?
- Are there clear descriptions of the type of data to be collected and a clear data collection plan?

The grants will be awarded based on applicant response to the above mentioned criteria and that which is otherwise most advantageous to the Departments.

XI. Reporting Requirements

The Departments are interested in insuring that the grantee work closely with the industry and trade associations that are successful applicants for the previously referenced competition (Reference # DGA/DDA 98–003). The Departments expect the successful offeror will convene these associations' STW project staff on a quarterly basis. The grantee will also be asked to submit periodic reports in a format to be determined and on a semi-annual basis.

Signed at Washington, D.C., this 11th day of May 1998.

Janice E. Perry,

Grant Officer.

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX A

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

1 7 - 2 4 9

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$	$	$
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate%)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$	$	$

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*

3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. *Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. *Supplies: Include the cost of consumable supplies and materials to be used during the project period.*

6. *Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. *Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. *Total, Direct Costs: Add lines 1 through 7.*

9. *Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. *Training /Stipend Cost: (If allowable)*

11. *Total Federal funds Requested: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 98–13156 Filed 5–15–98; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–20; Exemption Application No. D–10355, et al.]

Grant of Individual Exemptions; Equitable Life Assurance Society

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Equitable Life Assurance Society of the United States (Equitable) Located in New York, New York; Exemption

[Prohibited Transaction Exemption 98–20; Exemption Application No. D–10355]

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the past and continuing lease (the Lease) of commercial space in One Boston Place by Equitable Separate Account No. 8, also known as the Prime Property Fund (PPF), to an Equitable affiliate, Equitable Real Estate Investment Management, Inc. (ERE), provided the following conditions are satisfied:

(1) All terms and conditions of the Lease are at least as favorable to PPF as could be obtained in an arm's length transaction with an unrelated party;

(2) The interests of PPF for all purposes under the Lease is represented by an independent fiduciary, Lawrence A. Bianchi, a principal of the Codman Company in Boston, Massachusetts;

(3) The rent paid by ERE at all times under the Lease is no less than the fair market rental value of the property; and

(4) The independent fiduciary will continue to monitor the Lease on behalf of PPF.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on February 6, 1998 at 63 FR 6214.

EFFECTIVE DATE: This exemption has an effective date of July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Tyson Foods, Incorporated Employee Profit Sharing Plan and Trust (the Plan) Located in Springdale, Arkansas Exemption

[Prohibited Transaction Exemption 98–21; Exemption Application No. D–10421]

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past sale by the Plan of certain hatcheries, a freezer facility and an office complex (collectively, the Properties), all located in Arkansas, to Tyson Foods, Incorporated (the Company), a party in interest with respect to the Plan, provided that the following conditions were satisfied:

(A) All terms of the transactions were at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The sale was a one-time transaction for cash;

(C) The Plan paid no commissions nor other expenses relating to the sale;

(D) The purchase price was the greater of: (1) the fair market value of each of the Properties as determined by a qualified, independent appraiser; or (2) the Plan's original acquisition cost; and

(E) Prior to the sale, an independent fiduciary reviewed the transactions and determined that the transactions described herein, were appropriate and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on March 20, 1998 at 63 FR 13693.

EFFECTIVE DATE: This Exemption has an effective date of May 23, 1997.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or

administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of May 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–13146 Filed 5–15–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–22; Exemption Application Nos. D–10461, D–10462 and D–10463]

Grant of Amendment to Prohibited Transaction Exemption (PTE) 93–8 Involving the Fortunoff Pension Plans (the Plans) Located in Westbury, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of Amendment to PTE 93–8.

SUMMARY: This document contains a final exemption which amends PTE 93–8 (58 FR 7258, February 5, 1993), a purchase, leaseback and license exemption involving Plans sponsored by Fortunoff Fine Jewelry and Silverware, Inc. (FFJ) and M. Fortunoff of Westbury Corporation (M. Fortunoff) and parties in interest. These transactions are described in a notice of pendency that was published in the **Federal Register** on May 8, 1992 at 57 FR 19951.

EFFECTIVE DATE: This exemption is effective as of May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, D.C. 20210, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 19, 1997, the Department of Labor (the Department) published a notice of proposed exemption (the Notice) in the **Federal Register** (62 FR 66685) that would amend PTE 93–8. PTE 93–8 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. The Notice was requested in an application filed on behalf of M. Fortunoff and FFJ (collectively, the Applicants) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990) (the Procedures). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The Notice gave interested persons the opportunity to comment and to request a public hearing on the matters described therein. Although the Notice and supplemental statement were to be posted and distributed to interested persons during the month of December 1997, the Applicants stated that this action was not taken but inadvertently overlooked. Therefore, the Applicants represented that they posted copies of the Notice and supplemental statement on employee bulletin boards in company stores and executive offices and also mailed this documentation to all other participants in the Plans who were not current employees, on or about March 9, 1998. The Department received no comments or hearing requests from interested persons following the dissemination of the Notice and supplemental statement and, therefore, has determined to grant the amendment to PTE 93–8.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This exemption will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the Summary of Facts and Representations set forth in the proposed exemption relating to PTE 93–8, as amended by this grant notice, accurately describe, where relevant, the material terms of the transactions consummated pursuant to that exemption.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the Procedures cited above, the Department hereby amends PTE 93–8. Accordingly, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the leasing by the Fortunoff Pension Plan—Employer Group A Plan, the Fortunoff Pension Plan—Employer Group B Plan and the Fortunoff Fine Jewelry and Silverware, Inc. Profit Sharing Plan (collectively, the Plans) to Fortunoff Fine Jewelry and Silverware, Inc. (FFJ), under the provisions of an amended lease (the Amended Lease) described in Prohibited Transaction Exemption (PTE) 93–8 (58 FR 7258, February 5, 1993), of certain real property (the Substitute Property), acquired by the Plans through

a third party exchange (the Exchange Property), as well as all remaining real estate which constitutes the leased premises (the Property), provided the following conditions are met:

(a) The terms of the Amended Lease remain at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

(b) The independent fiduciary—

(i) Determines that the acquisition and subsequent leasing of the Substitute Property by the Plans under the Amended Lease are in the best interest of the Plans and their participants and beneficiaries;

(ii) Monitors and enforces compliance with the terms and conditions of the Amended Lease, the Escrow Agreement and the new exemption, at all times; and

(iii) Appoints one or more independent fiduciaries to resolve any conflicts of interest which may develop among the Plans with respect to the Amended Lease, the Escrow Agreement, the Property, or the Plans' respective interests therein.

(c) The fair market value of the proportionate interests held by each Plan in the Property as a whole following the exchange transaction does not exceed 25 percent of each Plan's assets.

(d) The Property, the Exchange Property and the Substitute Property are all appraised by qualified, independent appraisers prior to the consummation of the exchange transaction.

(e) The base rent for the Property is adjusted annually by the independent fiduciary based upon an independent appraisal of such Property.

(f) FFJ incurs all real estate taxes and other costs which are incident to the Amended Lease.

(g) The Escrow Agreement is maintained by M. Fortunoff of Westbury Corporation (M. Fortunoff), in favor of the Plans, as security for FFJ's rental obligations under the Amended Lease.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 93–8, refer to the proposed exemption, grant notice and technical correction notice which are cited above.

Signed at Washington, D.C., this 13th day of May, 1998.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–13144 Filed 5–15–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10583, et al.]

Proposed Exemptions; McClain's R.V., Inc. 401(k)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

McClain's R.V., Inc. 401(k) Profit Sharing Plan (the Plan) Located in Lake Dallas, Texas

[Application No. D–10583]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain unimproved real property (the Land) by the Plan to Larry McClain (Mr. McClain), the sole shareholder of McClain's R.V. Inc., the sponsor of the Plan, and a party in interest with respect

to the Plan, provided that the following conditions are satisfied:

(a) the proposed sale will be a one-time cash transaction;

(b) the Plan will receive the greater of: (1) the original acquisition cost of the Land plus the aggregate holding costs incurred by the Plan; or (2) the current fair market value of the Land (plus an appropriate premium related to the adjacency of the Land to other real property owned by McClain's R.V. Inc.), as established by an independent qualified appraiser at the time of the sale; and

(c) the Plan will pay no commissions or other expenses associated with the proposed sale.

Summary of Facts and Representations

1. The Plan is a 401(k) profit sharing plan that was established effective January 1, 1981. As of December 31, 1996, the Plan had 73 participants and beneficiaries. As of December 31, 1997, the Plan had total assets of $3,419,103. Chase Texas, N.A. (formerly known as Texas Commerce Bank) is a directed trustee of the Plan.

The sponsor of the Plan is McClain's R.V. Inc. (the Employer), which is a subchapter ''C'' corporation, incorporated in the State of Oklahoma. The Employer sells and services recreational vehicles and travel trailers. Mr. McClain is the sole shareholder of the Employer and a Plan participant.

2. On or about November 7, 1985, the Plan purchased the Land from Mr. Pertells, an independent third party, for approximately $57,000. This original purchase transaction was made in cash with no extension of credit involved.

The Land is located at S.W. 2nd Street and Rockwell Avenue in Oklahoma City, Oklahoma. The Land consists of two tracts which comprise approximately 21,855 square feet, and is adjacent to certain real property that is owned by the Employer. The Land has been used sporadically by the Employer for overflow or customer parking. The applicant represents that the Employer's customers would occasionally park on the Land rather than in the Employer's main parking lot. In the interest of maintaining good customer relations, the Employer did not require the customers to move their vehicles to the regular parking area. Additionally, when the Employer's main parking lot was full, the employees of the Employer would temporarily park their vehicles on the Land, and would move their vehicles to the Employer's parking lot later in the day. The applicant represents that the Employer does not require its employees or customers to pay for parking on the Land or in the Employer's parking lot.[1] As such, there have been no formal leases or arrangements made between the Plan and the Employer to compensate the Plan for parking on the Land. Furthermore, the Land has yielded no other revenue for the Plan from the date of its original acquisition to the present.[2]

3. The original decision to purchase the Land as a long term investment was made by the trustees of the Plan in 1985. The applicant maintains that at the time the Land was originally purchased, land values were stable and there was no indication that property values would plummet shortly thereafter. The trustees also intended to lease the Land to the Employer for use as necessary, thus providing some income to the Plan. However, the intended leasing of the Land did not occur because the trustees were informed that such a lease would violate the prohibited transaction rules of the Act.

The Plan's estimated aggregate holding costs relating to the Land for the period 1985–1997 were $3,473.23. This amount includes the property taxes that were due on the Land for that period, and certain periodic appraisals of the Land that were paid for by the Plan.[3] Therefore, the Plan's total cost for the acquisition and holding of the Land was $60,473.23 as of April, 1998.[4]

4. The Land was appraised on January 15, 1998, (the Appraisal) by Bennie W. Vowell (Mr. Vowell), an independent qualified appraiser certified in the State of Oklahoma. The Appraisal is an update of an earlier appraisal of the Land, which was also conducted by Mr. Vowell. The Appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practice and analyzed appropriate market data for determining the fair market of the Land, including recent sales of similar properties as well as the ''highest and best use'' value of the Land. The Appraisal also considered the adjacency of the Land to real property owned by the Employer and, accordingly, added a premium to the value of the Land in any sale to the Employer. The Appraisal concluded that the fair market value of the Land was $49,000, as of January 15, 1998.

5. Mr. McClain proposes to purchase the Land from the Plan in a one-time cash transaction. As of December 31, 1997, the Land represented approximately 1.4 percent of the Plan's total assets. The applicant represents that the Land has been declining in value since the original acquisition. This decline in value has been adversely affecting the value of the participants' accounts in the Plan.[5]

The applicant represents that the amount Mr. McClain would pay for the Land in this proposed transaction is in excess of the Land's current fair market value. If the Land was sold on the open market, it would not sell for as much as Mr. McClain is willing to pay. In addition, the Plan's price in a sale of the Land to an independent third party would not include the adjacency premium, which the Appraisal indicates is appropriate in a sale to Mr. McClain as a result of the Employer's ownership of adjacent property. The sale of the Land to an independent third party at a lower price would cause the Plan and its participants to suffer a financial loss. Alternatively, if the Land remains in the Plan, the participants will not be able to invest the portions of their accounts which are currently attributable to the Land in other investment vehicles with a higher yield. The applicant thus maintains that the terms and conditions of the proposed sale are superior alternatives to selling the Land to a third party or retaining the Land as a Plan asset.

6. Therefore, the applicant represents that the proposed transaction is in the best interest and protective of the Plan because the transaction will enable the Plan to divest of an asset that has depreciated in value and generated no income to the Plan. The Plan will be able to reinvest the proceeds in other investments with higher rates of return. The transaction is protective of the Plan,

[1] In this regard, the Department notes that section 406(a)(1)(D) of the Act prohibits, in relevant part, a plan fiduciary from causing a plan to engage in a transaction which constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. However, the Department is not providing any relief herein for any violations of part 4 of Title I of the Act which may have occurred during the Plan's ownership of the Land.

[2] The Department expresses no opinion in this proposed exemption as to whether the acquisition and the subsequent holding of the Land by the Plan violated section 404(a) of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

The Department notes further that the decision to propose this exemption is based on the applicant's representations, as discussed herein, that any attempts to sell the Land to a third party would result in further losses to the Plan.

[3] The applicant represents that the appraisals for the years 1996, 1997 and 1998 have been paid by the Employer.

[4] This amount represents the sum of the Plan's original acquisition cost of $57,000 plus the aggregate holding costs of $3,473.23.

[5] The applicant represents that a portion of the Land's value is allocated to each participant's account.

because the Plan will receive the greater of: (a) the total cost of the Land; or (b) the current fair market value of the Land (plus an appropriate premium related to the Land's adjacency to the Employer's property) as established by an independent qualified appraiser at the time of the sale. The Plan will not pay any commissions or other expenses associated with the sale. Furthermore, the applicant represents that any amounts received by the Plan as a result of the proposed transaction, which are in excess of the fair market value of the Land will be treated as a contribution to the Plan, but that this contribution will not exceed limitations of section 415 of the Internal Revenue Code.

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) the proposed sale will be a one-time cash transaction;

(b) the Plan will receive the greater of: (i) the total cost of the Land; or (ii) the current fair market value of the Land (plus an appropriate premium related to the Land's adjacency to the Employer's property) as established by an independent qualified appraiser at the time of the sale;

(c) the Plan will not pay any commissions or other expenses associated with the proposed sale; and

(d) the sale of the Land to the Employer will enable the Plan to divest of an illiquid asset which has depreciated in value and yielded no income. Also, the sale will enable the Plan to reinvest the sale proceeds in investments with higher rates of return.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or an affiliate thereof) results in the plan either paying less or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

Karen J. Hartley Profit Sharing Plan (P/S Plan) and Karen J. Hartley Money Purchase Pension Plan and Trust Agreement (M/P Plan, Collectively; the Plans) Located in Eugene, Oregon

[Application Nos. D–10588 and D–10589]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan (the Loan) by the Plans to Karen J. Hartley (Ms. Hartley), the trustee and sole participant of the Plans and, a disqualified person with respect to the Plans;[6] provided that the following conditions will be met:

1. The Loan will be structured such that each Plan will lend up to 25% of its assets. However, the aggregate amount of the Loan will not exceed $40,000 at any time;

2. The outstanding balance of the Loan will at no time exceed 25% of the Plans' aggregate assets;

3. The Plans will bear no expenses with respect to the proposed transaction;

4. The terms and conditions of the Loan will be at least as favorable to the Plans as those obtainable in arm's-length transaction with an unrelated party; and

5. The Loan will be adequately secured by collateral, which at all times will be equal to 100% of the outstanding principal amount of the Loan plus 6 months interest at the Loan's interest rate of 8.2%. In the event the collateral amount falls below this required amount, this proposed exemption, if granted, will no longer be available.

Summary of Facts and Representations

1. The P/S Plan was established on January 1, 1989, and the M/P Plan was adopted on January 1, 1993. Ms. Hartley is the sole participant[7] and trustee of both Plans. Ms. Hartley has investment discretion over the Plans' assets. Charles Schwab and Company (Schwab) is the current custodian of the Plans. As of January 31, 1998, the P/S Plan had total assets of $142,171.59, and the M/P Plan had total assets of $35,031.71. Thus, as of January 31, 1998, the aggregate balance of the Plans' assets was $177,203.30. Ms. Hartley is a sole proprietor engaged in the practice of law in Eugene, Oregon.

2. The Loan will have a ten year duration and a fixed interest rate of 8.2% per annum. The Loan will be payable in equal monthly installments of principal and interest. The promissory note (the Note) which will evidence the Loan provides for no penalty, premium or prepayment charge in the event of a full or partial prepayment. The Loan will be structured such that each Plan will lend up to 25% of its assets. However, the aggregate amount of the Loan will at no time exceed $40,000. Furthermore, the outstanding principal balance of the Loan will at no time exceed 25% of the Plans' aggregate assets.

Ms. Hartley represents that the terms of the Loan will comply with section 72(p) of the Code.[8] The Loan proceeds will be used by Ms. Hartley to acquire a dwelling unit, which shall be her principal residence.

3. The Loan will be secured by cash or cash equivalents, such as money market funds and/or certificates of deposit (the Collateral). The Collateral amount will at all times equal 100% of the outstanding principal amount of the Loan, plus 6 months of interest on such principal at the rate of 8.2% per annum. The Collateral will be maintained in a separate account with Schwab (the Collateral Account). The applicant represents that at no time will the Collateral Account contain less than the amount of assets required to fully secure the Loan, in accordance with this proposed exemption. In the event that the amount in the Collateral Account falls below the required amount, as specified herein, the proposed exemption, if granted, will no longer be available.

A security agreement (Security Agreement) will be signed by the parties to create a perfected security interest for the Plans in the Collateral. Ms. Hartley will perfect the Plans' security interest by a proper filing of a state financing statement with the Corporation Division

[6] Pursuant to CFR 2510.3–3(b) and (c), the Department has no jurisdiction with respect to the Plans under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[7] The applicant represents that each of the Plans will have no other participants during the Loan's existence, from its initial making until the outstanding principal balance has been paid in full, and the Loan is terminated.

[8] In this regard, section 72(p)(1) of the Code treats a loan from a qualified plan to a participant as a ''premature distribution'' unless the loan meets certain conditions to qualify for ''exception for certain loans'' contained in section 72(p)(2) of the Code. However, with respect to the Loan, the Department has no jurisdiction to determine whether the requirements of section 72(p) of the Code are met.

of the State of Oregon. Ms. Hartley will retain rights to and possession of the Collateral, subject to the terms of the Security Agreement and the rights and obligations of Schwab, through its maintenance of the Collateral Account.

4. Ms. Hartley will monitor the Collateral. On a monthly basis, Ms. Hartley will receive from Schwab a statement for the Collateral Account (Schwab Statement). Ms. Hartley will determine if the amount in the Collateral Account contains at least the required Collateral amount.

On an annual basis, Ms. Hartley will examine the Schwab Statements for the Collateral Account, and will determine whether the amount in the Collateral Account exceeds the required amount of the Collateral. This determination may be made using monthly interest amortization tables, or a computer program. If the Collateral Account exceeds the required Collateral amount (an Excess Amount), Ms. Hartley may transfer the Excess Amount to her personal account, as long as the required Collateral amount remains in the Collateral Account. Alternatively, Ms. Hartley may leave any portion of the Excess Amount in the Collateral Account. However, any Excess Amount in the Collateral Account shall not modify the required Collateral amount.

If the Loan is ever in default, Ms. Hartley as trustee for the Plans will seek to remedy the default and use all legal means available in the State of Oregon.

5. With respect to the rights of the Plans as a secured creditor, the Security Agreement contains the following provisions. Section 4.2 of the Security Agreement states that the Debtor (i.e., Ms. Hartley) shall not remove the Collateral from the Collateral Account without the written consent of the Secured Party (i.e., the Plans). Section 4.3 of the Security Agreement also states that the Debtor agrees to execute and file a financing statement and do whatever may be necessary under the applicable provisions contained in the Uniform Commercial Code for the State of Oregon to perfect and continue the Secured Party's interest in the Collateral. Section 4.4 of the Security Agreement provides that the Debtor will not sell or otherwise transfer or dispose of any interest in the Collateral without the prior written consent of the Secured Party. Furthermore, Section 4.5 of the Security Agreement provides that, among other things, except where it has received the prior written consent of the Secured Party, the Debtor shall keep the Collateral free from any adverse liens or other security interests. The Debtor will not use or permit anyone to use the Collateral in violation of any statute, ordinance, or state or federal regulation, and the Secured Party may examine and inspect the Collateral at any time.

6. Ms. Hartley desires to enter into the loan transaction because the transaction is administratively feasible, protective and in the best interest of the Plans. The Plans will bear no expenses with respect to the proposed transaction. The Loan will not exceed 25% of each of the Plan's total net assets, and the aggregate amount of the Loan will not exceed $40,000. In addition, the outstanding balance of the Loan will at no time exceed 25% of the Plans' aggregate assets. The Loan will be adequately secured by the Collateral, which at all times will be equal to 100% of the outstanding principal amount of the Loan plus 6 months interest. Also, Ms. Hartley represents that the Loan is consistent with the Plans' liquidity needs and investment objectives, including the Plans' overall investment strategy to invest only in so-called ''socially responsible investments''.[9]

With respect to the terms and conditions of the Loan, Washington Mutual Bank in Eugene, Oregon (the Bank), in a letter dated April 2, 1998, has certified that it would enter into a similar loan with Ms. Hartley (the Bank Loan). Specifically, the original amount of the Bank loan would be $40,000. The Bank Loan would be payable in equal monthly payments of principal and interest, in the same amount as the Loan, over a 10 year period at an interest rate of 8.2%. Therefore, Ms. Hartley represents that the terms of the Loan will be at least as favorable to the Plans as those obtainable in arm's-length transaction with an unrelated party, as indicated by the letter from the Bank.

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

A. The Plans will bear no expenses with respect to the proposed transaction;

B. The Loan will not exceed 25% of each of the Plan's total net assets. In addition, the aggregate amount of the Loan will not exceed $40,000;

C. The outstanding principal balance of the Loan will at no time exceed 25% of the Plans' aggregate assets;

D. The terms and conditions of the Loan will be at least as favorable to the Plans as those obtainable in arm's-length transaction with an unrelated party;

E. The Loan will be adequately secured by the Collateral, which at all times will be equal to 100% of the principal amount of the Loan plus 6 months interest at the Loan's interest rate of 8.2%. In the event the Collateral Amount falls below this required amount, the proposed exemption, if granted, will no longer be available; and

F. Ms. Hartley is the sole participant of the Plans and she desires that this transaction be consummated.

Notice to Interested Persons

Because Ms. Hartley is the sole participant of the Plans, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days from the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and

[9] The Department is providing no opinion in this proposed exemption as to whether particular investments or investment strategies would be considered ''socially responsible'' in nature. In this regard, the Department notes that the Internal Revenue Service (IRS) has taken the view that investment strategies for qualified retirement plans may raise questions with regard to the exclusive benefit rule under section 401(a) of the Code if, among other things, the safeguards and diversity that a prudent investor would adhere to are not present. [See, for example, IRS Rev. Rul. 73–532, 1973–2 C.B. 128]

protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of May, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–13145 Filed 5–15–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has submitted the following revised information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. It was originally published on January 15, 1998. No comments relating to the information collection were received.

DATES: Comments will be accepted until June 17, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–6433. E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0004.

Form Number: NCUA 5300.

Type of Review: Revision of a currently approved collection.

Title: Semiannual and Quarterly Financial and Statistical Report.

Description: The financial and statistical information collected is essential to NCUA in carrying out its responsibility for supervising federal credit unions. The information also enables NCUA to monitor all federally insured credit unions whose accounts are insured by the National Credit Union Share Insurance Fund.

Respondents: All credit unions.

Estimated Number of Respondents/Recordkeepers: 11,500.

Estimated Burden Hours Per Response: 8 hours.

Frequency of Response: Quarterly and semiannually.

Estimated Total Annual Burden Hours: 204,800.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on March 19, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–13132 Filed 5–15–98; 8:45 am]

BILLING CODE 7535–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of A New Generic Clearance Plan

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a new Generic Clearance Plan to measure customer satisfaction with the Retirement and Insurance Services' (RIS) programs and services. This Plan satisfies the requirements of Executive Order 12862 and the guidelines set forth in OMB's ''Resource Manual for Customer Surveys.'' RIS is requesting approval for conducting these voluntary customer satisfaction surveys in fiscal years 1998, 1999, and 2000.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For RIS survey questionnaires, we estimate surveying approximately 464,975 customers per year for an annual burden of 109,101 hours for FY 1998 and 94,517 hours each for fiscal years 1999 and 2000; for our telephone surveys, including Interactive Voice Response (IVR) technology, we estimate surveying 264,080 customers per year for an annual burden of 22,072 hours; for Internet surveys, we estimate surveying 1,000 Internet readers for an annual burden of 167 hours; for Focus Groups, we estimate that we may have 10–20 focus groups consisting of 10–15 participants (300 total per year), lasting up to about two hours each for an annual burden of 600 hours; and for Comment Card/Postcard surveys that the RIS Washington, DC, Retirement Information Office may use, we estimate that it would take about 7 minutes to complete and 3,000 customers may respond for an annual burden of 350 hours. The total annual estimated burden is 132,498 hours in FY 1998 and 117,914 hours each for fiscal years 1999 and 2000.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before July 17, 1998.

ADDRESSES: Send or deliver comments to Christopher G. Brown, Acting Chief, Quality Assurance Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 4316, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–13055 Filed 5–15–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Information Collection: SF 3104 and SF 3104B

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for reclearance of an information collection. SF 3104, Application for Death Benefits/Federal Employees Retirement System, is used to apply for benefits under the Federal Employees Retirement System based on the death of an employee, former employee, or retiree who was covered by FERS at the time of his/her death or separation from Federal Service. SF 3104B, Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death, is used by applicants for death benefits under FERS if the deceased was a Federal Employee at the time of death.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 4,054 SF 3104s are completed annually. We estimate that it takes approximately 60 minutes to complete the form. The annual burden is 4,054 hours. Approximately 2,920 SF 3104Bs are completed annually. We estimate that it takes 60 minutes to fill out the form. The annual burden is 2,920 hours. The combined total annual burden is 6,974 hours. For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received by July 17, 1998.

ADDRESSES: Send or deliver comments to: John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–13059 Filed 5–15–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 19d–1, SEC File No. 270–242, OMB Control No. 3235–0206

Rule 19d–3, SEC File No. 270–245, OMB Control No. 3235–0204

Rule 19h–1, SEC File No. 270–247, OMB Control No. 3235–0259

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Rule 19d–1 Notices by Self-Regulatory Organizations Of Final Disciplinary Actions, Denials, Bars, Or Limitations Respecting Membership, Association, Participation, Or Access To Services, And Summary Suspensions.

Rule 19d–1 under the Securities Exchange Act of 1934 (the ''Act'') prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) disciplinary sanctions (including summary suspensions); (2) denials of membership, participation or association with a member; and (3) prohibitions or limitations on access to SRO services. The rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to discipline members or associated persons of members, deny membership or participation or association with a member, and similar adjudicated findings. The rule requires that such actions be promptly reported to the Commission. The rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission (1) to determine whether the matter should be called up for review on the Commission's own motion and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Act.

It is estimated that 10 respondents will utilize this application procedure annually, with a total burden of 2,750 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–1 is 2.5 hours. The average cost per hour is approximately $60. Therefore, the total cost of compliance for the respondents is $165,000.

A respondent is required to keep the information not less than five years. The filing of notices pursuant to the rule is mandatory for SROs but does not involve the collection of confidential information.

Rule 19d–3 Applications For Review Of Final Disciplinary Sanction, Denials Of Membership, Participation, Or Limitations Of Access To Service Imposed By Self-Regulatory Organizations.

Rule 19d–3 under the Act prescribes the form and content of applications to the Commission for review of final disciplinary sanctions, denials of membership, participation or association with a member or prohibitions or limitations of access to services that are imposed by SROs. The Commission uses the information provided in the application filed pursuant to Rule 19d–3 to review final actions taken by SROs including: (1) disciplinary sanctions; (2) denials of membership, participation or association with a member; and (3) prohibitions on or limitations of access to SRO services.

It is estimated that approximately 50 respondents will utilize this application procedure annually, with a total burden of 2,750 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule

19d–1 is 2.5 hours. The average cost per hour is approximately $60. Therefore, the total cost of compliance for the respondents is $165,000.

A respondent is not required to retain the Rule 19d–3 submission for any specified period of time. The filing of a motion seeking review of a final action is mandatory only if the respondent wants Commission review. The submission does not involve the collection of confidential information.

Rule 19h–1/Notice by a Self-Regulatory Organization of a Proposed Admission to or Continuance In Membership or Participation or Association With a Member of Any Person Subject to a Statutory Disqualification, and Applications to the Commission for Relief Therefrom.

Rule 19h–1 under the Act prescribes the form and content of notices and applications by SROs regarding proposed admissions to, or continuances in, membership, participation or association with a member of any person subject to a statutory disqualification.

The Commission uses the information provided in the submissions filed pursuant to Rule 19h–1 to review decisions of SROs to permit the entry into or continuance in the securities business of persons who have committee serious misconduct. The filings submitted pursuant to the rule also permit inclusion of an application to the Commission for consent to associate with a member of an SRO notwithstanding a Commission order barring such association.

The Commission reviews filings made pursuant to the rule to ascertain whether it is in the public interest to permit the employment in the securities business of persons subject to statutory disqualification. The filings contain information that is essential to the staff's review and ultimate determination on whether an association or employment is in the public interest and consistent with investor protection.

It is estimated that approximately 5 respondents will make submissions pursuant to this rule annually, with a total burden of 225 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19h–1 is 4.5 hours. The average cost per hour is approximately $60. Therefore, the total cost of compliance for the respondents is $13,500.

A respondent is required to keep the information not less than five years. The filing of notices is mandatory but does not involve the collection of confidential information.

Please note that an agency may not conduct or sponsor, and a person not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB on or before June 17, 1998.

Dated: May 11, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–13097 Filed 5–15–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Agency Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 18, 1998.

An open meeting will be held on Wednesday, May 20, 1998, at 10:00 a.m. A closed meeting will be held on Thursday, May 21, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commsissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, May 20, 1998, at 10:00 a.m., will be:

(1) The Commission, will consider whether to adopt amendments to rules 14a–8, 14a–4, and 14a–5 under the Securities Exchange Act of 1934. For further information, please contact Frank G. Zarb, Jr. or Sanjay M. Shirodkar, Division of Corporation Finance at (202) 942–2900 or Doretha M. VanSlyke, Division of Investment Management at (202) 942–0721.

(2) The Commission will consider a proposal to amend Rule 504 of Regulation D to address trading abuses involving securities issued under that rule. These proposals are part of the Commission's agenda to deter microcap fraud. For further information, please contact Richard K. Wulff or Barbara C. Jacobs of the Division of Corporation Finance at (202) 942–2950.

The subject matter of the closed meeting scheduled for Thursday, May 21, 1998, at 10:00 a.m., will be

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 13, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–13192 Filed 5–13–98; 4:07 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [63 FR 26231, May 12, 1998].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: May 12, 1998.

CHANGE IN THE MEETING: Additional Item.

The following item was added to the closed meeting held on Thursday, May 14, 1998, at 10:00 a.m.:

Settlement of injunctive action.

Commissioner Unger, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942–7070.

Dated: May 14, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–13343 Filed 5–14–98; 3:54 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39983; File No. SR–MSRB–97–9]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Municipal Securities Rulemaking Board Relating to Rule G–38 on Consultants

May 12, 1998.

On March 18, 1998,[1] the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–97–9), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder.[3] The proposed rule change and Amendment No. 1 are hereafter referred to collectively as the ''proposed rule change.'' The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change consisting of an amendment to Rule G–38 on consultants. The proposed rule change would give brokers, dealers and municipal securities dealers (collectively referred to as ''dealers'') the option of disclosing their consulting arrangements to issuers, pursuant to section (c) of the rule, on either an issue-specific or issuer-specific basis. Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

Rule G–38. Consultants

(a)–(b) No change.

(c) Disclosure to Issuers. Each broker, dealer or municipal securities dealer shall submit in writing to each issuer with which the broker, dealer or municipal securities dealer is engaging or seeking to engage in municipal securities business, information on consulting arrangements relating to such issuer, which information shall include the name, company, role and compensation arrangement of any consultant used, directly or indirectly, by the broker, dealer or municipal securities dealer to attempt to obtain or retain municipal securities business with each such issuer. Such information shall be submitted to the issuer *either:*

(*i*) prior to the selection of any broker, dealer or municipal securities dealer in connection with [such] *the particular* municipal securities business *being sought*[*.*]*; or*

(ii) at or prior to the consultant's first direct or indirect communication with the issuer for any municipal securities business being sought. Each broker, dealer or municipal securities dealer shall promptly advise the issuer, in writing, of any change in the information disclosed, pursuant to this subsection (ii), on each consulting arrangement relating to such issuer. In addition, each broker, dealer or municipal securities dealer disclosing information pursuant to this subsection (ii) shall update such information by notifying each issuer in writing within one year of the previous disclosure made to such issuer concerning each consultant's name, company, role and compensation arrangement, even where the information has not changed; provided, however, that this annual update requirement shall not apply where the broker, dealer or municipal securities dealer has ceased to use the consultant, directly or indirectly, to attempt to obtain or retain municipal securities business with the particular issuer.

(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of And Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule G–38, on consultants, requires dealers: (1) To have written agreements with certain individuals who are used by a dealer, directly or indirectly, to obtain or retain municipal securities business (''consultants''), and (2) to disclose such consulting arrangements directly to issuers and to the public through disclosure to the Board. Section (c) of the rule currently requires that each dealer disclose, in writing, to each issuer with which the dealer is engaging or is seeking to engage in municipal securities business, information on consulting arrangements relating to such issuer. The information to be disclosed includes the name, company, role and compensation arrangement of any consultant used, directly or indirectly, to obtain or retain municipal securities business with each such issuer. Dealers are required to make such disclosures prior to the issuer's selection of any dealer in connection with the particular municipal securities business sought.

It has come to the Board's attention that this issue-specific nature of the disclosure requirement can create compliance problems for dealers in the case of frequent issuers of municipal securities as well as in the co-manager selection process. For example, an issuer may bring new issues to market several times a month, and if a dealer is using a consultant to obtain a syndicate slot in each such issue, the dealer is required to disclose the same information to the same issuer month after month and possibly week after week. In addition, the Board has learned that dealers who use a consultant to help obtain co-manager business sometimes have difficulty complying with Rule G–38(c) because, unlike the lead manager, a co-manager may learn of its selection for that business after the selection of the lead manager, thereby making it impossible for the dealer to disclose its consulting arrangements prior to the issuer's selection of any dealer, as required by the rule.

While the Board believes that the timing of the issue-specific disclosure requirement in Rule G–38(c) is appropriate in the vast majority of cases, the Board recognizes that it can be a problem in the context of frequent issuers of municipal securities and in the co-manager selection process. Thus, the Board has determined to amend Rule G–38(c) to give dealers the option of disclosing their consulting arrangements to issuers on either an issue-specific or issuer-specific basis.

[1] The Board initially submitted this proposal on November 24, 1997. However, a substantive amendment was requested to modify and clarify ambiguous timing issues in the proposed rule language. The Board filed Amendment No. 1 on March 18, 1998.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

Pursuant to the amendment, if a dealer chooses to disclose information regarding a consulting arrangement on an issuer-specific basis, the dealer must submit the information, in writing, to the issuer at or prior to the consultant's first direct or indirect communication with that issuer for any municipal securities business.[4] To ensure that such information, once disclosed, remains current, the amendment also requires dealers to (1) promptly notify the issuer, in writing, of any change in the information disclosed; and (2) update issuers, in writing, within one year of the previous disclosure of each consultant's name, company, role and compensation arrangement, even where such information has not changed.[5] Of course, this annual updating requirement would cease to apply if the dealer is no longer using the consultant, directly or indirectly, to attempt to obtain or retain municipal securities business with a particular issuer(s).

The Board submitted Amendment No. 1 in response to concerns expressed by Commission staff to provide that dealers disclosing information on an issuer-specific basis shall do so ''at or prior to the consultant's first direct or indirect communication with the issuer for any municipal securities business being sought.'' [6] Amendment No. 1 also clarifies that the annual updating requirement for dealers disclosing information on an issuer-specific basis is keyed off the previous full disclosure of the consultant's name, company, role and compensation arrangement (and not any interim disclosure of changes to such information).

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[7] The Board believes that the proposed rule change will facilitate compliance with Rule G–38, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In June 1997, the Board published a draft amendment to Rule G–38(c) for industry comment.[8] In response, the Board received comment letters from three dealers.[9] One of these commenters expressed its belief that the amendment ''is helpful and may simplify the reporting process.'' [10] The other two commenters also supported the draft amendment.[11] One commenter stated that ''the proposed changes will greatly simplify the disclosure process when multiple transactions develop as the result of a consultant's activities with an issuer.''[12] However, this commenter recommended that the draft amendment require dealers to advise the issuer of any material change in the information disclosed; the commenter believes that this will obviate the need for dealers to file amended disclosure reports relating to, for example, an insignificant change to a consultant's role or to a minor change in the name of the consultant's organization. The Board believes that adopting the commenter's recommendation would introduce a subjective element to the disclosure requirement and would result in differing interpretations as to what is ''material.'' For example, by incorporating this subjective standard, the Board could not ensure that issuers would be advised of changes in the consultant's name, company, role and compensation arrangement—information which is required to be disclosed to issuers pursuant to Rule G–38(c). Thus, the Board has declined to adopt the commenter's recommendation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–9 and should be submitted by June 8, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

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[4] In contrast, the Board believes that disclosures made by a dealer on an issue-specific basis should continue to be required prior to the issuer's selection of any dealer for the particular municipal securities business being sought.

[5] Pursuant to Rule G–8(a)(xviii) on recordkeeping, dealers are required to maintain records of all disclosures made pursuant to Rule G–38(c). This would apply to disclosures made pursuant to the amendment.

[6] The amendment originally would have required that such disclosures be made ''within three business days of the consultant's first direct or indirect communication with the issuer, but in any event prior to the issuer's selection of such broker, dealer or municipal securities dealer for any municipal securities business being sought.'' *See supra* note 1.

[7] Section 15B(b)(2)(C) states that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

[8] MSRB Reports, Vol. 17, No. 2 (June 1997) at 17–18. The draft amendment would have required dealers that disclose information on their consulting arrangements on an issuer-specific bases to make such disclosures ''within three business days of the consultant's first direct or indirect communication with the issuer, but in any event prior to the issuer's selection of such broker, dealer or municipal securities dealer for any municipal securities business being sought.'' As discussed above, the Board submitted Amendment No. 1 in response to concerns expressed by Commission staff regarding the timing of this provision. Thus, the proposed rule change provides that dealers disclosing information on issuer-specific basis shall do so ''at or prior to the consultant's first direct or indirect communication with the issuer for any municipal securities business being sought.''

[9] A.G. Edwards, Rauscher Pierce Refsnes, Inc., and Smith Barney.

[10] Rauscher Pierce Refsnes, Inc.

[11] A.G. Edwards and Smith Barney.

[12] A.G. Edwards.

[13] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–13096 Filed 5–15–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 39980; File No. SR–NYSE–98–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Include Rules 392, 460.30, 80A(b), 79A.15 and 105 in Its Minor Disciplinary Fine System under Exchange Rule 476A

May 8, 1998.

Pursuaant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 20, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On March 11, 1998, the Exchange filed Amendment No. 1,[2] and on April 16, 1998, the Exchange filed Amendment No. 2.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A'' by adding the failure to comply with the provisions of Rules 392,460.30, 80A(b), 79A.15 and 105. The Exchange believes it is appropriate to make the failure to comply with the provisions of the above-named rules subject to the possible imposition of a fine under Rule 476A procedures.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 476A provides that the Exchange may impose a fine, not to exceed $5,000, or any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose of the Rule 476A procedure is to provide for a meaningful sanction for a rule violation when the initiation of a disciplinary proceeding under Rule 476 would be more costly and time-consuming than would be warranted given the minor nature of the violation, or when the violation calls for a stronger regulatory response than a cautionary letter would convey. Rule 476A preserves due process rights; identifies those rule violations which may be the subject of summary fines; and includes a schedule of fines.

In SR–NYSE–84–27, which initially set forth the provisions and procedures of Rule 476A, the Exchange indicated in would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of Rule 476A as experience with it was gained.

The Exchange is presently seeking approval to add to the List of Rules subject to possible imposition of fines under Rules 476A procedures, failure by members or member organizations to comply with the provisions of: (1) Rule 392 and Rule 460.30 which require notification to the Exchange by member organizations when they are participating in or engaging in certain activities related to an offering of securities listed on the Exchange; (2) Rule 80-A(b) which prohibits entry of stop orders for the remainder of any trading day on which ''sidecar'' procedures have been invoked; (3) Rule 79A.15 on specialists' publishing bids or offers upon receipt of limit orders; and (4) Rule 105 and its Guidelines with respect to specialists' specialty stock options transactions and the reporting of such transactions.

The purpose of the proposed change to Rule 476A is to facilitate the Exchange's ability to induce compliance with all aspects of the above-cited rules. The Exchange believes failure to comply with the requirments of these rules should be addressed with an appropriate sanction and seeks Commission approval to add violations of these requirements to the Rule 476A List so as to have a board range of regulatory responses available. The Exchange believes that this would more effectively encourage compliance by enabling a prompt, meaningful and heightened regulatory response (*e.g.*, the issuance of a fine rather than a cautionary letter) to a minor violation of a rule.

The Exchange wishes to emphasize the importance it places upon compliance with the above-named rules and, in particular, Rule 79A.15, which it adopted to reflect the provisions and certain interpretations of SEC Rule 11Ac1–4 under the Act. The Exchange recognizes that violations of Rule 79A.15 would likely result in violations of a Commission rule and, therefore, proposes, when a full disciplinary action is not warranted, to issue a summary fine instead of a cautionary letter as its first regulatory action against a specialist organization. While the Exchange, upon investigation, may determine that a violation of any of these rules is a minor violation of the type which is properly addressed by the procedures adopted under Rule 476A, in those instances where investigation reveals a more serious violation of the above-described rules, the Exchange will provide an appropriate regulatory response. This includes the full disciplinary procedures available under Rule 476.

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 corrects errors in exhibits to the Exchange's filing. See Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission, dated March 10, 1998.

[3] Amendment No. 2 clarifies that the Exchange, in those instances in which an Exchange disciplinary action is not warranted, will issue a summary fine instead of a cautionary letter as its first regulatory action against a specialist organization. Such fine will be issued against the specialist member organization, which, according to the schedule of fines contained in Rule 476A, would be result in a fine of $1,000; the second and third regulatory actions within a rolling 12-month period would result in fines of $2,500 and $5,000 respectively. If a specialist member organization is issued a fine relating to Rule 79A.15 twice within a rolling 12-month period, the Exchange will pursue formal disciplinary proceedings under Rule 476 when continued poor performance during that rolling 12-month period warrants such action. See letter from Robert J. McSweeny, Senior Vice President, Market Surveillance, NYSE, to Katherine A. England, Division of Market Regulation, SEC, dated April 16, 1998.

[4] Concurrently with the proposed rule change, the Exchange is seeking to amend its Rule 19d–1 reporting plan for Rule 476A violations to include the items proposed for addition to the list of rules subject to Rule 467A. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated January 16, 1998.

2. Statutory Basis

The proposed rule change will advance the objectives of Section 6(b)(6) of the Act in that it will provide a procedure whereby member organizations can be ''appropriately disciplined'' in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure of imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rules change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–98–02 and should be submitted by June 8, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–13098 Filed 5–15–98; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than July 17, 1998.

Type of Request: Regular submission.

Title of Information Collection: TVA Aquatic Plant Management.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 2,000.

Estimated Total Annual Burden Hours: 400.

Estimated Average Burden Hours Per Response: .2.

Need For and Use of Information: TVA committed to involving the public in developing plans for managing aquatic plants in individual TVA lakes under a Supplemental Environmental Impact Statement completed in August 1993. This proposed survey will provide a mechanism for obtaining input into this planning process from a representative sample of people living near each lake. The information obtained from the survey will be factored into the development of aquatic plant management plans for mainstream Tennessee River lakes.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 98–13058 Filed 5–15–98; 8:45 am]

BILLING CODE 8120–08–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 and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (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 September 30, 1997, [62 FR 51176].

DATES: Comments must be submitted on or before June 17, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification: Mechanics. Repairmen, Parachute Riggers—14 CFR part 65.

OMB Control Number: 2120–0022.

Type of Request: Extension of a currently approved collection.

Forms: FAA Form 8610–1 and FAA Form 8610–2.

[5] 17 CFR 200.30–3(a)(12).

Affected Public: Mechanics, repairmen, parachute riggers, and inspection authorizations.

Abstract: The regulation prescribes requirements for mechanics, repairmen, parachute riggers, and inspection authorizations. Information collected shows applicant eligibility. Certification is required to perform these job functions.

Annual Burden Hour Estimate: 28,943.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA 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, D.C. on May 11, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–13126 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During Week Ending May 8, 1998

The following Applications for Certificates of Public Cnvenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3814.

Date Filed: May 5, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 2, 1998.

Description: Application of Continental Airlines, Inc. pursuant to 49 U.S.C. Sections 41102 and 41108 and Subpart Q of the Department's Rules of Practice, applies for a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of persons, property and mail between Houston and Newark, on the one hand, and Buenos Aires, Argentina, on the other hand.

Docket Number: OST–98–3818.

Date Filed: May 6, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 3, 1998.

Description: Application of Executive Airlines, Inc. d/b/a American Eagle pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Department's Rules of Practice, applies for amendment of the Dallas Love Field condition in its certificate of public convenience and necessity issued by Order 90–2–54, February 28, 1990. That certificate authorizes air transportation of persons, property, and mail between points in the United States, its territories, and possessions.

Docket Number: OST–98–3820.

Date Filed: May 6, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 3, 1998.

Description: Application of American Airlines, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Department's Rules of Practice, applies for amendment of the Dallas Love Field condition in its certificate of public convenience and necessity for Route 4 (Order 91–12–131, December 22, 1981). That certificate authorizes American to engage in air transportation of persons, property, and mail between points in the United States, its territories, and possessions.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–13113 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at San Angelo Municipal Airport (Mathis Field), San Angelo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Angelo Municipal Airport under the provision of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 17, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Arboth Rylant, Manager of San Angelo Municipal Airport, at the following address: Arboth A. Rylant, Airport Manager, San Angelo Municipal Airport, 8618 Terminal Circle, San Angelo, Texas 76904.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Angelo Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L.

101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 6, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 1, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1998.

Proposed charge expiration date: July 1, 2006.

Total estimated PFC revenue: $958,587.

PFC application number: 98–03–C–00–SJT.

Brief description of proposed projects:

Projects To Impose and Use PFC's

Reconstruct Portion of Taxiway A, PFC Application, Airport Lighting Upgrades, Ramp/Runway Sweeper, Install REIL on Runway 18 and PAPI on Runway 3, Renovate/Expand Terminal Building, and Relocate ARFF Facility

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR Part 135 charter operators who operate aircraft with a seating capacity of less than 10 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at San Angelo Municipal Airport.

Issued in Fort Worth, Texas on May 6, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–13090 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Notice of Strategic Plan Public Meeting Agenda

SUMMARY: This notice provides the agenda for a public meeting being held by the National Highway Traffic Safety Administration (NHTSA) for a discussion of safety issues and proposed strategies to comprise an updated agency strategic plan. The objective of the meeting is to receive comments and information from interested organizations and the general public.

DATES AND TIMES: As previously announced by NHTSA in the **Federal Register** on April 2, 1998, concerning availability of the NHTSA Draft Strategic Plan for public comment [Reference Docket No. 98–NHTSA–98–3651; Notice 1], NHTSA will hold a one-day public meeting devoted primarily to obtaining comments and information related to traffic safety issues and proposed program strategies from interested organizations and individuals as well as the general public on June 9, 1998, beginning at 8:30 a.m. and ending at approximately 5:00 p.m.

ADDRESSES: The public meeting will be held at the U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., Room 2230, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This notice provides a summary of the agenda for the public meeting to be held on June 9, 1998. The purpose of this meeting is to enable NHTSA to obtain views on safety problems and policies that will influence strategic planning being conducted by the agency, and information on potential program strategies that NHTSA should consider in designing and adopting a strategic plan to guide traffic safety initiatives as the agency enters the new millennium. The agency's intention to hold this public meeting was first announced on April 2, 1998 (63 FR 16291). For additional information about the draft plan and the reasons for the meeting, please consult that announcement.

Starting at 8:30 a.m. and concluding by 5:00 p.m., NHTSA's Administrator and Associate Administrators will provide a brief overview of key components of the Draft Strategic Plan as an introduction to the morning and afternoon sessions of the meeting, followed by roundtable discussions moderated by agency program managers for the purpose of examining major safety areas and obtaining views on effective strategies, as depicted in the following meeting agenda:

Opening Remarks by Administrator
Overview of Strategic Plan
Vehicle Safety—Issues and Strategies:
- Introduction to vehicle safety, consumer information, enforcement, research initiatives and crash/injury information

Discussions:
- —Vehicle crashworthiness
- —Biomechanics research
- —Innovative data (CIREN, CODES)
- —Vehicle crash avoidance (including heavy truck program)
- —Intelligent Transportation Systems (ITS)
- —National data systems (FARS, NASS, GES)
- —Consumer information on vehicle safety
- —Enforcement program activities.

Break for Lunch
Agency Customer Service—Issues and Strategies:
- —Outreach, program training, products for customers, safety data quality, customer diversity, continuous improvement

Behavioral Safety—Issues and Strategies:
- —Introduction to highway safety issues, technical assistance, research, product/services delivery, partnerships and information needs

Discussions:
- —Safety belts, child safety, outreach/education
- —Pedestrian, bicycles, motorcycle, school bus safety
- —Injury & health, EMS/trauma, health data
- —Safe Communities, grant programs, state/local delivery
- —Alcohol, other drugs, teenager drinking, repeat offenders
- —Police enforcement, speeding, aggressive driving
- —Older/younger drivers, driver education, licensing, NDR
- —ONEDOT: Overall intermodal safety, roadway safety (FHWA), driver fatigue, commercial carriers, rail-highway safety (FRA).

Conclusion

NHTSA has based its decisions about the agenda on the goal of affording an opportunity for safety community and public comment on the most important elements of the agency's proposed strategic approach to improving traffic safety. Familiarity with the Draft Strategic Plan will facilitate participation. As NHTSA announced in the **Federal Register** notice of April 2, 1998, copies of the Draft Strategic Plan may be obtained by writing to: NHTSA Office of Plans and Policy, Strategic Planning Division, 400 Seventh Street, S.W., Room 5208, Washington, D.C. 20590. Copies of the plan are also available on the NHTSA Home Page [http://www.nhtsa.dot.gov]. Public comments on the draft plan are available for review (please refer to the April 2, 1998, notice for details on how to access the official docket via the Internet).

FOR FURTHER INFORMATION CONTACT: For details on the Draft Strategic Plan or the public meeting, please contact Joseph Cameron (202–366–2579), Elza Chapa (202–366–0014) or Louise Davis (202–366–1574), NHTSA Office of Plans and Policy. FAX number: 202–366–2559.

Issued: May 12, 1998.

William H. Walsh,

Associate Administrator for Plans and Policy, National Highway Traffic Safety Administration.

[FR Doc. 98–13155 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3822]

Notice of Receipt of Petition for Decision That Nonconforming 1996–1998 BMW Z3 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1996–1998 BMW Z3 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1996–1998 BMW Z3 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 17, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1996–1998 BMW Z3 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1996–1998 BMW Z3 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1996–1998 BMW Z3 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1996–1998 BMW Z3 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1996–1998 BMW Z3 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1996–1998 BMW Z3 passenger cars comply with the Bumper Standard found in 49 CFR Part 581 and with the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b)

installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single pushbutton at both front designated seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 12, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–13073 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3823]

Notice of Receipt of Petition for Decision That Nonconforming 1995 Ferrari F355 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Ferrari F355 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1995 Ferrari F355 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 17, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1995 Ferrari F355 passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1995 Ferrari F355 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1995 Ferrari F355 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1995 Ferrari F355, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1995 Ferrari F355 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 H*ydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily

altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) inscription of the word ''Brake'' on the dash, in place of the international ECE warning symbol; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies and rear sidemarker lights; (c) installation of a U.S.-model high-mounted stop light assembly.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a key microswitch and a warning buzzer.

Standard No. 118 *Power Window Systems*: installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a seat belt warning buzzer wired to the seat belt latch; (b) replacement of the seat belts and the driver's and passenger's side air bags, knee bolsters, control unit and sensors with U.S.-model components on vehicles that are not so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that are automatic, self-tensioning, and that release by means of a single red push button at both front designated seating positions.

Standard No. 214 *Side Impact Protection*: installation of door bars on vehicles that are not so equipped.

With regard to compliance with the Bumper Standard found in 49 CFR Part 581, the petitioner states that the bumpers and the support structure for the bumpers on the non-U.S. certified 1995 Ferrari F355 are identical to those found on the vehicle's U.S. certified counterpart. The petitioner notes, however, that some of these bumpers may have to be replaced if they do not have holes cut into the side to accommodate side marker lights.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 12, 1998.

Marilynne Jacobs,

Director Office of Vehicle Safety Compliance.

[FR Doc. 98–13074 Filed 5–15–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to the Office of the Management and Budget for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Requesting approval of an existing collection in use without an OMB control number.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

Title: Annual Waybill Compliance Survey.

Office: Office of Economics, Environmental Analysis, and Administration.

OMB Form No.: Pending.

Frequency: Annually.

No. of Respondents: 350.

Total Burden Hours: 175.

DATES: Persons wishing to comment on this information collection should submit comments by June 18, 1998.

ADDRESSES: Direct all comments to Case Control, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423. When submitting comments refer to the title of the information collection.

FOR FURTHER INFORMATION CONTACT: Harold J. Warren, 202 565–1549. Requests for copies of the information collection may be obtained by contacting Ellen R. Keys (202) 565–1654.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of railroads operating in the United States. The Carload Waybill Sample is collected to support the Board's regulatory activities. The Annual Waybill Compliance Survey is required to be filed by all non-waybill sample railroads terminating traffic in the United States pursuant to authority in Title 49 U.S.C. 1145, 11144, and 11901 of the ICC Termination Act of 1995, Public Law No. 104–88, 109 Stat. 803 (1995). Our regulations at 49 CFR 1244.2(f) specifically require the survey to be filed annually.

Vernon A. Williams,

Secretary.

[FR Doc. 98–13054 Filed 5–15–98; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 63, No. 95

Monday, May 18, 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 ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-194-000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 98–11818 appearing on page 24778, in the issue of Tuesday, May 5, 1998, make the following corrections:

a. On page 24778, in the third column, the document heading should read as set forth above.

b. On the same page, in the same column, above the first paragraph, ''April 20, 1998.'' should read ''April 29, 1998.''

BILLING CODE 1505-01-D

DEPARTMENMT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–403–000]

NorAm Gas Transmission Company; Notice of Application for Abandonment

Correction

In notice document 98–12635, beginning on page 26589, in the issue of Wednesday, May 13, 1998, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98-062]

National Environmental Policy Act; Stardust Mission

Correction

In notice document 98–12155 beginning on page 25236 in the issue of Thursday, May 7, 1998, make the following corrections:

1. On page 25236, in the third column:

a. In the fourth and eighth lines from the bottom ''participle'' should read ''particle''.

b. In the sixth line from the bottom ''participles'' should read ''particles''.

2. On page 25237, in the first column:

a. In the first and fourth lines ''participles'' should read ''particles''.

b. In first full paragraph, in the ninth line ''participles'' should read ''particles''.

c. In the last paragraph, in the third line ''entirety'' should read ''entirely''.

BILLING CODE 1505-01-D

federal register

Monday
May 18, 1998

Part II

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations: Family Remittances; Travel Remittances; Carrier Service Providers; Currency Carried by Travelers; Cuban Assets Control Regulations: Fully-Hosted or Fully-Sponsored Travel and Restrictions on Travel Transactions; Final Rules

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations: Family Remittances; Travel Remittances; Carrier Service Providers; Currency Carried by Travelers

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: Pursuant to the President's announcement of March 20, 1998, the Treasury Department is amending the Cuban Assets Control Regulations to authorize a person subject to U.S. jurisdiction to make remittances to a close relative in Cuba of up to $300 in any consecutive 3–month period. The remitter must be aged 18 years or older and the remittances must be for the support of the close relative or members of his or her household. In situations in which more than one close relative of the remitter resides in the same household in Cuba, no more than $300 in any consecutive 3–month period may be sent by the remitter to that household. Rules relating to non–Cuban currency carried by Cubans returning from the United States to Cuba are amended to reflect this authorization. In addition, technical changes are made to rules relating to provision of emigration–related remittances and the licensing of cargo transported to Cuba by carrier service providers.

EFFECTIVE DATE: May 13, 1998.

FOR FURTHER INFORMATION: Dennis P. Wood, Chief, Compliance Programs Division (tel.: 202/622–2490); Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480); Charles L. Bishop, OFAC–Miami Sanctions Coordinator (tel.: 305/530–7177); or William B. Hoffman, Chief Counsel (tel.: 202/622–2410); Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem, dial 703/321–3339, and select self–expanding file ''T11FR00.EXE'' in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

On March 20, 1998, President Clinton announced that the United States is taking a number of steps to expand the flow of humanitarian assistance to Cuba and to help strengthen independent civil society and religious freedom in that country. These include allowing a person subject to U.S. jurisdiction to make remittances of specified amounts to close relatives in Cuba. Accordingly, the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') is amending the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), pursuant to authority delegated to the Secretary of the Treasury by the President, in order to implement this measure and to make certain technical changes to the Regulations.

Section 515.563(a) of the Regulations is amended to authorize a person subject to U.S. jurisdiction to make family remittances to a national of Cuba resident in Cuba who is a close relative of the remitter or the remitter's spouse. The same remittances are authorized with respect to Cuban nationals resident in the authorized trade territory who are not unblocked nationals pursuant to § 515.505(b) of the Regulations. (As defined in § 515.322, the term ''authorized trade territory'' means all countries other than the United States and countries subject to sanctions pursuant to 31 CFR chapter V.) The remitter must be aged 18 years or older, and the remittances must be for the support of the close relative (including any member of his or her household). A U.S. remitter may make payments of up to $300 in any consecutive 3–month period to any one close relative, and, in situations in which more than one close relative of the remitter resides in the same household, no more than $300 in any consecutive 3–month period may be sent by the remitter to that household. Section 515.563(d) of the Regulations defines a ''close relative'' as a person's spouse, child, grandchild, parent, grandparent, great grandparent, uncle, aunt, brother, sister, nephew, niece, first cousin, mother–in–law, father–in–law, son–in–law, daughter–in–law, sister–in–law, brother–in–law, or spouse, widow or widower of any of the above.

Remittances may be transferred through remittance forwarders specifically licensed by OFAC or by U.S. depository institutions generally licensed by OFAC pursuant to § 515.566(a)(3). In addition, the family remittance may be carried directly on the person of the U.S. remitter or remitter's spouse who is engaging in authorized travel to Cuba, provided the traveler is aged 18 years or older, carries no more than $300 per trip for this purpose irrespective of the number of payees, and makes total remittances of no more than $300 per close relative (including all members of that close relative's household) in any consecutive 3–month period.

The text of former § 515.563(b), now § 515.563(c), is revised to make clear that the emigration–related remittance authorized by that paragraph is separate from and in addition to the travel–related remittance authorized by § 515.564(c). A similar revision is made to § 515.564(c). In addition, § 515.566(a)(2) is amended to indicate that certain baggage carried by carrier service providers requires licensing by the U.S. Department of Commerce. Finally, § 515.569(d) is modified to provide that Cuban nationals returning to Cuba may carry with them currency they have received as family remittances pursuant to § 515.563.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553)(the ''APA'') requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The Regulations are being issued without prior notice and public comment procedure pursuant to the APA. The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting and

Procedures Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, banking, Blocking of assets, Cuba, Currency, Estates, Exports, Foreign investment in the United States, Foreign trade, Imports, Informational materials, Penalties, Publications, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 is revised to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–48 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 515.563 is revised to read as follows:

§ 515.563 Family remittances to nationals of Cuba.

(a) A person subject to the jurisdiction of the United States may make remittances to a national of Cuba resident in Cuba or in the authorized trade territory who is a close relative of the remitter or of the remitter's spouse, provided the U.S. remitter is 18 years of age or older and payments are made from unblocked sources for the support of the close relative (including any member of his or her household). In any consecutive 3–month period, the maximum amount a remitter may send to a close relative of the remitter or the remitter's spouse pursuant to this section is the lesser of:

(1) $300 to the close relative in Cuba or the authorized trade territory; or

(2) $300 to the household of the close relative in Cuba or the authorized trade territory, regardless of the number of close relatives comprising the household.

Note to paragraph (a). The maximum amounts set forth in paragraph (a) of this section do not apply to family remittances to a Cuban national who has been specifically licensed as an unblocked national pursuant to § 515.505(b), as family remittances to unblocked persons do not require separate authorization.

(b) A remitter or remitter's spouse who is 18 years of age or older and who is engaged in authorized travel to Cuba may carry on his or her person no more than $300 in total family remittances, regardless of the number of eligible payees in Cuba, provided the remitter's family remittances will not exceed the maximum amount set forth in paragraph (a) of this section for any payee within the past 3 months.

(c) In addition to travel–related remittances authorized pursuant to § 515.564(c), remittances to any close relative of the remitter or of the remitter's spouse who is a national of Cuba or who is resident in Cuba are authorized for the purpose of enabling the payee to emigrate from Cuba to the United States, in an amount not exceeding $500, to be made only once to any payee, provided that the payee is a resident of and within Cuba at the time the payment is made.

(d) The term *close relative* used with respect to any person means such person's spouse, child, grandchild, parent, grandparent, great grandparent, uncle, aunt, brother, sister, nephew, niece, first cousin, mother–in–law, father–in–law, son–in–law, daughter–in–law, sister–in–law, brother–in–law, or spouse, widow or widower of any of the foregoing.

3. Section 515.564 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 515.564 Certain transactions incident to travel to, from and within the United States by certain Cuban nationals.

* * * * *

(c) Travel–related remittances by persons subject to U.S. jurisdiction to Cuba or a Cuban national, directly or indirectly, for transactions on behalf of a Cuban national, are authorized pursuant to paragraph (a) of this section only when made for the purpose of enabling the payee to emigrate from Cuba to the United States, including for the purchase of airline tickets and payment of visa fees or other travel–related fees. * * *

* * * * *

4. Section 515.566 is amended by revising the last sentence of paragraph (a)(2) to read as follows:

§ 515.566 Authorization for transactions incident to the provision of travel service, carrier service, and family remittance forwarding service.

(a)(1) * * *

(2) * * * Carriage to or from Cuba of any merchandise, cargo or gifts, other than those permitted to individual travelers as accompanied baggage, must also be authorized by licenses issued by the U.S. Department of Commerce.

* * * * *

5. Section 515.569 is amended by revising paragraph (d) to read as follows:

§ 515.569 Currency carried by travelers to Cuba.

* * * * *

(d) A Cuban national returning directly from the United States to Cuba may carry non–Cuban currency only in the amount of U.S. currency or third–country currency brought into the United States by the traveler and registered with the U.S. Customs Service upon entry, plus up to $300 in funds received as family remittances by the Cuban national during his or her stay in the United States.

* * * * *

Dated: May 4, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 11, 1998.

James E. Johnson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 98–13120 Filed 5–13–98; 2:31 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations: Fully–Hosted or Fully–Sponsored Travel and Restrictions on Travel Transactions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: In order to ensure effective enforcement of the prohibitions on travel–related transactions in Cuba, any person subject to U.S. jurisdiction determined to have traveled to Cuba without the authority of a general or specific license is subject to a rebuttable presumption that the traveler has

engaged in prohibited travel–related transactions. In order to overcome this presumption, any traveler to Cuba who claims to have been fully hosted or fully sponsored, or not to have engaged in any travel–related transactions, may be asked by Federal enforcement agencies to provide a signed explanatory statement, accompanied by any relevant supporting documentation.

EFFECTIVE DATE: May 13, 1998.

FOR FURTHER INFORMATION: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480); David H. Harmon, Chief of Enforcement (tel.: 202/622–2430); or William B. Hoffman, Chief Counsel (tel.: 202/622–2410); Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

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Background

The Office of Foreign Assets Control (''OFAC'') is amending § 515.560 of the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), to establish a presumption that persons subject to U.S. jurisdiction who have traveled to Cuba without the authority of a general or specific license have engaged in prohibited travel–related transactions. This presumption is subject to rebuttal upon presentation of a statement, signed by the traveler and accompanied by appropriate supporting documentation, that (1) no transactions were entered into, or (2) the travel was fully hosted or fully sponsored by a person or persons not subject to the jurisdiction of the United States and was not in exchange for services provided in Cuba or elsewhere. The statement shall give a full accounting of either (1) how it was possible to engage in travel without engaging in travel–related transactions, or (2) who hosted or sponsored the visit, why it was hosted or sponsored, and what travel–related transactions were paid for by a third party. In the case of fully hosted or fully sponsored travel, appropriate supporting documentation includes, but is not limited to, an original letter of invitation signed by the person or persons hosting or sponsoring the travel, specific to that traveler, and an explanation of the purpose of the travel, or other appropriate evidence documenting that the travel was not in exchange for services provided in Cuba or elsewhere.

Persons planning to travel to Cuba under this provision are encouraged to obtain two brochures from OFAC prior to their departure to ensure that their travel plans conform with the requirements for fully hosted or fully sponsored travel: *Cuba: Travel Restrictions* (available in Spanish as *Cuba: Restricciones de Viajes a Cuba*), and *Cuba: What You Need to Know About the U.S. Embargo*. Travel to Cuba is not fully hosted or fully sponsored if a person subject to U.S. jurisdiction, as defined in § 515.329 of the Regulations prepays or reimburses expenses for travel in Cuba or on a Cuban carrier through a foreign travel service provider not subject to the jurisdiction of the United States. Nor is travel to Cuba fully hosted or fully sponsored if a person subject to U.S. jurisdiction pays — before, during, or after the travel — any expenses for travel in Cuba, or on a Cuban carrier, even if the payment is made to a third–country person or entity.

OFAC has determined that persons traveling to and within Cuba normally incur expenses that are routinely and customarily associated with travel to and within any country. Therefore, absent evidence to the contrary, it will be presumed that a person who traveled to Cuba did engage in transactions related to his or her travel.

OFAC bases its presumption that travelers to and within Cuba engage in travel–related transactions on information developed during the course of OFAC investigations demonstrating that it is normally necessary for such travelers to incur expenditures. Information on travel fees and costs has also been documented in publications concerning travel to Cuba. Following are descriptions of some of the costs commonly incurred by travelers to and in Cuba.

The Cuban Government routinely charges a fee for a tourist visa or tourist card. This fee may be paid directly by the traveler or it may be included in the amount paid by the traveler to a third country travel agent who arranges travel to Cuba. A departure tax is required of air travelers departing Cuba. This fee may be paid directly by the traveler or indirectly through a third–country travel agent.

Travelers in Cuba often encounter significant room and board charges at major hotels and restaurants frequented by foreign tourists. Accommodations and meals may also be found in private Cuban residences for a fee.

Pleasure boaters encounter several fees that are required by Cuban authorities for sailing in Cuban waters and visiting Cuban ports. These include separate fees for a tourist visa, inward clearance, cruising permits, and exit fees. The Marina Hemingway and other marinas in Cuba charge docking fees that vary according to vessel length and duration of stay. Since Marina Hemingway is not within walking distance of the center of Havana, paid ground transportation by taxi or private vehicle is essential for boaters wishing to explore the city. The International Yacht Club (Club Nautico) charges fees for permanent and temporary membership. Members receive discounts on mooring fees and at bars and restaurants within the Marina Hemingway complex. Persons flying aircraft to Cuba are normally required to pay charges for landing, refueling, storage, and maintenance.

In general, Cuba actively promotes foreign tourism as a means of acquiring foreign currency to stimulate its economy. Foreign tourism has become a major industry within Cuba, and is identified in press reports as the country's leading source of hard currency. While OFAC recognizes that unique situations may arise wherein the Cuban Government or a third party not subject to U.S. jurisdiction may find it in its interest to pay or waive all travel fees and costs required of a traveler who is subject to the jurisdiction of the United States, it is highly unlikely that such is the case with most travelers to Cuba.

In the absence of the presumption established by this regulation, it is often a practical impossibility for OFAC to prove that persons traveling to Cuba without a general or specific license have engaged in travel–related transactions in Cuba. Unlicensed travelers do not routinely return to the United States with receipts documenting their expenditures in Cuba. Moreover, OFAC often cannot compel documentary evidence of expenditures from the recipients of payments for travel in Cuba, because many of those recipients are nationals of Cuba or third countries who are not subject to U.S. jurisdiction. Because the Cuban government is generally unwilling to permit travel to Cuba by federal enforcement personnel, they cannot travel to Cuba in order to investigate traveler's claims that they had no expenses.

The presumption established by this regulation only shifts the burden of producing evidence. It does not shift the ultimate burden of proof from OFAC to the traveler.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, banking, Blocking of assets, Cuba, Currency, Estates, Exports, Foreign investment in the United States, Foreign trade, Imports, Informational materials, Penalties, Publications, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–48 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 515.560 is revised to read as follows:

§ 515.560 Certain transactions incident to travel to and within Cuba.

* * * * *

(g)(1) Unless otherwise authorized to engage in travel–related transactions pursuant to this part, any person subject to the jurisdiction of the United States, as defined in § 515.329, who has traveled to Cuba shall be presumed to have engaged in travel–related transactions prohibited by this part. This presumption may be rebutted by a statement signed by the traveler providing specific supporting documentation that no transactions were engaged in by the traveler or on the traveler's behalf by any other person subject to U.S. jurisdiction, or that the traveler was fully sponsored or fully hosted by a third party not subject to the jurisdiction of the United States and that any sponsorship or waiver of fees was not in exchange for services provided to Cuba or a Cuban national. The statement may be requested by any Federal law enforcement agency authorized to enforce the prohibitions of this Part, including the Office of Foreign Assets Control. The statement shall describe the circumstances of the travel and explain how it was possible to avoid entering into travel–related transactions such as payments for meals, lodging, transportation, bunkering of vessels or aircraft, visas, entry or exit fees, and gratuities. If the travel was fully sponsored or fully hosted, the statement shall state what party hosted or sponsored the travel and why. The statement shall also provide a day–to–day account of financial transactions entered into on behalf of the traveler by the host or sponsor, including but not limited to visa fees, room and board, local or international transportation costs and Cuban airport departure taxes. In the case of pleasure craft calling at Cuban marinas, the statement shall also address related refueling costs, mooring fees, club membership fees, provisions, cruising permits, local land transportation, and departure fees. In preparing the statement, travelers should be aware that the authorization contained in paragraph (c)(3) of this section concerning the purchase and importation of up to $100 of Cuban merchandise for personal use does not apply to fully sponsored or fully hosted travelers. Travelers fully hosted or fully sponsored by a person or persons not subject to the jurisdiction of the United States shall also provide appropriate supporting documentation demonstrating that they were fully hosted or fully sponsored, such as an original signed statement from their sponsor or host, specific to that traveler, confirming that the travel was fully hosted or fully sponsored and the reasons for the travel. All documentation described in this section is subject to the recordkeeping requirements, including the period during which records shall be available for examination, in § 501.601 of this chapter.

(2) If the traveler can establish that all necessary transactions involved fully sponsored or fully hosted travel within Cuba, such transactions do not violate the prohibitions of this part, provided that, except as provided in paragraph (g)(3) of this section:

(i) No person subject to the jurisdiction of the United States has made any payments or transferred any property or provided any service in connection with such travel, including prepayment of or reimbursement for travel expenses, to any person or entity not subject to U.S. jurisdiction; and

(ii) The travel is not aboard a direct flight between the United States and Cuba authorized pursuant to § 515.566.

(3) Travel shall be considered fully sponsored or fully hosted for purposes of this section notwithstanding a payment by a person subject to the jurisdiction of the United States for transportation to and from Cuba, provided that the carrier furnishing the transportation is not a Cuban national.

(4) Persons planning to travel to Cuba consistent with this paragraph (g) may contact the Compliance Programs Division, Office of Foreign Assets Control, prior to their departure to ensure that their travel plans conform with the requirements for fully hosted or sponsored travel. Other inquiries concerning travel–related transactions should be addressed to the Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

Dated: May 4, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 11, 1998.

James E. Johnson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 98–13120 Filed 5–13–98; 2:31 pm]

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Part III

Environmental Protection Agency

40 CFR Part 194

Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance With the Disposal Regulations: Certification Decision; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL—6014–9]

RIN 2060–AG85

Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance With the Disposal Regulations: Certification Decision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (''EPA'') is certifying that the Department of Energy's (''DOE'') Waste Isolation Pilot Plant (''WIPP'') will comply with the radioactive waste disposal regulations set forth at Subparts B and C of 40 CFR Part 191 (Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Waste). The EPA is required to evaluate whether the WIPP will comply with EPA's standards for the disposal of radioactive waste by the WIPP Land Withdrawal Act (''LWA'') of 1992, as amended. EPA's certification of compliance allows the emplacement of radioactive waste in the WIPP to begin, provided that all other applicable health and safety standards, and other legal requirements, have been met. The certification constitutes final approval under the WIPP LWA for shipment of transuranic waste from specific waste streams from Los Alamos National Laboratory for disposal at the WIPP. However, the certification is subject to four specific conditions, most notably that EPA must approve site-specific waste characterization measures and quality assurance programs before other waste generator sites may ship waste for disposal at the WIPP. The Agency is amending the WIPP compliance criteria (40 CFR Part 194) by adding Appendix A that describes EPA's certification, incorporating the approval processes for waste generator sites to ship waste for disposal at the WIPP, and adding a definition for ''Administrator's authorized representative.'' Finally, EPA is finalizing its decision, also pursuant to the WIPP LWA, that DOE does not need to acquire existing oil and gas leases near the WIPP to comply with the disposal regulations.

EFFECTIVE DATE: This decision is effective June 17, 1998. A petition for review of this final action must be filed no later than July 17, 1998, pursuant to section 18 of the WIPP Land Withdrawal Act of 1992 (Pub. L. 102–579), as amended by the WIPP LWA Amendments (Pub. L. 104–201).

FOR FURTHER INFORMATION CONTACT: Betsy Forinash, Scott Monroe, or Sharon White; telephone number (202) 564–9310; address: Radiation Protection Division, Center for the Waste Isolation Pilot Plant, Mail Code 6602–J, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. For copies of the Compliance Application Review Documents supporting today's action, contact Scott Monroe. The Agency is also publishing a document, accompanying today's action, which responds in detail to significant public comments that were received on the proposed certification decision. This document, entitled ''Response to Comments,'' may be obtained by contacting Sharon White at the above phone number and address. Copies of these documents are also available for review in the Agency's Air Docket A–93–02.

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I. What is the WIPP?

The Waste Isolation Pilot Plant (''WIPP'') is a potential disposal system for radioactive waste. Developed by the Department of Energy (''DOE'' or ''the Department''), the WIPP is located near Carlsbad in southeastern New Mexico. The DOE intends to bury radioactive waste 2150 feet underground in an ancient layer of salt which will eventually ''creep'' and encapsulate waste containers. The WIPP has a total capacity of 6.2 million cubic feet of waste.

Congress authorized the development and construction of the WIPP in 1980 ''for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States.'' [1] The waste which may be emplaced in the WIPP is limited to transuranic (''TRU'') radioactive waste generated by defense activities associated with nuclear weapons; no high-level waste or spent nuclear fuel from commercial power plants may be disposed of at the WIPP. TRU waste is defined as materials containing alpha-emitting radio-isotopes, with half lives greater than twenty years and atomic numbers above 92, in concentrations greater than 100 nano-curies per gram of waste.[2]

Most TRU waste proposed for disposal at the WIPP consists of items that have become contaminated as a result of activities associated with the production of nuclear weapons (or with the clean-up of weapons production facilities), e.g., rags, equipment, tools, protective gear, and organic or inorganic sludges. Some TRU waste is mixed with hazardous chemicals. Some of the waste proposed for disposal at the WIPP is currently stored at Federal facilities across the United States, including locations in Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee, and Washington. Much of the waste proposed for disposal at the WIPP will be generated in the future.

II. What Is the Purpose of Today's Action?

Before disposal of radioactive waste can begin at the WIPP, the U.S. Environmental Protection Agency (''EPA,'' or ''the Agency'') must certify that the WIPP facility will comply with EPA's radioactive waste disposal regulations (Subparts B and C of 40 CFR Part 191).[3] The purpose of today's action is to issue EPA's certification decision.

With today's action, EPA will add to the Code of Federal Regulations a new Appendix A to 40 CFR Part 194 describing EPA's certification decision and the conditions that apply to the certification. The Agency is adding a new section, § 194.8, to the WIPP compliance criteria (40 CFR Part 194) that describes the processes EPA will use to approve quality assurance and waste characterization programs at waste generator sites. The EPA is also adding a definition of the term ''Administrator's authorized representative'' to the WIPP compliance criteria. Except for these actions, the certification decision does not otherwise amend or affect EPA's radioactive waste disposal regulations or the WIPP compliance criteria.

Today's action also addresses the provision of section 7(b)(2) of the WIPP Land Withdrawal Act which prohibits DOE from emplacing transuranic waste underground for disposal at the WIPP until, inter alia, it acquires specified oil and gas leases, unless EPA determines that such acquisition is not necessary.

III. With Which Regulations Must the WIPP Comply?

The WIPP must comply with EPA's radioactive waste disposal regulations, located at Subparts B and C of 40 CFR Part 191. These regulations limit the amount of radioactive material which may escape from a disposal facility, and protect individuals and ground water resources from dangerous levels of radioactive contamination. In addition, the compliance certification application (''CCA'') and other information submitted by DOE must meet the requirements of the WIPP compliance criteria at 40 CFR Part 194. The compliance criteria implement and interpret the general disposal regulations specifically for the WIPP, and clarify the basis on which EPA's certification decision is made.

IV. What Is the Decision on Whether the WIPP Complies With EPA's Regulations?

A. Certification Decision

The EPA finds that DOE has demonstrated that the WIPP will comply with EPA's radioactive waste disposal regulations at Subparts B and C of 40 CFR Part 191. This decision allows the WIPP to begin accepting transuranic waste for disposal, provided that other applicable environmental regulations have been met and once a 30-day Congressionally-required waiting period has elapsed.[4] EPA's decision is based on a thorough review of information submitted by DOE, independent technical analyses, and public comments. The EPA determined that DOE met all of the applicable requirements of the WIPP compliance criteria at 40 CFR Part 194. However, as discussed below, DOE must meet certain conditions in order to maintain a certification for the WIPP and before shipping waste for disposal at the WIPP.

B. Conditions

As noted above, EPA determined that DOE met all of the applicable requirements of the WIPP compliance criteria. In several instances, however, EPA found that it is necessary for DOE to take additional steps to ensure that the measures actually implemented at the WIPP (and thus the circumstances expected to exist there) are consistent with DOE's compliance certification application (''CCA'') and with the basis for EPA's compliance certification. Regarding several requirements, DOE demonstrated compliance with the applicable compliance criteria for only one category of waste at a single waste generator site. To address these situations, EPA is amending the WIPP compliance criteria, 40 CFR Part 194, and appending four explicit conditions to its certification of compliance for the WIPP.

Condition 1 of the certification relates to the panel closure system, which is intended over the long term to block brine flow between waste panels in the WIPP. In its CCA, DOE presented four options for the design of the panel closure system, but did not specify which one would be constructed at the WIPP. The EPA based its certification decision on DOE's use of the most robust design (referred to in the CCA as ''Option D''). The Agency found the Option D design to be adequate, but also

[1] Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980, Pub. L. 96–164, section 213.

[2] WIPP Land Withdrawal Act, Pub. L. 102–579, section 2(18), as amended by the 1996 WIPP LWA Amendments, Pub. L. 104–201.

[3] WIPP LWA, section 8(d).

[4] WIPP LWA, § 7(b).

determined that the use of a Salado mass concrete—using brine rather than fresh water—would produce concrete seal permeabilities in the repository more consistent with the values used in DOE's performance assessment. Therefore, Condition 1 of EPA's certification requires DOE to implement the Option D panel closure system at the WIPP, with Salado mass concrete replacing fresh water concrete. (For more detail on the panel closure system, refer to the preamble discussion of § 194.14.)

Conditions 2 and 3 of the final rule relate to activities conducted at waste generator sites that produce the transuranic waste proposed for disposal in the WIPP. The WIPP compliance criteria (§§ 194.22 and 194.24) require DOE to have in place a system of controls to measure and track important waste components, and to apply quality assurance (''QA'') programs to waste characterization activities. At the time of EPA's proposed certification decision, the Los Alamos National Laboratory (''LANL'') was the only site to demonstrate the execution of the required QA programs and the implementation of the required system of controls. Therefore, EPA's certification constitutes final approval under the WIPP LWA for DOE to ship waste for disposal at the WIPP only from the LANL, and only for the retrievably stored (legacy) debris at LANL for which EPA has inspected and approved the applicable system of controls. Before DOE may ship any mixed (hazardous and radioactive) waste from the LANL—even if it is encompassed by the waste streams approved by EPA in this action—DOE must obtain any other regulatory approvals that may be needed, including approval from the State of New Mexico under the Resource Conservation and Recovery Act to dispose of such waste at the WIPP.

As described in the final WIPP certification, before other waste may be shipped for disposal at the WIPP, EPA must separately approve the QA programs for other generator sites (Condition 2) and the waste characterization system of controls for other waste streams (Condition 3). The approval process includes an opportunity for public comment, and an inspection (of a DOE audit) or audit of the waste generator site by EPA. The Agency's approval of waste characterization systems of controls and QA programs will be conveyed in a letter from EPA to DOE. In response to public comments on these conditions, EPA's approval processes for waste generator site programs have been incorporated into the body of the WIPP compliance criteria, in a new section at § 194.8. (For more information on this change, see the preamble section entitled, ''Significant Changes to the Final Rule Made in Response to Public Comments.'' For further discussion of Conditions 2 and 3, refer to the preamble discussions of § 194.22 and § 194.24, respectively.)

Condition 4 of the certification relates to passive institutional controls (''PICs''). The WIPP compliance criteria require DOE to use both records and physical markers to warn future societies about the location and contents of the disposal system, and thus to deter inadvertent intrusion into the WIPP. (§ 194.43) In its application, DOE provided a design for a system of PICs, but stated that many aspects of the design would not be finalized for many years (even up to 100) after closure. The PICs actually constructed and placed in the future must be consistent with the basis for EPA's certification decision. Therefore, Condition 4 of the certification requires DOE to submit a revised schedule showing that markers and other measures will be implemented as soon as possible after closure of the WIPP. The DOE also must provide additional documentation showing that it is feasible to construct markers and place records in archives as described in DOE's certification application. After closure of the WIPP, DOE will not be precluded from implementing additional PICs beyond those described in the application. (See the preamble discussion of § 194.43 for more information on PICs.)

Although not specified in the certification, it is a condition of any certification that DOE must submit periodic reports of any planned or unplanned changes in activities pertaining to the disposal system that differ significantly from the most recent compliance application. (§ 194.4(b)(3)) The DOE must also report any releases of radioactive material from the disposal system. (§ 194.4(b)(3)(iii), (v)) Finally, EPA may request additional information from DOE at any time. (§ 194.4(b)(2)) These reports and information will allow EPA to monitor the performance of the disposal system and evaluate whether the certification must be modified, suspended, or revoked for any reason. (Modifications, suspensions, recertification, and other activities are also addressed in the preamble section entitled, ''EPA's Future Role at the WIPP.'')

C. Land Withdrawal Act Section 4(b)(5)(B) Leases

The EPA finds that DOE does not need to acquire existing oil and gas leases (Numbers NMNM 02953 and 02953C) (referred to as the ''section 4(b)(5)(B) leases'') in the vicinity of the WIPP in order to comply with EPA's final disposal regulations at 40 CFR Part 191, Subparts B and C. The EPA concludes that potential activities at these existing leases would have an insignificant effect on releases of radioactive material from the WIPP disposal system and, thus, that they do not cause the WIPP to violate the disposal regulations.

D. EPA's Future Role at the WIPP (recertification, enforcement of conditions)

The EPA will continue to have a role at the WIPP after this certification becomes effective. As discussed above, DOE must submit periodic reports on any activities or conditions at the WIPP that differ significantly from the information contained in the most recent compliance application. The EPA may also, at any time, request additional information from DOE regarding the WIPP. (§ 194.4) The Agency will review such information as it is received to determine whether the certification must be modified, suspended, or revoked. Such action might be warranted if, for example, significant information contained in the most recent compliance application were no longer to remain true. The certification could be modified to alter the terms or conditions of certification—for example, to add a new condition, if necessary to address new or changed activities at the WIPP. (§ 194.2) The certification could be revoked if it becomes evident in the future that the WIPP cannot or will not comply with the disposal regulations. Either modification or revocation must be conducted by rulemaking, in accordance with the WIPP compliance criteria. (§§ 194.65–66) Suspension may be initiated at the Administrator's discretion, in order to promptly reverse or mitigate a potential threat to public health. For instance, a suspension would take effect if, during emplacement of waste, a release from the WIPP occurred in excess of EPA's containment limits. (See § 194.4(b)(3).)

In addition to reviewing annual reports from DOE regarding activities at the WIPP, EPA periodically will evaluate the WIPP's continued compliance with the WIPP compliance criteria and disposal regulations. As directed by Congress, this ''recertification'' will occur every five

years.[5] For recertification, DOE must submit to EPA for review the information described in the WIPP compliance criteria (although, to the extent that information submitted in previous certification applications remains valid, it can be summarized and referenced rather than resubmitted). (§ 194.14) In accordance with the WIPP compliance criteria, documentation of continued compliance will be made available in EPA's dockets, and the public will be provided at least a 30-day period in which to submit comments. The EPA's decision on recertification will be announced in the **Federal Register**. (§ 194.64)

In the immediate future, the Agency expects to conduct numerous inspections at waste generator sites in order to implement Conditions 2 and 3 of the compliance certification. Notices announcing EPA inspections or audits to evaluate implementation of quality assurance (''QA'') and waste characterization requirements at generator facilities will be published in the **Federal Register**. The public will have the opportunity to submit written comments on the waste characterization and QA program plans submitted by DOE. As noted above, EPA's decisions on whether to approve waste generator QA program plans and waste characterization systems of controls—and thus, to allow shipment of specific waste streams for disposal at the WIPP—will be conveyed by a letter from EPA to DOE. A copy of the letter, as well as any EPA inspection or audit reports, will be placed in EPA's docket. (See the preamble sections entitled ''Dockets'' and ''Where can I get more information about EPA's WIPP activities?'' for more information regarding EPA's rulemaking docket.) The procedures for EPA's approval have been incorporated in the compliance criteria at a new section, § 194.8.

As discussed previously, Condition 1 of the WIPP certification requires DOE to implement the Option D panel closure system at the WIPP, with Salado mass concrete being used in place of fresh water concrete. It will be possible to evaluate the closure system only when waste panels have been filled and are being sealed. At that time, EPA intends to confirm compliance with this condition through inspections under its authority at § 194.21 of the WIPP compliance criteria.

Similarly, EPA will be able to evaluate DOE's compliance with Condition 4 of the certification only when DOE submits a revised schedule and additional documentation regarding the feasibility of implementing passive institutional controls. This documentation must be provided to EPA no later than the final recertification application. Once received, the information will be placed in EPA's docket, and the Agency will evaluate the adequacy of the documentation. If necessary, EPA may initiate a modification to the certification to address DOE's revised schedule; any such modification would be undertaken in accordance with the public participation requirements described in the WIPP compliance criteria, §§ 194.65–66. During the operational period when waste is being emplaced in the WIPP (and before the site has been sealed and decommissioned), EPA will verify that specific actions identified by DOE in the CCA and supplementary information (and in any additional documentation submitted in accordance with Condition 4) are being taken to test and implement passive institutional controls. For example, DOE stated that it will submit a plan for soliciting archives and record centers to accept WIPP information in the fifth recertification application. The Agency can confirm implementation of such measures by examining documentation and by conducting inspections under its authority at § 194.21.

Finally, the WIPP compliance criteria provide EPA the authority to conduct inspections of activities at the WIPP and at all off-site facilities which provide information included in certification applications. (§ 194.21) The Agency expects to conduct periodic inspections, both announced and unannounced, to verify the adequacy of information relevant to certification applications. The Agency may conduct its own laboratory tests, in parallel with those conducted by DOE. The Agency also may inspect any relevant records kept by DOE, including those records required to be generated in accordance with the compliance criteria. For example, EPA intends to conduct ongoing inspections or audits at the WIPP and at waste generator sites to ensure that approved quality assurance programs are being adequately maintained and documented. The EPA plans to place inspection reports in its docket for public examination.

V. What Information Did EPA Examine to Make its Decision?

The EPA made its certification decision by comparing relevant information to the WIPP compliance criteria (40 CFR Part 194) and ensuring that DOE satisfied the specific requirements of the criteria in demonstrating compliance with the disposal regulations. The primary source of information examined by EPA was a compliance certification application (''CCA'') submitted by DOE on October 29, 1996. (Copies of the CCA were placed in EPA's Air Docket A–93–02, Category II–G.) The DOE submitted additional information after that time. On May 22, 1997, EPA announced that DOE's application was deemed to be complete. (62 FR 27996–27998)

However, as contemplated by Congress, EPA's compliance certification decision is based on more than the complete application. The EPA also relied on materials prepared by the Agency or submitted by DOE in response to EPA requests for specific additional information necessary to address technical sufficiency concerns. The Agency also considered public comments on the proposed rule which supported or refuted technical positions. Thus, EPA's certification decision is based on the entire record available to the Agency, which is contained in EPA's Air Docket A–93–02. The record consists of the complete CCA, supplementary information submitted by DOE in response to EPA requests for additional information, technical reports generated by EPA and EPA contractors, EPA audit and inspection reports, and public comments submitted on EPA's proposed certification decision during the public comment period.

In response to public comments regarding the precise materials EPA considered in reaching its certification decision, the Compliance Application Review Documents (''CARDs'') supporting today's decision reference the relevant portion(s) of the October 29, 1996, CCA and any supplementary information that the Agency relied on in reaching a particular compliance decision. (Docket A–93–02, Item V–B–2) All materials which informed EPA's proposed and final decisions have been placed in the WIPP dockets or are otherwise publicly available. A full list of the supporting documentation for EPA's certification decision and the DOE compliance documentation considered by the Agency is located at Docket A–93–02, Item V–B–1. For further information regarding the availability of information EPA examined, see the section entitled ''Dockets'' in this preamble.

[5] WIPP LWA, § 8(f). Congress also directed that this periodic recertification ''shall not be subject to rulemaking or judicial review.''

VI. In Making its Final Decision, how did EPA Incorporate Public Comments on the Proposed Rule?

A. Introduction and the Role of Comments in the Rulemaking Process

Congress directed that EPA's certification decision for the WIPP be conducted by informal (or ''notice-and-comment'') rulemaking pursuant to Section 4 of the Administrative Procedure Act (''APA'').[6] Notice-and-comment rulemaking under the APA requires that regulatory agencies provide notice of a proposed rulemaking, an opportunity for the public to comment on the proposed rule, and a general statement of the basis and purpose of the final rule.[7] The notice of proposed rulemaking required by the APA must ''disclose in detail the thinking that has animated the form of the proposed rule and the data upon which the rule is based.'' (*Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 392–94 (D.C. Cir. 1973)) The public is thus enabled to participate in the process by making informed comments on the Agency's proposal. This provides the Agency the benefit of ''an exchange of views, information, and criticism between interested persons and the agency.'' (Id.)

For the WIPP certification decision, there are two primary mechanisms by which EPA explains the issues that were raised in public comments and the Agency's reactions to them. First, broad or major comments are discussed in the succeeding sections of this preamble. Second, EPA is publishing a document, accompanying today's action and entitled ''Response to Comments,'' which contains the Agency's response to all significant comments received during the comment period on the proposed certification decision. (The EPA also responded to comments received on its advance notice of proposed rulemaking (''ANPR''); for further information on the ANPR, see the preamble section ''Public Involvement Prior to the Proposed Rule.'') The Response to Comments document provides more detailed responses to issues which are addressed in the preamble, and addresses all other significant comments on the proposal. All comments received by EPA, whether written or oral, were given equal consideration in developing the final rule.

[6] WIPP LWA, § 8(d)(2).

[7] 5 U.S.C. 553

B. Significant Changes to the Final Rule Made in Response to Public Comments

Today's action finalizes EPA's proposed decision that the WIPP facility will comply with the disposal regulations and that DOE does not need to acquire existing oil and gas leases in the WIPP Land Withdrawal Area. (For further information, refer to the preamble section entitled, ''What is the decision on whether the WIPP complies with EPA's regulations?'') Beyond these broad determinations, EPA's proposed certification decision also included four conditions related to the panel closure system, quality assurance at waste generator sites, waste characterization measures at waste generator sites, and passive institutional controls. The final rule retains all of these conditions. However, in response to comments submitted on the proposal, the Agency has made clarifying changes to Subpart A of 40 CFR Part 194 to provide a clearer explanation of the process for determining compliance with the conditions related to waste generator sites.

Proposed Conditions 2 and 3 relate to quality assurance (''QA'') programs and waste characterization programs, respectively, at waste generator sites intending to ship waste for disposal at the WIPP. Except for removal of the procedural sections of the proposed conditions from the appendix (as proposed) to Subpart A of 40 CFR Part 194, to provide for a clearer enunciation of the process for determining compliance with the conditions, these conditions are retained with minor clarifications in the final rule. The conditions restrict DOE from shipping waste to the WIPP from any sites other than the Los Alamos National Laboratory until EPA separately approves the QA and waste characterization plans at other waste generator sites. For both QA and waste characterization programs, the proposed approval process included: placement in the docket of site-specific documentation submitted by DOE, publication of a **Federal Register** notice by EPA announcing a scheduled inspection or audit, a period of at least 30 days for the public to comment on information placed in the docket, and the Agency's written decision regarding the approval of these programs in the form of a letter from EPA to DOE. The EPA proposed to approve QA programs on a site-wide basis. However, because the features of waste streams can vary widely and thus can require significantly different characterization techniques, EPA proposed to approve waste characterization measures and controls on the basis of waste streams or, where multiple waste streams may be characterized by the same waste characterization processes and techniques, groups of waste streams.

A number of commenters suggested that in the waste generator site approval process, EPA should delay the public comment period until after completion of an inspection or audit, and should make the Agency's approval decision explicitly subject to judicial review. Other comments questioned the authority for, and the value of, a separate site approval process by EPA.

The EPA finds that it is both necessary and within the Agency's authority to evaluate and approve site-specific QA and waste characterization programs. The compliance criteria expressly provide that any certification of compliance ''may include such conditions as [EPA] finds necessary to support such certification.'' (§ 194.4(a)) Before waste is shipped for disposal at the WIPP, EPA must be confident that the waste will conform to the waste limits and other waste-related assumptions incorporated in DOE's performance assessment—that is, that DOE adheres to the fundamental information and assumptions on the waste on which the certification of compliance is based. Such confidence can be assured only by confirmation that the required QA and waste characterization programs are in place (i.e., established, implemented or executed) at waste generator sites. The EPA believes that an approval process separate from DOE's internal procedures is beneficial because DOE's process is not geared solely to confirming that programs adhere to EPA's compliance criteria, and because DOE's process does not provide for public participation.

Given the great public interest regarding the WIPP, and waste characterization in particular, EPA believes it is important that the public be informed of and have the opportunity to be involved in the site approval process. To that end, EPA's approval process includes docketing information relevant to site-specific approvals, and allowing the public to comment on such information.

The EPA's certification that the WIPP will comply with the 40 CFR Part 191 radioactive waste disposal regulations is based on the Agency's determination that the WIPP will comply with the containment requirements and other requirements of 40 CFR Parts 191 and 194 for the waste inventory described for purposes of the performance assessment. In the CCA, DOE purported to demonstrate that the WIPP would meet the 40 CFR Part 191 release limits

by modeling the WIPP's behavior in its performance assessment. The performance assessment incorporated certain upper and lower limiting values of specified waste components, as required by 40 CFR 194.24(c). The EPA confirmed the results of the performance assessment using the same upper and lower limiting values in the performance assessment verification test (''PAVT''). Those upper and lower limiting values apply to contact-handled, remote-handled, and to-be-generated waste from numerous generator sites. Thus, in today's action, EPA certifies that the WIPP will comply with the 40 CFR Part 191 containment requirements to the extent that emplaced waste falls within the waste envelope limits that were shown by the performance assessment, and confirmed by the PAVT, to be compliant with the 40 CFR Part 191 standards. Proposed Conditions 2 and 3 change neither the performance assessment assumptions nor the terms on which the WIPP is authorized for disposal, but rather ensure that the assumptions on which the compliance certification is based are adhered to in practice.

Based on public comments, EPA also finds it necessary to clarify that the compliance criteria at § 194.22 and § 194.24 were not intended to require that DOE address their requirements—including QA measures, and the use of process knowledge—for all waste streams in the certification application for the initial certification. Clearly, it would be impossible to do so for the to-be-generated waste. It is similarly impossible for DOE to demonstrate fully, in the initial certification application, that the waste emplaced in the disposal system actually conforms to the waste envelope (i.e., upper and lower waste limits) upon which the certification is based, since waste cannot be disposed of at the WIPP before EPA grants an initial certification. Confusion on these issues arose because the compliance criteria at 40 CFR Part 194 apply to information in compliance recertification applications as well as the initial certification application.

The fact that it was not EPA's intent to require DOE to have implemented QA or measurement programs for all waste at every site prior to initial certification is supported by numerous statements made by the Agency at the time the compliance criteria were issued. The EPA had great discretion in setting the waste characterization requirements, since they were part of the general requirements of the WIPP compliance criteria and not derived directly from the disposal regulations. In the Response to Comments for 40 CFR Part 194, EPA emphasized that compliance with the requirements would be confirmed through inspections or audits and would not serve to re-open the certification rulemaking. (Docket A–92–56, Item V–C–1, pp. 6–5, 6–8, and 6–20) The Agency stated that the certification rulemaking would address DOE's analysis of waste characteristics and components and documentation that a system of controls had been established at the WIPP to track the amount of important waste components emplaced in the disposal system. (Docket A–92–56, Item V–C–1, p. 6–9) The certification rulemaking has addressed these issues and found DOE in compliance with the requisite criteria. The EPA believes that the comprehensive waste characterization approach described by DOE in the CCA—including the approach to identification, limitation, and confirmation of waste components important to containment of waste in the disposal system—is an appropriate basis for granting an initial certification. The EPA further believes that confirmation of the QA and system of controls at waste generator sites (i.e., measuring and tracking important waste components) can be reasonably obtained by a process of inspections and audits in accordance with 40 CFR 194.21, 194.22(e), and 194.24(h).

The EPA declines to modify the proposed approval process by delaying the comment period until after the issuance of EPA's inspection or audit report. The EPA does not believe it is prudent to commit to a strict sequence of events that will be adhered to for every approval. In some cases, the Agency may place records of a completed inspection or audit in the docket prior to or during the public comment period. However, in other cases, the Agency believes that the public comment period may better serve members of the public if it allows them to provide comments on DOE's documentation prior to EPA's inspection or audit. In this way, public comments could inform EPA's inspection criteria and process, or provide information on which EPA may take action to follow up in the inspection or audit. Therefore, the Agency does not believe that it is prudent to specify when the comment period may occur in relation to an inspection or audit. Furthermore, EPA declines to make any statement regarding whether the approval decisions are subject to judicial review. Jurisdiction of U.S. Federal Courts is governed by the enactments of the U.S. Congress.

Nevertheless, in response to comments requesting changes or clarifications to EPA's waste generator site and waste stream approval processes, EPA made certain changes to the proposed conditions. In order to clarify EPA's original intent in the compliance criteria regarding approval of site-specific activities, EPA is amending the compliance criteria at 40 CFR Part 194 to include the site-specific approval process. (See 62 FR 58804, 58815) Thus, the procedures for demonstrating compliance with the proposed Conditions 2 and 3 are incorporated in the final rule as a new section at 40 CFR Part 194: § 194.8, ''Approval Process for Waste Shipment from Waste Generator Sites for Disposal at the WIPP.'' Also, in response to comments advocating greater transparency in the approval process, EPA has clarified that scheduled inspections or audits by EPA for the purpose of approving quality assurance programs at waste generator sites will be announced by notice in the **Federal Register** (§ 194.8(a)); this is consistent with EPA's commitment to do so for inspections and audits of waste characterization programs at generator sites (§ 194.8(b)). Providing notice of such inspections will alert the public to upcoming EPA approval activities and allow for more informed public participation. While public notice will be provided for the scheduled initial phase of an inspection or audit, should it prove necessary for EPA to conduct follow-up activities or continuations of inspections and audits, EPA reserves the right to do so without providing additional public notice. Such follow-up activities or continuations of audits or inspections might be necessary to obtain additional information or ensure that corrective actions are being taken to resolve initial findings. In no case will EPA decide whether to approve site-specific quality assurance or waste characterization programs before providing a minimum 30-day public comment period on documentation of the program plans, or before conducting an inspection or audit at the relevant site.

The Agency received some comments related to Conditions 1 and 4 in the proposed rule. EPA's responses to these comments are discussed in the preamble sections related to § 194.14 and § 194.43, respectively. Conditions 1 and 4 were retained without change in the final rule. The response to comments document accompanying today's action provides more detailed responses regarding the certification conditions and all aspects of the final rule.

The EPA received no significant comments on its proposed actions to slightly modify the criteria by revising the authority citation and adding a new definition for Administrator's authorized representative. Therefore, these actions take effect without change from the proposed rule.

VII. How Did EPA Respond to General Comments on Its Proposed Certification Decision?

The EPA received many comments which addressed broad issues related to the proposed certification decision. Many citizens simply expressed their strong support for, or opposition to, opening the WIPP. Some commenters requested that EPA consider certain factors in making its certification decision. These factors include reviews by organizations other than EPA, and the political or economic motivations of interested parties. The EPA's certification decision must be made by comparing the scope and quality of relevant information to the objective criteria of 40 CFR Part 194. Where relevant, the Agency has considered public comments which support or refute technical positions taken by DOE. Emotional pleas and comments on the motives of interested parties are factors that are not relevant to a determination of whether DOE has demonstrated compliance with the disposal regulations and the WIPP compliance criteria, and are therefore outside the scope of this rulemaking.

A number of commenters suggested that EPA should explore alternative methods of waste disposal, such as neutralizing radioactive elements, before proceeding with a certification decision. Others stated that the WIPP should be opened immediately because underground burial of radioactive waste is less hazardous than the current strategy of above-ground storage. Such considerations are all outside the scope of this rulemaking. Congress did not delegate to EPA the authority to abandon or delay the WIPP in favor of other disposal methods. Congress mandated that EPA certify, pursuant to Section 4 of the APA, whether the WIPP will comply with the radioactive waste disposal regulations.[8] Thus, EPA is obligated to determine whether the WIPP complies with the disposal regulations, regardless of the relative risks of underground disposal compared to above-ground storage.

Many members of the public expressed a desire for EPA to oversee other aspects of the WIPP's operation. In particular, the public was concerned with the risks of transporting radioactive materials from waste generator sites to the WIPP. All transportation requirements for the WIPP are established and enforced by regulators other than EPA. (For further discussion on the source and limitations of EPA's authority to regulate the WIPP, see preamble Section X, ''Why and how does EPA regulate the WIPP?'') One commenter stated that EPA should survey electric and magnetic fields at the WIPP. The EPA's disposal regulations apply only to ionizing radiation. They do not apply to non-ionizing radiations such as electric and magnetic fields. These issues are beyond the scope of EPA's authority to regulate waste disposal at the WIPP and are not addressed in the certification rulemaking.

The EPA received a number of comments suggesting that the Agency should have provided more or better opportunities for public participation in its decision making process. Comments suggested, for example, that EPA should have rescheduled public hearings, responded more fully to comments submitted prior to the proposed rule, extended the public comment period, and included the public in all meetings between EPA and DOE. The EPA provided numerous opportunities for public participation in the WIPP certification decision, including two comment periods—one before and one after the proposed decision—of at least 120 days (In fact, EPA accepted comments on its advance notice of proposed rulemaking announcing receipt of DOE's CCA for over 250 days.), two sets of public hearings in New Mexico, **Federal Register** notices, and a number of meetings with various stakeholders. These measures exceed the basic requirements for notice-and-comment rulemaking and are in full compliance with the public participation requirements of both the WIPP compliance criteria and the Administrative Procedure Act. Further discussion on the measures taken by EPA to involve the public can be found in the preamble section entitled, ''How has the public been involved in EPA's WIPP activities?''

Some members of the public expressed doubt that EPA and its contractors possessed the necessary technical skills to evaluate DOE's application or were free from conflicts of interest. Many comments requested that EPA release the names and qualifications of individual contractor employees who provided technical support for EPA's certification rulemaking. The EPA initially denied this request because such information is typically claimed as confidential business information by federal government contractors. (The Trade Secrets Act prohibits EPA from releasing confidential business information, and imposes criminal liability on federal employees for the unauthorized disclosure of such confidential information.[9]) However, in response to the public interest regarding this issue, EPA sought and obtained from its contractors a limited waiver of confidentiality to release the names and qualifications of individual employees who provided technical support related to EPA's certification decision. In January 1998, EPA provided this contractor information to several stakeholders and also placed it in the rulemaking docket. (Docket A–93–02, Items IV–C–13 and IV–C–14) The Agency also sent to stakeholders (and docketed) a description of the measures EPA has taken to ensure that contractors do not have any conflict of interest in providing technical support on the certification rulemaking. While EPA agreed to release the above information to allay public concerns, such information is not relevant to EPA's certification decision. Under notice-and-comment rulemaking, it is the substance and basis for EPA's decision that are at issue.

Finally, several commenters stated that EPA—by initially certifying the WIPP to receive only certain waste from the Los Alamos National Laboratory—is granting a piecemeal certification, and that such an action is illegal under EPA's regulatory authority. The EPA disagrees with the assertion that its actions constitute a phased certification. The EPA's certification is based on the Agency's determination that the WIPP will comply with the disposal regulations for the inventory described in the performance assessment. Conditions 2 and 3 of the certification (related to waste generator sites) change neither the performance assessment assumptions nor the terms on which the WIPP is authorized for disposal, but ensure that DOE adheres to the assumptions on which compliance is based. The EPA believes this approach is consistent with Congressional intent (as reflected in the WIPP LWA) and with the disposal regulations and compliance criteria. For further discussion of comments related to the proposed conditions of certification, refer to the preceding preamble section entitled, ''Significant Changes Made to

[8] WIPP Land Withdrawal Act (''WIPP LWA''), Pub. L. 102–579, as amended by the 1996 WIPP LWA Amendments, Pub. L. 104–201, Section 8(d).

[9] 18 U.S.C. 1905

the Final Rule in Response to Comments.''

VIII. How Did EPA Respond to Major Technical Issues Raised in Comments?

A. Content of Compliance Certification Applications (§ 194.14)

40 CFR Part 194 sets out those elements which the Agency requires to be in a complete compliance application. In general, compliance applications must include information relevant to demonstrating compliance with each of the individual sections of 40 CFR Part 194 to determine if the WIPP will comply with the Agency's radioactive waste disposal regulations at 40 CFR Part 191, Subparts B and C. The Agency published the ''Compliance Application Guidance for the Waste Isolation Pilot Plant: A Companion Guide to 40 CFR Part 194'' (''CAG'') which provided detailed guidance on the submission of a complete compliance application.[10]

Any compliance application must include, at a minimum, basic information about the WIPP site and disposal system design, and must also address all the provisions of the compliance criteria; these requirements are embodied in § 194.14. The documentation required in the compliance criteria is important to enable a rigorous, thorough assessment of whether the WIPP facility will comply with the disposal regulations.

The EPA thoroughly reviewed DOE's compliance certification application (''CCA'') and additional information submitted by DOE, and proposed that DOE complies with each of the requirements of § 194.14, conditioned upon DOE's implementation of the most robust panel closure system design (designated as Option D) with slight modification. The succeeding sections address public comments related to § 194.14. (For more detailed discussions, see Docket A–93–02, Item V–B–2, CARD 14; and Item V–B–3.)

1. Site Characterization and Disposal System Design

The EPA received numerous public comments on issues related to the requirements of §§ 194.14(a) and 194.14.(b), primarily related to the geological features, disposal system design and characteristics of the WIPP. Since the geology and disposal system characteristics are directly related to performance assessment modeling and the containment requirements of 40 CFR Part 191, a discussion of EPA's review of the substantive comments (except for those relating to shaft seals and panel closures) can be found in the Performance Assessment section of this preamble. A discussion of the comments on the engineered features related to long term performance, specifically on the shaft seal design and panel closure system, are discussed below.

a. Shaft Seals. In the CCA, DOE described the seals to be used in each of the four shafts and included the design plans and the material and construction specifications for the seals. (Docket A–93–02, Item II–G–1, CCA Chapter 3.3.1, Chapter 8.1.1, and Appendix SEAL) The purpose of the shaft seal system is to limit fluid flow within the shafts after the WIPP is decommissioned and to ensure that the shafts will not become pathways for radionuclide release. The shaft seal system has 13 elements that fill the shaft with engineered materials possessing high density and low permeability, including concrete, asphalt, clay, compacted salt, cementitious grout, and earthen fill. The compacted salt column component of the system within the Salado is intended to serve as the primary longterm barrier by limiting fluid transport along the shaft during the 10,000 year regulatory period. The EPA proposed that DOE's shaft seal design is adequate because the system can be built and is expected to function as intended. (Docket A–93–02, Item V–B–2, CARD 14, Section 14.E; and Item V–B–3)

Commenters expressed concern that dissolution of the salt column could occur because the overlying Rustler aquifer has karst features and cannot be relied upon to retard the migration of radionuclides. (For more information on karst, refer to the preamble sections on Performance Assessment, Geological Scenarios.) Dissolution of salt (halite) in the WIPP shafts would require a source of water that is not saturated with salt, and a sink, i.e., some location for the water to flow to after it has dissolved the salt in the shafts. Since all of the ground water from the top of the Salado downward is saturated with salt (i.e., it is ''brine''), the unsaturated but highly saline water would probably come down the shaft from the Rustler Formation. In order to reach the salt component of the shaft seal, that water would have to pass through or around 490 feet of concrete, asphalt, and bentonite layers. Then, after flowing through 550 feet of compacted salt column, the saturated water would have to flow through or around another concreteasphalt water stop, another 100 feet of bentonite clay, and the shaft station concrete plug. (Docket A–93–02, Item V–B–2, CARD 14, Section 14.A)

Even if water were to pass through the salt column, only a small fraction of the salt column would be removed. Due to the ongoing inward creep of the Salado Formation, the salt column would still be consolidated after such a dissolution episode. Finally, DOE's PA calculations do not include ''credit'' for bentonite swelling, capture of water by clay, or the adsorption of water into dry halite'all processes that would tend to reduce water predicted to reach the salt column'and the PA results are therefore conservative. Therefore, EPA concludes that dissolution of the salt column is not a concern. (Docket A–93–02, Item V–B–2, CARD 14, Section 14.E; Item V–B–3, Section F.2)

Commenters questioned the ability of the shaft seals to perform as expected because the material and construction of the seals have not been tested. However, EPA found that DOE performed and referenced numerous tests and experiments to establish the material characteristics of importance to containment of waste at the WIPP. The characteristic of primary importance is the material's permeability, the degree to which fluids can travel through the material. The permeability of concrete, asphalt, and bentonite clay are well documented, and DOE performed numerous experiments to demonstrate the applicability of these characteristics to the WIPP's site specific conditions (e.g., high brine concentration). The DOE documented many laboratory and insitu tests of the permeability of compacted crushed salt including a largescale field test to demonstrate the feasibility of implementing such a seal measure. (Docket A–93–02, Item II–G–2, Appendices SEAL, PCS, DEL, and MASS)

The technology planned for constructing the shaft seals has been tested in the real world. The construction equipment and procedures necessary to emplace the seal materials are in large part the same as those used to excavate the WIPP, but used in reverse. Except for salt, the shaft seal component materials are commonly used in construction. Salt has been extensively tested to determine its properties and behavior in the conditions which will exist in the shafts after the WIPP is closed. The EPA finds that the shaft seal design has undergone extensive technical review and testing by DOE that shows it is feasible to construct and is expected to perform as intended. (Docket A–93–02, Item V–B–

[10] Section 194.11 provides that EPA's certification evaluation would not begin until EPA notified DOE of its receipt of a ''complete'' compliance application. This ensures that the full one-year period for EPA's review, as provided by the WIPP LWA, shall be devoted to substantive, meaningful review of the application. (61 FR 5226)

2, CARD 14, Section 14.E; Item V–B–3, Section F.2)

As commenters pointed out, and EPA agrees, many changes may occur in knowledge of construction materials and in construction methods and equipment during the 35 years before the WIPP is expected to be closed. The DOE provided a final design for the shaft seals which could be constructed. However, EPA recognizes the fact that technology may change and expects the shaft seal plans to be periodically reviewed and revised to take full advantage of new knowledge or construction equipment in the future. Acknowledgment of this circumstance does not mean that the existing plans are inadequate, or that major changes in the design are anticipated. Periodic review of the WIPP authorization(s) to operate is required by the various statutes and regulations applicable to the WIPP, including EPA's review of recertification applications every five years, and the State of New Mexico's review of the hazardous waste permit at least every ten years. Shaft seal design changes may be proposed by DOE and perhaps approved by EPA several times before the end of the WIPP disposal operations phase. Significant changes in the designs will be required to go through public noticeandcomment procedures before approval by EPA. (§ 194.65–66)

b. Panel Closure System. Panel closures are needed primarily during active disposal operations at the WIPP and during preparations for final closure of the entire facility. Relative to long-term performance, they can serve to block the flow of brine between panels.

The DOE provided four options for a panel closure system in the CCA, but did not specify which panel closure option would be used at WIPP. The EPA reviewed the four panel closure system options proposed by DOE and considered that the intended purpose of the panel closure system is to prevent the existing disturbed rock zone (''DRZ'') in the panel access drifts (tunnels) from increasing in permeability after panel closure (which could allow greater brine flow). The EPA considers the panel closure system design identified as ''Option D'' to be the most robust panel closure design. (Docket A–93–02, Item II–G–1, CCA Chapter 3 and Appendix PCS; Item V–B–2, CARD 14, Section 14.E; Item V–B–3, Section F.2) The EPA based its evaluation of compliance for the proposed rule on the Option D panel seal design and proposed to establish a certification condition requiring DOE to implement the Option D design. The EPA believes that the proposed design on which compliance was based should be actually implemented at the site. The EPA also proposed to require DOE to use Salado mass concrete (concrete made with Salado salt) for construction of the concrete barrier component of the panel closure. This substitution eliminates the potential for degradation and decomposition of fresh water concrete by infiltration of brine. The EPA determined that implementation of Option D is adequate to achieve the long-term performance modeled in the PA, since DOE shows that the use of a concrete barrier component is capable of providing resistance to inward deformation of the surrounding salt and prohibiting growth of the DRZ from its initial state. (Docket A–93–02, Item V–B–13)

Contrary to public comments, EPA found that the panel closures can be constructed using currently available and widely used technology. Mixing and transportation of concrete, using special measures to prevent segregation of fine and coarse particles (as required in the Panel Closure System construction specifications), and placement in confined spaces by pumping, is used routinely in bridge and building foundations, dams, and in water supply, subway and highway tunnels. The steel forms in which the concrete will be confined are somewhat unusual in shape, but the methods of construction are fairly simple and standardized. The Salado mass concrete mix is specially formulated for use in the WIPP, but it has been extensively tested to determine its properties (e.g., strength and resistance to chloride degradation) as explained in ''Variability in Properties of Salado Mass Concrete.'' (Docket A–93–02, Item II–G–1, Ref. No. 662)

One commenter asked that EPA revise its panel seal design condition so that DOE may reassess the engineering of panel closures when panels are to be closed in the future. The EPA proposed a certification condition (Condition 1) requiring DOE to implement the panel seal design that it designated as Option D in the CCA. The Option D design shall be implemented as described in the CCA, except that DOE is required to use Salado mass concrete rather than fresh water concrete. Nothing in this condition precludes DOE from reassessing the engineering of the panel seals at any time. Should DOE determine at any time that improvements in materials or construction techniques warrant changes to the panel seal design, DOE must inform EPA. If EPA concurs, and determines that such changes constitute a significant departure from the design on which certification is based, the Agency is authorized under § 194.65 to initiate a rulemaking to appropriately modify the certification. The EPA has retained the proposed Condition 1, related to the panel closure system, without change in the final rule. (See also ''Conditions'' and ''Significant Changes to the Final Rule'' sections of this preamble.)

2. Results of Assessments, Input Parameters to Performance Assessments, Assurance Requirements, and Waste Acceptance Criteria

Sections 194.14(c) through (f) require DOE to submit the results of assessments conducted in accordance with 40 CFR Part 194; a description of the input parameters associated with such assessments and the basis for selecting such parameters; documentation of measures taken to meet the assurance requirements of 40 CFR Part 194; and a description of the waste acceptance criteria and actions taken to assure adherence to such criteria. The EPA proposed that DOE complied with §§ 194.14(c) through (f) based on EPA's finding that DOE submitted the information required. The EPA received numerous public comments on the results of assessments, input parameters to the PA, assurance requirements, and the waste acceptance criteria. A discussion of EPA's responses to substantive comments can be found in the corresponding sections of the preamble. Based on these responses, EPA finds that DOE complies with §§ 194.14(c) through (f). For further discussion, refer to CARD 14, Sections 14.C, 14.D, 14.E, 14.F (Docket A–93–02, Item V–B–2) and Sections H.2, I.2, J.2, and K.2 of the technical support document for § 194.14 (Docket A–93–02, Item V–B–3).

3. Background Radiation, Topographic Maps, Past and Current Meteorological Conditions

For the CCA, DOE was required to describe the background radiation in air, soil and water in the vicinity of the disposal system and the procedures employed to determine such radiation (§ 194.14(g)), provide topographic maps of the vicinity of the disposal system (§ 194.14(h)), and describe past and current climatic and meteorological conditions in the vicinity of the disposal system and how these conditions are expected to change over the regulatory time frame (§ 194.14(i)). The EPA proposed that DOE complied with the requirements of §§ 194.14 (g), (h), and (i). The EPA did not receive substantive comments on these issues, except for dissolution related to climate change. A

discussion of EPA's response to the substantive comments on dissolution can be found in the Performance Assessment, Geological Scenarios and Disposal System Characteristics section of this preamble. The EPA finds that DOE complies with §§ 194.14 (g) through (i). For further discussion, refer to Sections 14.K, 14.L, and 14.M of CARD 14 (Docket A–93–02, Item V–B–2) and Sections H.2, L.2, N.2 and N.4 of the technical support document for § 194.14 (Docket A–93–02, Item V–B–3).

4. Other Information Needed for Demonstration of Compliance

The DOE was also required, under § 194.14(j), to provide additional information, analyses, tests, or records determined by the Administrator or the Administrator's authorized representative to be necessary for determining compliance with 40 CFR Part 194. After receipt of the CCA dated October 29, 1996, EPA formally requested additional information from DOE in seven letters dated December 19, 1996, and February 18, March 19, April 17, April 25, June 6, and July 2, 1997. (Docket A–93–02, Items II–I–1, II–I–9, II–I–17, II–I–25, II–I–27, II–I–33, and II–I–37, respectively) The information requested in these letters was necessary for EPA's completeness determination and technical review. EPA staff and contractors also reviewed records maintained by DOE or DOE's contractors (e.g., records kept at the Sandia National Laboratories Records Center in Albuquerque, New Mexico). No additional laboratory or field tests were conducted by DOE at EPA's specific direction; however, DOE did conduct and document laboratory tests after October 29, 1996, in order to present additional data to the Conceptual Model Peer Review Panel. (Docket A–93–02, Item II–A–39)

The EPA proposed that DOE complied with § 194.14(j) because it responded adequately to EPA's formal requests for additional information, analyses, and records. The EPA did not formally request additional information from DOE after publication of the proposed rule. However, in response to comments, EPA did verbally ask DOE and Sandia National Laboratory for information and other assistance in calculations related to the Hartman scenario, drilling into fractured anhydrite, and the CCDFGF code and quasi-static spreadsheet with regard to air drilling. (Docket A–93–02, Items IV–E–24, IV–E–25, IV–E–26, and IV–E–27) In addition, DOE voluntarily submitted information on the proposed rule that was considered as comments.

All documents sent to EPA regarding certification of the WIPP are available in EPA Air Docket A–93–02. Additional information relevant to EPA's certification evaluation that was reviewed by the Agency (e.g., DOE data records packages, quality assurance records, and calculations of actinide solubility for americium, plutonium, thorium and uranium) is also publicly available. Documentation of peer review panel meetings conducted after receipt of the CCA has been placed in the EPA docket. See Docket A–93–02, Item V–B–1 for further information on the location of all documentation reviewed by EPA.

5. Conclusion

The EPA received numerous public comments on the proposed rule regarding § 194.14. EPA has thoroughly reviewed the public comments and addressed all issues raised therein. On the basis of its evaluation of the CCA and supplementary information, and the issues raised in public comments, EPA finds that DOE complies with all subsections of 40 CFR 194.14, with the condition that DOE must fulfill the requirements set forth in Condition 1 of the final rule. For additional information on EPA's evaluation of compliance for § 194.14, see CARD 14. (Docket A–93–02, Item V–B–2)

B. Performance Assessment: Modeling and Containment Requirements (§§ 194.14, 194.23, 194.31 through 194.34)

1. Introduction

The disposal regulations at 40 CFR Part 191 include requirements for containment of radionuclides. The containment requirements at 40 CFR 191.13 specify that releases of radionuclides to the accessible environment must be unlikely to exceed specific limits for 10,000 years after disposal. At the WIPP, the specific release limits are based on the amount of waste in the repository at the time of disposal. (§ 194.31) Assessment of the likelihood that the WIPP will meet these release limits is conducted through the use of a process known as performance assessment (''PA'').

The WIPP PA process culminates in a series of computer simulations that attempts to describe the physical attributes of the disposal system (site characteristics, waste forms and quantities, engineered features) in a manner that captures the behaviors and interactions among its various components. The computer simulations require the use of conceptual models that represent physical attributes of the repository. The conceptual models are then expressed as mathematical relationships, which are solved with iterative numerical models, which are then translated into computer code. (§ 194.23) The results of the simulations are intended to show the potential releases of radioactive materials from the disposal system to the accessible environment over the 10,000-year regulatory time frame.

The PA process must consider both natural and man-made processes and events which have an effect on the disposal system. (§§ 194.32 and 194.33) It must consider all reasonably probable release mechanisms from the disposal system and must be structured and conducted in a way that demonstrates an adequate understanding of the physical conditions in the disposal system. The PA must evaluate potential releases from both human-initiated activities (e.g., via drilling intrusions) and natural processes (e.g., dissolution) that would occur independently of human activities. The DOE must justify the omissions of events and processes that could occur but are not included in the final PA calculations.

The results of the PA are used to demonstrate compliance with the containment requirements in 40 CFR 191.13. The containment requirements are expressed in terms of ''normalized releases.'' The results of the PA are assembled into complementary cumulative distribution functions (''CCDFs'') which indicate the probability of exceeding various levels of normalized releases. (§ 194.34)

As described above, 40 CFR Part 194 contains several specific requirements for the performance assessment of WIPP. It is often difficult to discuss one of the requirements in isolation from the others. For example, several public comments raised concern about the CCA's screening of the fluid injection scenario from the PA and EPA's subsequent analysis. In order for EPA to adequately address the fluid injection issue, the Agency must discuss multiple requirements related to geology and other characteristics specific to the WIPP site (§ 194.14), models and computer codes (§ 194.23), and the screening process for both human-initiated releases and releases by natural processes (§§ 194.32 and 194.33). Because so many of the PA issues have similarly overlapping requirements and are often complex, EPA has chosen to combine the discussions. Therefore, the following discussions are framed in terms of the PA issues raised in comments, rather than according to specific PA requirements of the compliance criteria. The following sections discuss the major PA issues

that were raised during public hearings and the public comment period. For more information on performance assessment and related issues, refer to CARDs 14, 23, 32, and 33. (Docket A–93–02, Item V–B–2)

2. Human Intrusion Scenarios

a. Introduction. Section 194.32 requires DOE to consider, in the PA, both natural and man-made processes and events which can have an effect on the disposal system. Of all the features, events, and processes (''FEPs'') that are considered for the PA calculations, the human-intrusion scenarios related to drilling have been shown to have the most significant impact on the disposal system and its ability to contain waste. (§ 194.33)

In preparing the CCA, DOE initially identified 1,200 potential FEPs, both natural and human-initiated, for the WIPP PA. These FEPs were reduced in number in the final PA calculations. The DOE may eliminate FEPs from consideration in the PA for three reasons:

- Regulatory—FEPs can be omitted based on regulatory requirements. For example, drilling activities that occur outside the Delaware Basin do not have to be considered in the PA, according to §§ 194.33(b)(3)(i) and 194.33(b)(4)(i).
- Probability—FEPs can be omitted because of the low probability that the FEP will occur. For example, DOE determined that the probability of a meteorite landing in the vicinity of the WIPP is so low that it does not need to be considered in the PA. (§ 194.32(d))
- Consequences—FEPS can be omitted because the consequences resulting from the FEP, even if it does occur, are so small. For example, there would be no consequences on the repository or the containment of waste if an archeological excavation took place on the surface in the vicinity of the WIPP. (§ 194.32(a))

The following sections discuss the major public comments on human intrusion scenarios. Generally, public comments related to whether or not the scenario was appropriately screened by DOE and to EPA's subsequent evaluation of this screening. Some comments addressed whether DOE's modeling of events was appropriate. The human intrusion scenarios discussed below are: spallings releases, air drilling, fluid injection, potash mining, and carbon dioxide injection. For more information on human intrusion scenarios, refer to CARDs 32 and 33. (Docket A–93–02, Item V–B–2)

b. Spallings. The DOE's models for the PA included five ways in which radioactive waste could leave the repository and escape to the accessible environment: cuttings,[11] cavings,[12] spallings,[13] direct brine release, and transport of dissolved radionuclides through the anhydrite interbeds (i.e., layers of rock immediately above the repository). The first four of these potential release pathways involve direct releases of radiation to the earth's surface in cases where people drill a borehole while searching for resources.

The DOE's model for computing releases of radiation due to spallings was of particular concern to the Conceptual Models Peer Review Panel which reviewed each of the conceptual models developed for the purposes of the PA. (See Docket A–93–02, Item V–B–2, CARD 23, Section 7.) The peer review panel found the spallings conceptual model inadequate because it did not fully model all potential mechanisms that may cause pressure-driven solid releases to the accessible environment. (Docket A–93–02, Item II–G–12, p. 74) The DOE presented additional experimental evidence and the results of other modeling to the peer review panel and requested that it consider whether the spallings volumes predicted by the original inadequate spallings model were reasonable for use in the PA. (Docket A–93–02, Items II–G–22 and II–G–23) After considering this additional information, the peer review panel concluded that the spallings values in the CCA are reasonable for use in the PA. The panel concluded that, while the spallings model does not accurately represent the future state of the repository, its inaccuracies are conservative and, in fact, may overestimate the actual waste volumes that would be expected to be released by a spallings event. (Docket A–93–02, Item II–G–22, Section 4, p. 18)

The spallings conceptual model relates to the following requirements of § 194.23: documentation of conceptual models used in the PA (§ 194.23(a)(1)); consideration and documentation of alternative conceptual models (§ 194.23(a)(2)); and reasonable representation of future states of the repository in conceptual models (§ 194.23(a)(3)(i)). The EPA proposed that DOE met the requirements of § 194.24(a)(1) and (a)(2), and, for all conceptual models except the spallings conceptual model, § 194.24(a)(3)(i). The EPA did not propose, however, to determine that the spallings model incorporated in the CCA PA ''reasonably represents possible future states of the repository,'' as stated in § 194.24(a)(3)(i). The EPA proposed to accept the spallings model for the purposes of demonstrating compliance with § 194.23(a)(3)(i) on the basis that it has been determined to produce conservative overestimates of potential spallings releases. (62 FR 58807) The Agency now concludes that DOE has met the requirements of § 194.23 in its final rule. (See Docket A–93–02, Item V–B–2, CARD 23, Section 7.4.)

The public commented on four aspects of DOE's spallings modeling and EPA's evaluation of that modeling: adequacy of DOE's spallings modeling, purpose and approach of EPA's spallings modeling, use of DOE's GASOUT code for modeling spallings, and the need to include additional spallings mechanisms.

Some commenters expressed concern that DOE's conceptual model for spallings used in the PA did not adequately represent spallings releases, as stated initially by the Conceptual Model Peer Review Panel. However, others indicated that DOE had worked on the spallings model extensively since the peer review panel's review, and that the spallings model demonstrated that the volume of releases due to spalling would be small.

The EPA agrees that the spallings conceptual model was inadequate to represent possible future states of the repository. In response to the Conceptual Models Peer Review Panel, DOE did substantial additional work, developed a separate mechanistically-based model and provided supporting experimental data. The peer review panel concluded that the spallings model used in the CCA PA calculated release volumes that were reasonable and probably conservative. (Docket A–93–02, Item II–G–22) On the basis of this additional work, EPA concludes that the spallings release volumes calculated by the CCA spallings model are acceptable. Based upon this work, the Agency also agrees with those commenters who stated that spallings would result in only a small volume of waste being released to the accessible environment through spallings.

Commenters asked for clarification of EPA's purpose in producing its spallings evaluation reports for the proposed rule. (Docket A–93–02, Items III–B–10 and III–B–11) They also questioned EPA's technical approach in these reports, particularly the discretization (time and space intervals).

[11] ''Cuttings'' refers to material, including waste, that is cut by a drill bit during drilling and is carried to the surface by the drilling fluid as it is pumped out of the borehole.

[12] ''Cavings'' refers to material that falls from the walls of a borehole as a drill bit drills through. Cavings are carried to the surface by the drilling fluid as it is pumped out of the borehole.

[13] ''Spallings'' refers to releases of solids pushed up and out by gas pressure in the repository during a drilling event.

Discretization is important because if intervals are too large, modeling may not calculate or may incorrectly calculate some important events, and if intervals are too small, modeling will be time-consuming and inefficient.

The EPA prepared its Spallings Evaluation and Supplemental Spallings Evaluation for the proposed rule in order to model simplistically the transport of spallings releases up a borehole during blowout. The spallings model used in the CCA PA did not examine transport; rather, DOE's spallings model took the approach that all waste broken loose and able to move would actually reach the earth's surface. The Agency used an independent model to investigate if DOE's spallings conceptual model would give conservative estimates of spallings releases. The EPA believed this would determine if the calculated spallings releases were potentially acceptable for use in PA, despite the flaws in DOE's model. The EPA undertook these studies early in its own review, and in the Conceptual Models Peer Review Panel's review of the spallings conceptual model, when both the Panel and the Agency were concerned about the results of the model.

After EPA completed its own modeling, DOE performed additional studies using an alternative, mechanistic conceptual model for spallings. (Hansen et al., Spallings Release Position Paper, Docket A–93–02, Item II–G–23) DOE's additional studies showed that its original spallings conceptual model always predicted a greater volume of releases than the mechanistic spallings conceptual model that used a more realistic approach to calculate spallings releases. As a result, both the Conceptual Models Peer Review Panel and EPA concluded that released volumes estimated using the original CCA spallings conceptual model were reasonable and conservative. The EPA found DOE's analysis in the Spallings Release Position Paper to be more conclusive than the Agency's studies in its Spallings Evaluation and Supplemental Spallings Evaluation. DOE's analysis was an improvement over EPA's analysis because it was more thorough, it used much finer discretization (smaller time and space intervals) which allowed more specific predictions, and it predicted both volumes and activity of spallings releases. As described in the proposed rule, EPA examined the Spallings Release Position Paper and concluded that the spallings release volumes calculated by the spallings model used in the PA are conservative and, therefore, acceptable to demonstrate compliance with the waste containment requirements of 40 CFR 191.13. (62 FR 58807) This conclusion is based not on the EPA's spallings reports prepared for the proposed rule, which have been questioned by commenters, but on the additional spallings analysis performed by DOE, presented to the Conceptual Models Peer Review Panel, and found by EPA to demonstrate that the spallings release volumes used in the CCA PA are conservative. (Docket A–93–02, Item III–B–2; Item V–B–2, CARD 23; and Item V–C–1)

Some commenters expressed concern about the stability of Sandia National Laboratory's GASOUT computer code that calculates spallings releases. One individual had used this code to calculate spallings releases due to air drilling, but other commenters stated that it was not appropriate to apply the GASOUT code to the air drilling scenario. (Air drilling refers to the practice of using air or other substances lighter than mud as a drilling fluid.)

The EPA agrees that the GASOUT code may not be stable under some conditions. GASOUT was designed to model blowout of waste during the first few seconds after borehole penetration, where the driller uses mud in the borehole to reduce friction during drilling. The GASOUT code was only intended to be used under specific conditions of waste tensile strength [14] and permeability. (Docket A–93–02, Item II–E–9) Within its range of applicability, GASOUT produces results that are consistent with results obtained by other modeling approaches, such as the quasi-static model and the coupled numerical model. (Docket A–93–02, Item II–G–23) However, if GASOUT is not used as designed, it may well be unstable or may calculate invalid results. In particular, EPA agrees with those commenters stating that it is inappropriate to use GASOUT to analyze the releases of spallings due to air drilling. The programmer of the GASOUT code himself has said that this code was not designed to model drilling using compressible fluids such as air. (Docket A–93–02, Item II–E–9) For further discussion of the GASOUT code, see the discussion of air drilling below in this preamble.

Some commenters stated that DOE had erroneously excluded from the PA the stuck pipe [15] and gas erosion [16] spallings mechanisms, two additional ways by which high gas pressure conditions in the repository could result in releases of solid radioactive waste to the accessible environment. In particular, commenters asserted that DOE had selected an incorrect value for the threshold waste permeability, [17] above which the gas erosion and stuck pipe mechanisms would not occur. They also stated that DOE's assumptions did not take into consideration the presence of magnesium oxide (MgO) backfill, which would affect both waste permeability and tensile strength. These commenters suggested that EPA should do further analysis, should require DOE to do more analysis, or should reject DOE's spallings models and mandate new models. Other commenters countered that stuck pipe and gas erosion would not occur because of the physical and mechanical properties of the waste.

The EPA has analyzed the validity of DOE's decision to exclude stuck pipe and gas erosion mechanisms from the PA. In order for these mechanisms to occur, there must be a combination of high gas pressure, low waste permeability, and low waste strength. First, the gas pressure in the repository must be sufficiently high to move waste to and up the borehole. Low waste permeability is necessary to maintain the high pressure during the drilling event. Finally, low waste tensile strength is necessary to allow the waste to break off and move toward the borehole. The DOE has fabricated simulated samples of waste that have corroded or degraded and have generated gas, as is expected to occur in the WIPP once waste is emplaced, and has measured the porosity [18] of these samples. Waste porosity and gas pressure are related. This is because a greater porosity means a greater volume of spaces that gas can fill. By the ideal gas law, when the same number of gas molecules fill a larger volume, they will have a lower gas pressure. The waste porosity also affects waste permeability,

[14] Tensile strength is resistance to being pulled apart.

[15] ''Stuck pipe'' means a situation where high gas pressures in the repository would break off radioactive waste and press it against a drill string hard enough to stop or greatly reduce drilling. In order to continue drilling, a drill operator would raise and lower the drill string and, in the process, could transport waste to the surface.

[16] ''Gas erosion'' means a situation where radioactive waste breaks off slowly due to high gas pressures in the repository, enters drilling mud surrounding the drill, and is transported to the earth's surface in the mud.

[17] ''Waste permeability'' is the degree to which fluid can move through the waste.

[18] ''Porosity'' is the fraction of space present that is open and can store gases or liquids, as opposed to space filled by solid matter.

since more open space in waste means more space where a liquid or gas can penetrate. Based upon DOE's measurements of the porosity of surrogate waste samples, EPA found that it is extremely unlikely that the required conditions of high gas pressure and low waste permeability will exist in the WIPP. The high pressure necessary to support gas erosion or stuck pipe mechanisms would expand the WIPP waste, creating a higher porosity (and higher permeability). Thus, for the characteristics of the WIPP waste, the permeability would not become low enough (less than 10^{-16} square meters) to create a gas erosion or stuck pipe event. (Docket A–93–02, Item V–B–2, CARD 23, Section 7.4) If the permeability is not low enough for gas erosion or stuck pipe, releases may still occur, but the release mechanism will be a short-lived blowout (spallings) rather than gas erosion or stuck pipe. Therefore, EPA concludes that DOE correctly modeled only the ''blowout'' process in its spallings model and appropriately excluded stuck pipe and gas erosion.

c. Air Drilling. Shortly before publication of the proposed certification decision, and after EPA's cutoff date for addressing ANPR comments, EPA received a comment containing a technical report stating that DOE should have included the human intrusion scenario of air drilling in the PA, rather than screening it out. (Docket A–93–02, Item IV–D–01) Normally, oil drillers will use mud in the borehole to reduce friction and to carry away solids that break free as the drill bit bores into the ground. However, in some cases, drillers might instead use air, mist, foam, dust, aerated mud or light weight solid additives as the fluid in the borehole. Public comments noted that the air drilling[19] scenario was not included by DOE in the CCA, and raised the following issues:

- Air drilling technology is currently successfully used in the Delaware Basin.
- Air drilling is thought to be a viable drilling technology under the hydrological and geological conditions at the WIPP site.
- Air drilling could result in releases of radionuclides that are substantially greater than those considered by DOE in the CCA.

In response to these concerns, EPA prepared a study on air drilling and its likely impact on the WIPP (Docket A–93–02, Item IV–A–1), placed it in the docket, and allowed for a public comment period of 30 days. (63 FR 3863; January 27, 1998) The EPA's study examined the frequency of air drilling near the WIPP, the likelihood that drillers would use air drilling under the conditions at the WIPP, and the potential volume of radioactive waste that could be released using air drilling. In the report, the Agency concluded that air drilling is not a common practice in the Delaware Basin, and that air drilling through the Salado, the geologic salt stratum where the WIPP is located, is not presently used in the Delaware Basin near the WIPP. Because the use of air as a drilling fluid is not current practice in the Delaware Basin, EPA found that DOE is not required to include air drilling in the PA. (§ 194.33(c)(1)) Nevertheless, the Agency also modeled potential releases of radioactive waste during air drilling, and found that any releases would be within the range calculated in the CCA PA for mud-based drilling.

The EPA received a number of comments on its air drilling report. Some members of the public stated that air drilling is a proven technology and the frequency of its use by the oil and gas industry is increasing. They suggested that air drilling techniques are not currently being used more widely because of the limited knowledge of new developments and the industry's resistance to changing methods. The commenters implied that if these obstacles are overcome, air drilling will occur widely in the future. One commenter recommended that the Agency require DOE to consider air drilling using a frequency of 30% of all wells, based upon a projected estimate from DOE of the use of air drilling in the entire U.S. in the year 2005. In contrast, other commenters stated that air drilling would be less economic than mud drilling if the driller encountered any interruption in the air drilling process.

The Agency recognizes that air drilling is a proven technology for extraction of oil and gas under appropriate conditions. However, EPA believes that it is inappropriate to use speculative projections of future practices in the oil and gas industry across the U.S. in the PA or to guess that a practice will be used more in the future because some drillers may currently misunderstand the technology. The EPA's compliance criteria require DOE to assume that future drilling practices and technology will remain consistent with practices in the Delaware Basin at the time a compliance application is prepared. (§ 194.33(c)(1)) The EPA included this requirement in the compliance criteria to prevent endless speculation about future practices, and to model situations that are representative of the Delaware Basin, rather than a wider area that is not representative of conditions at the WIPP site. (61 FR 5234; Docket A–92–56, V–C–1, p. 12–12) The Agency chose to use current drilling practices for resources exploited in the present and past as a stand-in for potential future resource drilling practices. (61 FR 5233) The specific frequency suggested by the commenter is arbitrary because it applies to the entire U.S. rather than the Delaware Basin and because the commenter provides no reason for selecting an estimated frequency of air drilling in 2005 rather than in some other year. The DOE must abide by the requirement of § 194.33(c)(1) to assume that future drilling practices remain consistent with practices in the Delaware Basin at the time the CCA was prepared (1996). Thus, the pertinent issues are whether air drilling constitutes current practice in the Delaware Basin and, if so, how it could affect potential releases from the WIPP.

Some commenters said that air drilling is already occurring in the Delaware Basin, and thus, should be considered in the PA. One commenter noted that EPA should look at the frequency of air drilling in the Texas portion of the Delaware Basin, as well as in the New Mexico portion of the Delaware Basin, consistent with § 194.33(c)(1). Commenters also raised a concern that EPA's examination of well files might underestimate the occurrence of air drilling because information on the drilling fluid used is not always clear in the records. Another commenter suggested that air drilling could be left out of the PA only if it has a probability of less than one chance in ten thousand, under § 194.32(d).

The EPA agrees that the frequency of air drilling needs to be examined in the entire Delaware Basin. In response to these public comments, EPA supplemented the analysis in its initial air drilling report by conducting a random sample of wells drilled in the New Mexico and Texas portions of the Delaware Basin and has determined the frequency of air drilling in the entire Delaware Basin. (The initial report is located at Docket A–93–02, Item IV–A–1; the supplemented report is located at Docket A–93–02, Item V–B–29.) The Agency found that air drilling is not used more frequently in the Delaware Basin as a whole than in the New Mexico portion of the Basin. At the 95% statistical confidence level, EPA found that, at most, only 1.65% of all wells in the Delaware Basin may have been drilled with air. In those records examined, none of the wells were

[19] In this discussion, the term ''air drilling'' refers to all forms of drilling using drilling substances lighter than mud.

drilled through the salt-bearing geologic formation, as would be required to penetrate the WIPP. This additional information confirms the Agency's conclusion (as stated initially in Docket A–93–02, Item IV–A–1) that air drilling is not a current practice in the Delaware Basin.

The EPA agrees that the well drilling records examined in its random sample may not by themselves be conclusive about whether air drilling was used at specific wells. As an independent confirmation of the extent of air drilling in the Delaware Basin (and near the WIPP specifically), EPA also interviewed knowledgeable industry contacts, many of whom were experienced in air drilling. These individuals independently confirmed that air drilling is rarely practiced in the Delaware Basin and that it is virtually nonexistent in the vicinity of WIPP. (Docket A–93–02, Item V–B–29) The DOE also found similar results in an exhaustive analysis of 3,349 wells in the Delaware Basin. (Docket A–93–02, IV–G–7) These independent sources of information further verify EPA's conclusion that air drilling is not a current practice in the Delaware Basin. In particular, air drilling through the salt section (where the waste is present) is not consistent with current drilling practices in the Delaware Basin.

The EPA disagrees that the frequency of air drilling must be less than one in ten thousand wells in order for DOE to leave it out of the PA. Section 194.33(c)(1) requires DOE to look at ''drilling practices at the time a compliance application is prepared.'' This requirement refers to typical industry practices in the Delaware Basin at the time a compliance application is prepared. (See 61 FR 5230; Docket A–92–56, Item V–C–1, p. 12–18; Docket A–93–02, Item II–B–29, p. 50.) It was not intended to apply to experimental procedures, emergency procedures, or conjectured future practices. The Agency finds it unrealistic to consider a specific deep drilling method to be current practice or typical of drilling in the Delaware Basin when it is used for only a small percentage of all wells in the Basin. As indicated in § 194.32, deep drilling and shallow drilling are events to be considered in the PA. The Agency believes that DOE has correctly implemented the requirements of § 194.32(d) by including the general technique of deep drilling as a scenario in the PA, rather than separately analyzing the probability of each potential kind of deep drilling.

One commenter stated that air drilling is a viable technique under the conditions in the vicinity of the WIPP site. This commenter said that drilling with air may even become the method of choice in the WIPP area, since a driller will prefer to use a technology such as air drilling, which avoids loss of circulation. Another commenter expressed concern about the conclusions of EPA's Analysis of Air Drilling at WIPP (Docket A–93–02, Item IV–A–1) that water inflow upon drilling would prevent air drilling near the WIPP and that air drilling is not an economically feasible drilling method near the WIPP. This commenter also stated that EPA's estimates of the water flow rate that can be tolerated during air drilling were too low.

The EPA examined a report from a commenter that found that water inflows from the Culebra would not prevent air drilling at the WIPP site. The report based this premise on the transmissivity in some parts of the WIPP site. However, EPA disagrees that the transmissivity threshold mentioned in the report would provide sufficient reason to conclude that air drilling was currently practical in that area. The range of transmissivities at the WIPP site shows that air drilling is definitely not feasible in some parts of the site, and is unsuitable in other portions of the site. The EPA also found that the possibility of excessive water inflow was only one of the reasons mentioned by industry contacts as to why air drilling was not used in the vicinity of WIPP. Other reasons, cited in EPA's Air Drilling Report, include sections of unconsolidated rock above the salt section and the potential for hitting brine pockets in the Castile Formation. (Docket A–93–02, Item V–B–29) Because of the reasons industry contacts gave for not conducting air drilling near the WIPP, the Agency disagrees that air drilling would ever become a preferred method of drilling at the WIPP site.

Commenters were concerned that there might be greater releases of waste with air drilling than with mud drilling. This is because air and foam are less dense than mud, so it would take less pressure inside the repository to push waste toward the surface as solid waste (spallings) or as waste dissolved in brine (direct brine release). One individual calculated spallings releases due to air drilling using DOE's GASOUT computer code, and found that releases due to air drilling were several orders of magnitude higher than the releases computed in the CCA PA. (Docket A–93–02, Item II–D–120) Other commenters countered that the GASOUT code was not designed to model spallings using air drilling, and therefore, that the GASOUT code could not be applied in this situation.

Although EPA concluded that there was no need to include air drilling in the PA, the Agency conducted its own modeling of spallings due to air drilling to respond to public concerns. (Docket A–93–02, Item V–B–29, Section 6 and Appendix A) The EPA used the quasi-static model developed by DOE as a mechanistic model of spallings, an approach that provides greater modeling flexibility than with the GASOUT code. The quasi-static model tends to overestimate releases of radioactive waste because it predicts the total volume of waste that is available for transport. The total volume available for transport would not all be released in actuality because pressurized gas would not be able to lift large, heavy particles up to the earth's surface. Studies have shown that the quasi-static model generally predicts larger spalled volumes than the model incorporated in the GASOUT code. (Docket A–93–02, Item II–G–23, Table 3–3) For air drilling conditions, EPA estimated volumes of releases to be within the range of spallings values predicted by the CCA and used in the PAVT evaluation.

The EPA also examined the effects of air drilling on the combined, complementary cumulative distribution functions (''CCDFs'') used to show graphically whether the WIPP meets EPA's containment requirements for radioactive waste. (Docket A–93–02, Item V–B–29, Section 6) The EPA found that the CCDFs produced by DOE were not significantly different from those produced in the PAVT. In fact, releases from the WIPP were still below the containment requirements of § 191.13 by more than an order of magnitude when air drilling is included as a scenario.

The EPA determines that DOE does not need to include air drilling in the PA because it is not current practice in the Delaware Basin. Further analyses, conducted by EPA solely to allay the public's concerns on this issue, showed that spallings releases calculated in the CCA and the PAVT encompass the potential impacts of air drilling (were it to occur) on compliance with the containment requirements.

See CARD 32 for further discussion of the screening of features, events, and processes. (Docket A–93–02, Item V–B–2)

d. Fluid Injection Commenters stated that DOE should not have screened out the human intrusion scenario of fluid injection [20] from the final PA

[20] The fluid injection discussed here refers to either (1) brine disposal from oil activities, (2) maintenance of pressure in existing oil production,

Continued

calculations. Brine could be injected into existing boreholes, enter the repository, become contaminated and flow to various release points. In § 194.32(c), EPA's compliance criteria specifically require DOE to analyze the effects of boreholes or leases that may be used for fluid injection activities near the disposal system soon after disposal.

The fluid injection scenario has been of particular concern to the public because of events that occurred in the Rhodes-Yates oil field, about 40 miles east of WIPP but outside the Delaware Basin in a different geologic setting. An oil well operator, Mr. Hartman encountered a brine blowout in an oil development well while drilling in the Salado Formation in the Rhodes-Yates Field. In subsequent litigation, the court found that the source of the brine flow was injection water from a long-term waterflood borehole located more than a mile away. A fluid injection scenario causing the movement of fluid under high pressure is referred to as ''the Hartman Scenario'' after this case.

The DOE initially screened out this activity from the PA because the Department's modeling of fluid injection indicated that it would result in brine inflow values within the range calculated in the CCA PA where there is no human intrusion. (Docket A–93–02, Item II–A–32) Both EPA and public commenters on the Advance Notice of Proposed Rulemaking did not believe that DOE had performed sufficient analyses to rule out the potential effects of fluid injection related to oil production on the disposal system. Therefore, the Agency required DOE to model fluid injection using more conservative geologic assumptions about the ability of Salado anhydrite to transmit fluid. (Docket A–93–02, Item II–I–17) This more conservative modeling showed that fluid injection would have little impact on the results of the PA. (Docket A–93–02, Item II–I–36) Based on this modeling and other information submitted by DOE on the frequency of fluid injection well failures, EPA proposed that DOE's screening was sufficient and realistic. (62 FR 58806, 58822) Thus, EPA concluded that fluid injection could be screened out of the final PA calculations based on low consequences to the disposal system.

The EPA performed its own independent review of fluid injection, which showed that the injection analysis must include the nature of anhydrites, duration of injection activities, and presence of leaking boreholes. (Docket A–93–02, Item V–B–22) As part of its analysis, the Agency performed additional modeling of the injection well scenario. The EPA concluded that, although scenarios can be constructed that move fluid to the repository via injection, the probability of such an occurrence, given the necessary combination of natural and human-induced events, is very low.

Several commenters stated that either EPA or DOE needed to model the Hartman Scenario. One commenter stated that it should be proven that DOE's BRAGFLO [21] code can reproduce what is believed to have happened in the Hartman case. Some members of the public also referred to modeling performed by Bredehoeft and by Bredehoeft and Gerstle which found that the Hartman scenario could cause releases in excess of the disposal regulations (Docket A–93–02, Item II–D–116 Attachment (b)); these commenters stated that neither EPA nor DOE had satisfactorily modeled the Hartman Scenario.

The EPA examined Bredehoeft and Gerstle's modeling of fluid injection at the WIPP and finds their assumptions highly unrealistic. In particular, the report assumes that all brine is directly injected into one anhydrite interbed in the Salado Formation. The anhydrite interbeds in the Salado are only a few feet thick. Therefore, a driller would need to plan specifically to deliberately inject brine into the anhydrite interbeds to have such a situation occur at the WIPP. Also, well operators using fluid injection for oil or gas recovery would be attempting to inject brine into formations where petroleum and gas reserves are found, which are thousands of feet below the Salado. If flooding due to fluid injection occurred accidentally in the vicinity of the WIPP, the flow of fluid would not be limited to the narrow band of one anhydrite interbed in the Salado. Also, Bredehoeft and Gerstle's report assumes that fractures in the anhydrite will extend for three or more kilometers and will remain open. This would require extremely high pressures to be generated by the brine injection process. The EPA agrees that under very unrealistic conditions, modeling can show fluid movement toward the WIPP under an injection scenario. However, when using more realistic but still conservative assumptions in the modeling, fluid movement sufficient to mobilize radioactive waste in the disposal system does not occur.

In response to public comments, the Agency tried to reproduce several of the results obtained with Bredehoeft's model using DOE's BRAGFLO model. In two cases, EPA's modeling produced flows similar to those in the March 1997 Bredehoeft report. (Docket A–93–02, Item II–D–116) However, because the Agency's study looked at flows in multiple locations and Bredehoeft's study does not specify the location of its predicted flows, the results are not directly comparable. The EPA also attempted to replicate Bredehoeft's modeling of high pressure conditions that would be mostly likely to cause a catastrophic event. However, the Agency found that critical aspects of Bredehoeft's work are not documented sufficiently to make meaningful comparisons using the BRAGFLO computer code. In particular, the grid spacing used in the model predictions were unclear. This information is necessary in order to recreate Bredehoeft's simulation. Also, EPA was unable to determine whether the length to which fractures grow are based on completely opened or partially opened fractures. The Agency contacted the primary author of the paper in order to obtain additional critical information. However, the author was not certain how they had treated these aspects of modeling and had no further documentation. (Docket A–93–02, Item IV–E–23) Because of insufficient documentation of vital aspects of modeling, the Agency could not replicate Bredehoeft's results. In addition, due to lack of proper documentation it was not clear to EPA that Bredehoeft's modeling represented the Hartman Scenario. Therefore, EPA finds that lack of agreement between the Bredehoeft model and BRAGFLO does not indicate that DOE's modeling is inadequate. (Docket A–93–02, Item V–B–22)

Several commenters had concerns about EPA's Fluid Injection Analysis, including its conclusions that the geology and the current well construction practices near the WIPP are extremely different from the geology and well construction practices that occurred in the Hartman case. In contrast, other commenters stated that fluid injection is unlikely to occur near WIPP and current well construction practices in the area will prevent injection well leakage. Some commented that EPA's probability estimates for the chain of events that could lead to a blowout caused by fluid injection were overly optimistic and that the probability estimate ignores

or (3) water flooding to increase oil recovery. In the Delaware Basin, the fluid would most likely be brine.

[21] BRAGFLO predicts gas generation rates, brine and gas flow, and fracturing within the anhydrite marker beds in order to calculate the future of the repository.

experience with severe water flows in New Mexico.

The EPA concluded that current well construction practice makes it unlikely that there could be a well failure of the nature of the ''Hartman scenario'' that occurred in the Rhodes-Yates field outside the Delaware Basin. This is because regulatory requirements for drilling are much more rigorous near the WIPP than was the case at the Rhodes-Yates field at the time of the Hartman case. Also, the Agency reiterates that there are significant differences in the geology near the WIPP and in the Rhodes-Yates field where the Hartman case occurred, that should not be ignored. The vertical distance between the formation where brine would be injected for disposal and the formation where the repository is located is greater than the vertical distance that fluid is believed to have traveled in the Hartman case. This distance, and effects of friction, would make it more difficult for fluids to travel vertically upward at the WIPP than in the Hartman case. Interbeds near the WIPP site are more numerous and are likely to be thinner than in the Hartman case, thereby reducing the likelihood of flow between the repository and the WIPP boundary. The Agency concludes that the geology in the WIPP area will play an active role in reducing fluid movement, or in an extreme case, preventing a massive well blowout. (Docket A–93–02, Item V–B–22)

While EPA accepted DOE's argument that the fluid injection scenario can be screened out of the PA on the basis of low consequence, DOE presented supplemental information that also indicated that the probability of a catastrophic well failure would be low. The EPA's Fluid Injection Analysis for the proposed rule also examined the chain of events necessary to cause catastrophic failure for a well. The EPA estimated that the probability of this chain of events occurring for a given well in the vicinity of the WIPP was low'within the range of one in 56,889 to one in 667 million. (Docket A–93–02, Item III–B–22) These estimates of probability were intended to illustrate in this hypothetical failure scenario the chain of events that must all occur for an injection well to impact the WIPP. The commenters objected to the lowest probability estimate, but did not state which probabilities or assumptions in the chain of events that they believed EPA had incorrectly selected. The EPA notes that this estimate of low probability was only one of many reasons cited in the technical support document for EPA's proposed determination that fluid injection could be screened from the PA. (Docket A–93–02, Item III–B–22) After considering geologic information, well history and age, construction standards, and operating practices, the Agency concludes that reported water flows in the Salado Formation in other areas of New Mexico are not representative of conditions in the vicinity of the WIPP. (Docket A–93–02, Item V–B–22) Even if an injection event takes place, the predicted low consequence is sufficient reason to remove it from consideration in the PA.

One commenter stated that EPA should require DOE to revise its PA model to include the Hartman Scenario and perform another PA. In contrast, another commenter stated that fluid injection events will not impact repository performance, even with conservative assumptions, so fluid injection can be excluded from the PA. The Agency finds that:

- Commenters' modeling of fluid injection that predicted potential releases exceeding EPA standards was based upon unrealistic assumptions that would maximize releases.
- The EPA tried to replicate scenarios similar to the Hartman case using DOE's BRAGFLO model. Some results were similar in magnitude to modeling results presented by commenters, but not directly comparable.
- Modeling by DOE predicts that fluid injection will cause low flows that will not significantly impact the results of PA.
- Well construction procedures near the WIPP have changed due to regulatory requirements; therefore, it is unreasonable to assume that the same well procedures from the Hartman case will occur near the WIPP.
- There are significant geological differences between the WIPP site and the Rhodes-Yates field in the Hartman case.

For all of these reasons, EPA concludes that it is not necessary to repeat the PA using the scenario of fluid injection. (Docket A–93–02, Item V–B–22; Also, see Docket A–93–02, Item V–B–2, CARDs 23 and 32 for further discussion of fluid injection.)

A related issue raised by commenters was DOE's modeling of fractures in the anhydrite interbeds directly above the WIPP. Such fractures could allow injected brine to enter the repository, to dissolve waste, and to release radioactivity outside the WIPP. Commenters stated that DOE's model for anhydrite fracturing was inadequate to describe observed changes at the WIPP and was not based on sufficient experimental data. Some commenters stated that DOE's model significantly understates the length of fractures compared to another modeling technique, Linear Elastic Fracture Mechanics (''LEFM''). Shorter fractures would mean that contaminated brine does not travel as easily, which lessens releases.

The Agency disagrees that DOE's modeling of anhydrite fracturing is inadequate. The independent Conceptual Models Peer Review Panel found that the ''type of fracture propagation and dilation used in the conceptual model has been substantiated by in situ tests.'' The Panel also found that the conceptual model was adequate. (Docket A–93–02, Item II–G–1, Appendix PEER.1) The EPA finds that the mathematical ''porosity model'' used in the CCA PA adequately implements the conceptual model for anhydrite fracturing. This mathematical model used a combination of field test data at lower pressures and the theory of continuum mechanics at higher pressures.

Some features of LEFM are not appropriate for representing the anhydrite interbeds. LEFM predicts that a single, long fracture hundreds of feet long will be created in a homogeneous medium. The Agency finds that this approach is inappropriate for the anhydrite interbeds in the Salado at the WIPP, which already contain numerous small fractures. (Docket A–93–02, Item IV–G–34, Attachment 5; Item V–C–1, Section 194.23) Field tests found that fractures branched into a series of fractures following preexisting fractures or weaknesses near the injection hole, rather than producing a single, long-distance fracture. In the case of fluid injection, these fractures would store fluid, which would slow down and shorten further fractures. The pre-existing fractures will produce a fracture front, such as that modeled by BRAGFLO, rather than a single fracture radius, as modeled by an LEFM. Two studies cited by commenters as support for use of LEFM in fact question the applicability of LEFM to WIPP anhydrites and recommend that DOE consider alternative conceptual models. (e.g., Docket A–93–02, Item IV–G–38) The EPA concludes that BRAGFLO is more appropriate to use for WIPP than a pure linear elastic fracture mechanics model because there are pre-existing fractures in the anhydrite layers that must be accounted for in the conceptual model. The EPA finds that the conceptual model based on a single fracture is fundamentally flawed for application in WIPP anhydrites. The Agency also finds that the model incorporated in the PA is appropriate,

and that further modeling with revised computer codes is not necessary.

e. Potash Mining. Public comments raised concerns about DOE's estimates of the potash reserves in the vicinity of the WIPP and DOE's evaluation of the solution mining scenario. The primary effects that mining could have on the repository are opening existing fractures in the geologic formations above the WIPP and increasing hydraulic conductivity as a result of subsidence. These effects could change the flow and path of ground water through the Culebra dolomite.

Several commenters stated that DOE underestimated the amount of potash in the vicinity of the WIPP and therefore underestimated the impact that extracting the additional potash would have on the performance of the repository. In the CCA, DOE provided estimates of the mineable potash reserves both outside and within the WIPP Land Withdrawal Area. The compliance criteria require DOE to consider excavation mining of only those mineral resources which are extracted in the Delaware Basin. (§ 194.32(b)) Therefore, potash resources of a type or quality that are currently not mineable for either technological or economic reasons need not be addressed in DOE's analysis. The EPA determined, through an independent analysis, that the CCA appropriately represents the extent of currently mined resources, in accordance with the criteria. The EPA also determined that DOE appropriately considered the impact that such resources and excavation mining could have on the performance of the repository. (Docket A–93–02, Item V–B–2, CARD 32)

Additional comments were received on DOE's screening of solution mining from the PA. The DOE determined that solution mining of potash is not occurring in the vicinity of the WIPP and can be omitted from the PA based on the regulatory requirement that only currently occurring (or near-future) practices be considered in the PA. (§ 194.32(c)) The EPA agrees with DOE that solution mining is not a current practice and can be omitted from the PA on regulatory grounds.

The DOE submitted supplemental information which related to the potential effects of solution mining for potash. (Docket A–93–02, Item II–I–31) The DOE concluded that the impacts of solution mining for potash would be the same as those for room and pillar mining, and that the potential subsidence-induced hydraulic effects in the Culebra would be similar to those for typical mining practices. Some comments disputed this conclusion, stating that the effects of solution mining on the repository would be substantially different than those from conventional mining and could cause the WIPP to exceed the containment requirements. After examining these comments, EPA concluded that the scenarios set forth in the comments were not realistic and that the commenter's conclusion was based on an extreme example of subsidence from solution mining. The EPA disagrees with the comments and concludes that subsidence in the vicinity of the WIPP would not vary significantly with solution mining compared to conventional mining.

The EPA concludes that solution mining for potash is appropriately omitted from the PA because it is not a current practice, and therefore, is not an activity expected to occur prior to or soon after disposal. As added assurance, the Agency also finds that even if solution mining of potash were to occur in the vicinity of the WIPP, the potential effects of such mining are consistent with those from conventional techniques and are therefore already accounted for in the PA. (Docket A–93–02, Item V–C–1, Section 8)

f. Carbon Dioxide Injection. Public comments raised concerns that carbon dioxide (CO_2) injection is a current drilling practice in the Delaware Basin that DOE inappropriately omitted from the PA calculations. Carbon dioxide flooding is the injection of CO_2 into an oil reservoir to improve recovery. CO_2 injection is typically used in tertiary recovery processes after the economic limits for waterflooding have been reached. When CO_2 is injected and mixing occurs, the viscosity of the crude oil in the reservoir is reduced. The CO_2 increases the bulk and relative permeability of the oil, and increases reservoir pressure so that the resulting mixture flows more readily toward the production wells. When CO_2 begins to appear at the producing well, it is typically recovered, cleaned of impurities, pressurized and re-injected.

The use of CO_2 flooding for enhanced oil recovery in west Texas and southern New Mexico began in 1972. In this area, most CO_2 injection activity is located on the Central Basin Platform and on the Northwest Shelf. A limited number of CO_2 flooding projects have occurred in the Texas portion of the Delaware Basin. Economy of scale, oil prices, proximity to CO_2 supply and reservoir heterogeneity are several of the controlling factors that strongly influence whether this technique is applied at a given well. (Docket A–93–02, Item V–C–1, Section 8)

In the CCA (Appendix SCR), DOE determined that CO_2 injection is not a current drilling practice in the Delaware Basin and therefore omitted it from consideration in the PA. For the proposed rule, EPA concurred with DOE that CO_2 injection was not a current practice. However, as a result of the public comments, EPA reviewed the issue and determined that CO_2 injection does occur in the Texas portion of the Delaware Basin. In responding to comments, EPA found no evidence of CO_2 injection practices in the New Mexico portion of the Delaware Basin. (Docket A–93–02, Item V–C–1, Section 8) All CO_2 injection projects found in New Mexico occurred outside the Delaware Basin. The EPA found that CO_2 injection has only limited potential for use around WIPP because of site-specific concerns related to reservoir size, proximity to existing pipelines and reservoir heterogeneity. However, because EPA confirmed that CO_2 injection is practiced in the Delaware Basin, EPA conducted an analysis of the consequences that CO_2 injection could have on the PA calculations.

In order to investigate the potential effect of CO_2 injection should it occur in the future, EPA conducted some bounding calculations. (Docket A–93–02, Item V–C–1, Section 8) Using numerous conservative assumptions, EPA estimated the rate of CO_2 flow through a hypothetical wellbore annulus into an anhydrite interbed at the depth of the WIPP repository. For example, grout in the wellbore annulus is expected to degrade only along portions of the wellbore; however, EPA assumed that such degradation would occur along the entire wellbore, thus providing a continuous pathway for CO_2 migration. Other conservative assumptions included a long time frame for injection, constant CO_2 pressures at the point of injection and at the intersection of the interbed with the borehole, and a high permeability in the interbed. The EPA's calculations also assumed that CO_2 would be injected into the Delaware Mountain Group below WIPP and readily migrate to Marker Bed 139, through which CO_2 is assumed to flow toward the repository. These assumptions increase the potential effect of the gas injection and therefore increase the predicted radionuclide releases that are calculated for the performance of the WIPP repository.

These simple but conservative calculations for a hypothetical CO_2 flood indicate that, even if it were to occur, CO_2 injection does not pose a threat to WIPP. For the very conservative assumptions specified in

this study, even for long periods of time, there is little potential for injected CO_2 to ever reach the repository. In summary, DOE determined that CO_2 injection was not a current drilling practice in the Delaware Basin and therefore screened it from the PA based on regulatory requirements. Based on public comments, EPA identified limited CO_2 injection activities in the Delaware Basin. The EPA conducted an analysis of the effects of CO_2 injection on the repository and found that CO_2 injection can be omitted from the PA because of the minimal consequences that would occur as a result of CO_2 injection.

g. Other Drilling Issues. A few public comments raised concerns about other human intrusion related scenarios. For example, some comments disagreed with the drilling rates that were set forth in the CCA. Other comments contended that natural gas storage exists in the Delaware Basin and should be considered in the PA.

Several public comments stated that the CCA did not provide drilling rates that are consistent with the extensive drilling throughout the area. The EPA required DOE to include the effects of drilling into a WIPP waste panel in the PA. The DOE was required to separately examine the rate of shallow and deep drilling. Shallow drilling is defined in § 194.2 as drilling events that do not reach a depth of 2,150 feet below the surface and therefore do not reach the depth of the WIPP repository. Deep drilling is defined in § 194.2 as drilling events that reach or exceed the depth of 2,150 feet and therefore reach or exceed the depth of the repository. Both types of drilling events include exploratory and developmental wells. (See Docket A–93–02, Item V–B–2, CARD 33 for further discussion of drilling rates.)

The EPA accepted DOE's finding that shallow drilling would not be of consequence to repository performance and was therefore not included in the PA. (Docket A–93–02, Item V–B–2, CARD 32, Section 32.G) The future rate of deep drilling was considered in DOE's PA. The deep drilling rate set forth in the CCA for the Delaware Basin is 46.775 boreholes per square kilometer per 10,000 years.

Several commenters suggested that DOE should use other, higher deep drilling rates in the PA. Comments stated that these higher rates, based on drilling over limited areas near the WIPP or on time periods shorter than 100 years (such as the last year or the last 50 years), would be more consistent with current drilling rates. The EPA's criteria require that the deep drilling rate be based on drilling in the Delaware Basin over the 100-year period immediately prior to the time that the compliance application is prepared. (§ 194.33(b)(3)) Although the drilling rate dictated by EPA's requirements may be lower than the current drilling rate, the use of a 100-year drilling rate more adequately reflects the actual drilling that may be expected to take place over the long term. (See Response to Comments for 40 CFR Part 194, Docket A–92–56, Item V–C–1, p. 12–11.) The future rate of deep drilling in the PA was set equal to the average rate at which that type of drilling has occurred in the Delaware Basin during the 100-year period immediately prior to the time that the compliance application was prepared. Commenters did not suggest that DOE had failed to include known drilling events or had calculated the rate inconsistently with EPA's requirements. Therefore, EPA finds that the approach taken by DOE meets the regulatory requirements set forth in § 194.33(b). (Docket A–93–02, Item V–B–2, CARD 33)

Natural gas storage facilities, in underground cavities, are known to exist in the Salado Formation outside the Delaware Basin. However, neither EPA nor DOE is aware of any natural gas storage in the Salado Formation of the Delaware Basin. Because there is no known gas storage in the Delaware Basin, DOE is permitted to omit it from the PA according to the requirements of § 194.32(c).

In addition to determining that there is no known gas storage in the Delaware Basin, EPA conducted an analysis of the effects that this activity would have on the repository. The EPA's analysis, presented in the response to comments, shows that natural gas storage would not affect the ability of the WIPP repository to successfully isolate waste because the migration potential of the gas would be minimal.

3. Geological Scenarios and Disposal System Characteristics

a. Introduction. 40 CFR 194.14(a) requires DOE to describe the natural and engineered features that may affect the performance of the disposal system. Among the features specifically required to be described are potential pathways for transport of waste to the accessible environment. This information is crucial to the conceptual models and computer modeling that is done to determine compliance with the containment requirements and the individual and ground-water protection requirements. In addition to a general understanding of the site, EPA required specific information on hydrologic characteristics with emphasis on brine pockets, anhydrite interbeds, and potential pathways for transport of waste. The EPA also required DOE to project how geophysical, hydrogeologic and geochemical conditions of the disposal system would change due to the presence of waste. Geology also relates to criteria at §§ 194.32 and 194.23, which require DOE to model processes which may affect the disposal system, and to use models that reasonably represent possible future states of the disposal system.

The EPA examined the CCA and the supplemental information provided by DOE and proposed to find that it contained an adequate description of the WIPP geology, geophysics, hydrogeology, hydrology and geochemistry of the WIPP disposal system and its vicinity, and how these conditions change over time. (62 FR 58798–58800) Several commenters suggested that the WIPP site geology and disposal system characteristics have been incorrectly assessed or inaccurately modeled. Commenters expressed concern with the WIPP site regarding Rustler recharge; dissolution, including karst; presence of brine in the Salado; use of two dimensional modeling with the BRAGFLO computer code instead of modeling the disposal system using a three-dimensional representation (2D/3D BRAGFLO), earthquakes, and the gas generation conceptual model. The EPA's response to these comments is discussed below.

b. WIPP Geology Overview. The WIPP is located in the Delaware Basin of New Mexico and Texas and is approximately 26 miles southeast of Carlsbad, New Mexico. This area of New Mexico is currently arid, but potential future precipitation increases were accounted for in the PA. The Delaware Basin contains thick sedimentary deposits (over 15,000 feet, or 4572 meters, thick) that overlay metamorphic and igneous rock (1.1 to 1.5 billion years old). The WIPP repository is a mine constructed approximately 2,150 feet (655 meters) below ground surface in the Permian age (6200–250 million years old) Salado Formation, which is composed primarily of salt (halite).

The DOE considered the primary geologic units of concern to be (from below the repository to the surface): (1) the Castile Formation (''Castile''), consisting of anhydrite and halite with pressurized brine pockets found locally throughout the vicinity of the WIPP site; (2) the Salado Formation (''Salado''), consisting primarily of halite with some anhydrite interbeds and accessory minerals and approximately 2,000 feet (600 meters) thick; (3) the Rustler Formation (''Rustler''), containing salt,

anhydrite, clastics, and carbonates (primarily dolomite), with the Culebra dolomite member of the Rustler as the unit of most interest; and (4) the Dewey Lake Red Beds Formation (''Dewey Lake''), consisting of sandstone, siltstone and silty claystone. The geologic formations below these were included in the screening of features, events, and processes, but were not included in the PA calculations because they did not affect the performance of the disposal system. See CARD 32, Sections 32.A and 32.F, for a detailed discussion of screening of features, events, and processes. (Docket A–93–02, Item V–B–2)

c. Rustler Recharge. Numerous comments on the proposed rule were related to whether the Rustler Formation, primarily the Culebra dolomite member, would be recharged; that is, whether water will infiltrate through the soil and underlying rock and into the Culebra. Commenters linked high infiltration to the potential dissolution of the Culebra and other members of the Rustler, concluding that karst has been formed and contributes to ground water flow. Commenters claimed that the presence of karst features would render DOE's ground water flow models invalid. Site characterization data and DOE's ground water modeling indicate that infiltration is very low and limited, if any, dissolution is ongoing, contrary to commenters statements.

The DOE indicated that the units above the Salado (i.e., the Rustler, the Dewey Lake and the Santa Rosa) are classified as a single hydrostratigraphic unit (i.e., equivalent to a geologic unit but for ground water flow) for conceptual and computer modeling. The Rustler is of particular importance for WIPP because it contains the most transmissive units above the repository (i.e., has the highest potential rate of ground water flow). In particular, the Culebra dolomite member of the Rustler Formation is considered to be the primary ground water pathway for radionuclides because it has the fastest ground water flow in the Rustler Formation. The Culebra dolomite is conceptualized as a confined aquifer in which the water flowing in the Culebra is distinct from rock units above or below it and interacts very slowly with other rock units. In general, fluid flow in the Rustler is characterized by DOE as exhibiting very slow vertical leakage through confining layers and faster lateral flow in conductive units. (Docket A–93–02, Item V–B–2, CARD 14, Sections 14.B.4 and 14.B.5) The DOE stated that the Culebra member conceptually acts as a ''drain'' for the units around it, but that it takes up to thousands of years for the Culebra to respond to changes in the environment. DOE's modeling indicates that the Culebra ground water is still responding to changes in precipitation from the latest ice age. DOE's explanation for the ground water flow in the units above the Salado is embodied in the ground water basin model which was introduced in Chapter 2 of the CCA. The EPA did not consider treatment of this issue in the CCA to be adequate and requested additional information. (Docket A–93–02, Item II–I–17) The DOE provided additional information in response to this request. (Docket A–93–02, Item II–I–31)

The ground water basin model, which simulates recharge passing slowly through the overlying strata before reaching the portion of the Culebra within the boundaries of the WIPP site recognizes the possibility of localized infiltration. (Docket A–93–02, Item V–B–2, CARD 23) The DOE included ground water recharge in its ground water basin modeling for the Culebra Member of the Rustler formation. The DOE also acknowledged the water-bearing capabilities of the Dewey Lake and considered this possibility in the PA evaluations. The DOE assumed that the water table would rise in response to increased recharge caused by up to twice the current site precipitation.

Essentially, DOE's conceptual model of flow in the Culebra assumes that the Culebra is a confined aquifer in which the flow slowly changes directions over time, depending on climatic conditions. The ground water basin model also accounts for the current ground water chemistry. Current geochemical conditions are the result of past climatic regimes and ground water responses to those changes; because the ground water chemistry is still adjusting to the current conditions, it does not reflect the current ground water flow direction in the Culebra. This new interpretation allows for limited but very slow vertical infiltration to the Culebra through overlying beds, although the primary source of ground water will be lateral flow from the north of the site. The EPA reviewed DOE's conceptualization of ground water flow and recharge, and believes that it provides a realistic representation of site conditions because it plausibly accounts for the inconsistencies in the current ground water flow directions and the geochemistry. The EPA examined this treatment of recharge in the PA modeling and determined it to be an appropriate approach that reasonably bounds and accounts for the impact of potential future recharge. (See Docket A–93–02, Item V–B–2, CARD 14, Sections 14.B.4 and 14.B.5; CARD 23, Section 2.4; and CARD 32, Section 32.F.4 for detailed discussions of hydrogeology.)

Commenters also stated that DOE's estimate of the age of ground water is based on an unreliable methodology and that the stable isotopic compositions of most samples of ground water from the Rustler Formation were found to be similar to the composition of other, verifiably young, ground water in the area. The age of the ground water is important because the ground water basin model is based on the assumption that the Rustler water is ''fossil'' water, having been recharged under climatic conditions significantly different from the present. Because the isotopic data can be interpreted differently, EPA examined the entire spectrum of data that could be used to assess infiltration rates, including DOE's ground water basin model, Carbon-14 data, and tritium data. Based on these data, EPA concluded that the ground water basin model provides a plausible description of ground water conditions in the Culebra. The EPA also points out that recent Carbon-14 data indicate that a minimum age of 13,000 years is appropriate for Culebra waters. Further, different geochemical zones in the WIPP are explained by differences in regional recharge and long residence time. (Docket A–93–02, Item II–I–31) The EPA examined all data pertaining to ground water flow in the Rustler, and believes the DOE's total conceptualization adequately described system behavior for the purposes of the PA.

d. Dissolution. In the CCA, DOE indicated that the major geologic process in the vicinity of the WIPP is dissolution. The DOE proposed that three principal dissolution mechanisms may occur in the Delaware Basin: lateral, deep and shallow. (Docket A–93–02, Item V–B–2, CARD 14, section 14.B.4) Deep dissolution refers to that at the base of or within the salt section along the Bell Canyon Castile Formation; lateral dissolution occurs within the geological units above the Salado (progressing eastward from Nash Draw); and shallow dissolution, including the development of karst and dissolution of fracture fill in Salado marker beds and the Rustler, would occur from surface-down infiltration of undersaturated water. Lateral, strata-bound dissolution can occur without shallow dissolution from above.

To the west, the slight dip in the beds has exposed the Salado to near-surface dissolution processes; however, DOE estimated that the dissolution front will not reach the WIPP site for hundreds of

thousands of years. Near-surface dissolution of evaporitic rocks (e.g., gypsum) has created karst topography west of the WIPP site, but DOE contended that karst processes do not appear to have affected the rocks within the WIPP site itself. The DOE indicated that while deep dissolution has occurred in the Delaware Basin, the process of deep dissolution would not occur at such a rate near the WIPP that it would impact the waste containment capabilities of the WIPP during the regulatory time period. The DOE concluded that the potential for significant fluid migration to occur through most of these pathways is low. However, DOE also concluded that fluid migration could occur within the Rustler and Salado anhydrite marker beds and included this possibility in PA calculations. In the proposed rule, EPA concluded that deep, lateral, and shallow dissolution (including karst features and breccia pipes) will not serve as significant potential radionuclide pathways and that the potential for significant fracture-fill dissolution during the regulatory time period is low. (Docket A–93–02, Item V–B–2, CARD 14, Section 14.B.5; Item V–B–3, Section B.3.t)

Comments on the proposed rule stated that shallow dissolution and karst features occur at WIPP and will affect its containment capabilities. The EPA does not agree with DOE's assertion that the distribution of salt in the Rustler is solely a depositional feature because Rustler transmissivity (which is related to fracture occurrence in the Rustler) corresponds somewhat to the occurrence of salt in the Rustler. This implies that some post-Rustler dissolution has occurred which impacts the fracturing in Rustler rocks. However, the evidence observed by EPA indicate many Rustler features were formed millions of years ago (e.g., the breccia zone in the exhaust shaft, or at WIPP–18, where anhydrite/clay-rich strata may be halite dissolution residues). Other Rustler features (e.g., salt distribution in the Rustler) could have occurred sometime after the Rustler was deposited, but there is no evidence to indicate that ongoing dissolution of soluble material in the Rustler or at the Rustler-Salado contact will modify the existing transmissivity to the extent that the results of PA will be affected. (Docket A–93–02, Item V–B–2, CARD 14, Section 14.B.5)

The EPA concurs that the presence of fractures and related fracture fill that could be attributed to dissolution or precipitation could significantly impact ground water transport in the Rustler. The DOE modeled the presence of fractures using a dual porosity model, and has accounted for permeability variability by developing transmissivity fields based upon measured field data which reflect the varying transmissivity values. This dual porosity conceptual model recognizes that fluid may flow through both the rock matrix and fractures at the site. The use of dual porosity assumes ground water flows through fractures, but allows solutes to diffuse into the matrix. The EPA concludes that while fractures are present in Rustler Formation units and slow vertical infiltration does occur, there is no evidence that indicates fractures are conduits for immediate dissolution of Rustler or Salado salts, or that pervasive infiltration and subsequent dissolution of the Salado Formation or Rustler is a rapid, ongoing occurrence at the WIPP site. Further, ground water quality differences between the more permeable units of the Rustler Formation support relative hydrologic isolation (i.e., the water in the Magenta member interacts very little with the water in the Culebra member), or at least they support very slow vertical infiltration that has not allowed for extensive geochemical mixing of ground waters in these units.

Many commenters suggested that WIPP cannot contain radionuclides because WIPP is in a region of karst (topography created by the dissolution of rock). Karst terrain typically exhibits cavernous flow, blind streams, and potential for channel development that would enhance fluid and contaminant migration. Numerous geologic investigations have been conducted in the vicinity and across the WIPP site to assess the occurrence of dissolution (karst) and the presence of dissolution-related features. The EPA reviewed information and comments submitted by DOE, stakeholders, and other members of the public regarding the occurrence and development of karst at the WIPP. (Docket A–93–02, Item V–B–2, CARD 14, section 14.B.5) The EPA acknowledges that karst terrain is present in the vicinity of the WIPP site boundary near the surface. Near-surface dissolution of evaporitic rocks (e.g., gypsum) have created karst topography west of the WIPP site. Nash Draw, which (at its closest to WIPP) is approximately one mile west of the WIPP site, is attributed to shallow dissolution and contains karst features. (Docket A–93–02, Item V–B–3, Section B.3.t) The EPA also recognizes the potential importance of karst development on fluid migration.

The EPA agrees that karst features occur in the WIPP area but concluded that karst features are not pervasive over the disposal system itself. The EPA examined hydrogeologic data (e.g., transmissivity and tracer tests) from DOE's wells at and near the WIPP site and found no evidence of cavernous ground water flow typical of karst terrain at the WIPP site. Similarly, a field investigation conducted by EPA during the summer of 1990 to assess the occurrence of karst features showed no evidence of significant karst features, such as large channels, dolines, sinkholes, or collapsed breccias (other than those at, for example, at WIPP–33 and Nash Draw) in the immediate WIPP vicinity. (55 FR 47714) Available data suggest that dissolution-related features occur in the immediate WIPP area (e.g., WIPP–33 west of the WIPP site), but these features are not pervasive and are not associated with any identified preferential ground water flow paths or anomalies at the WIPP site. (Docket A–93–02, Item V–B–2, CARD 14, Section 14.B.5) Therefore, the groundwater modeling in the PA is adequate.

Several commenters stated that poor Rustler Formation core recovery at WIPP indicates the presence of karst. The commenters state that fragmented core samples containing dissolution residues are a clear indication of unconsolidated or cavernous zones capable of transmitting water with little resistance. However, core recovery is related to rock strength, and does not necessarily have an association with local hydrologic conditions. In the case of WIPP, cores that were attempted through fractured material, including the Culebra, exhibited poor recoveries. The EPA agrees that fractured Rustler is ′present at test well H–3. However, EPA does not believe that the presence of fractured material in the Rustler indicates that karst processes are active. In fact, the development of fractures can occur for various reasons unrelated to dissolution (e.g., removal of overlying rock due to erosion). The DOE recognized the presence of fractures within the Culebra, and included this dual porosity system in the PA modeling. In addition, core loss is a common occurrence in the drilling of all kinds of rocks, sometimes associated with fracture and other causes related to drilling technology, as well as the occurrence of soft or incompetent rock. The EPA concludes that to interpret all zones of lost core as zones of karst is inappropriate, as other rock features contribute to core loss which have nothing to do with cavernous porosity.

The EPA reviewed information pertinent to the potential development of karst in the WIPP area and believes that the near continuous presence of the more than half-million year old

Mescalero Caliche over the WIPP site is a critical indicator that recharge from the ground surface to the bedrock hydrologic regime has not been sufficient to dissolve the caliche at the site. If active dissolution of the evaporites in the subsurface were occurring in the WIPP area, it would be expected that collapse features would be evident in the Mescalero above the area where the dissolution is, or has occurred. As noted above, EPA has found no evidence of direct precipitation-related flow increases typical of karst terrain, and no field evidence of large channels or other karst features. The relative pervasiveness of the Mescalero Caliche over a long period of time is also an indication that there has been an arid climate and very low recharge conditions over a long period of time at the WIPP site. This, combined with DOE's near-future precipitation assumptions, led EPA to conclude that karst feature development will neither be pervasive nor impact the containment capabilities of the WIPP during the 10,000 year regulatory period. (Docket A–93–02, Item V–B–2, CARD 14, Section 14.B.5; Item V–B–3, Section 3.B.t)

The EPA concludes that dissolution has occurred in the WIPP area outside of the WIPP site, as evidenced by karst features like Nash Draw. It is possible that dissolution has occurred at the WIPP site sometime in the distant past (i.e., millions of years ago for strata-bound features) associated with a geologic setting other than that currently present at WIPP; however dissolution in the Culebra is not an ongoing process at the WIPP site. Thus EPA finds that DOE's modeling (which assumes no karst within the WIPP site boundary) is consistent with existing borehole data and other geologic information.

e. Presence of Brine in the Salado. Numerous commenters stated the Salado Formation will be wet and that brine is weeping into the repository at a slow but significant rate, leading to a wet repository which will corrode the waste containers. This, the commenters stated, would invalidate the basic premises of the WIPP that dry salt beds would creep and encapsulate the waste canisters.

The EPA agrees that brine will enter the repository from the Salado Formation via anhydrite marker beds. The EPA also notes that the presence of brine within the Salado is a key element of the PA modeling; brine inflow is assumed to occur and the impact of brine inflow on gas generation is assessed. Brine is necessary for both of the processes that may cause gas generation: either drum corrosion or microbial respiration. If there is no inflow of brine into the repository, neither corrosion of iron drums nor survival of microbes would occur, so gas generation would not occur. Therefore, although the commenters correctly noted that initial WIPP studies did assume the salt to be ''dry,'' the presence of interstitial brine has long been recognized and is accounted for in the PA. (Docket A–93–02, Item V–B–2, CARD 14, Section 14.E.5; Item V–B–3, Section F.2)

In the CCA discussion of the gas generation conceptual model, DOE indicates that brine is expected to be present in the repository due to a natural inflow of brine. Corrosion of the waste containers, generation of gases resulting from waste corrosion and microbial degradation, and the effects of these processes on the disposal system components have been addressed in the DOE PA and the EPA-mandated PAVT. (Docket A–93–02, Item V–B–2, CARD 14, Section 14.D; Item V–B–2, CARD 23, Section 2.4; Item V–B–3, Section E.2) The DOE also considered that additional brine could be introduced to the waste area if a drilling event passed through the waste and subsequently hit a brine pocket. The presence of a pressurized brine pocket beneath WIPP was addressed in the PA under the Human Intrusion Scenarios whereby the reservoir is penetrated by a borehole and brine is subsequently released into and mixed with the waste and eventually discharged either into the Culebra or at the ground surface. The EPA concludes that DOE adequately considered the presence of brine in PA modeling because it included the possibility of encountering a brine pocket in its intrusion scenarios, and because the potential effects of brine on corrosion rates and gas generation were incorporated in PA models. For more information on brine pocket parameter values, see the subsequent discussion of Parameter Values in the Performance Assessment sections of this preamble.

f. Gas Generation Model. Some chemical reactions could occur in the WIPP because metal containers holding waste may corrode and waste made from organic materials such as rubber may decompose if water is available and if other conditions are conducive to such decomposition. The corrosion reaction would create hydrogen gas (H2). The decomposition of organic waste would create carbon dioxide ($_2$) and methane (CH_4). These gases would build up in the repository after it is sealed, increasing pressure inside the waste rooms.

The DOE developed a gas generation conceptual model to describe this situation. The Department's gas generation conceptual model incorporates the following basic premises:

- Gas is generated primarily by metal corrosion and microbial processes;
- Gas generation is closely linked to other processes;
- Gas generation from microbial processes will not always occur;
- High gas pressures in the repository can cause the Salado anhydrite interbeds to fracture; and
- High gas pressure is necessary before spalling and direct brine releases can begin.

The DOE performed experiments on gas generation rates for the 1992 PA and updated these experiments more recently. (Telander, M.R. and R.E. Westerman, 1997. ''Hydrogen Generation by Metal Corrosion in Simulated Waste Isolation Pilot Plant Environments,'' SAND96–2538; see Docket A–93–02, Item V–B–1.) The gas generation rates are important in The PA because build-up of high gas pressures increases the chance for releases if a drill bores into the repository.

During the public comment period, commenters questioned the gas generation rates used in the gas generation conceptual model. One commenter stated that calculated corrosion rates were too low because they are based upon long-term tests that show lower rates than short-term tests, they assume a high pH, and they include a minimum rate of zero, perhaps by assuming that salt crystallization will prevent corrosion. The commenter also stated that corrosion rates used in the model should account for the fact that direct contact with salt and backfill increases the rate. The commenter further stated that DOE seemed to use the observed data to set the upper limit of a distribution of corrosion rates, rather than the midpoint of such a distribution, which would systematically understate the corrosion rate because most values would be less than the values taken from DOE's observed data. Finally, the commenter stated that aluminum corrosion is as significant as corrosion of steel, and that it is likely to take place in the repository because CO_2 and iron will be present and will enhance aluminum corrosion.

The EPA examined DOE's studies on gas generation rates. The EPA disagrees that the assumptions of long-term rates, pH, and minimum corrosion rate are not well-founded. Since the results of the corrosion testing are used to develop a long-term hydrogen gas generation rate for the repository that applies over

hundreds of years, it is appropriate that DOE developed the rate based on hydrogen generation over a longer time (12 to 24 months) rather than for a shorter time. Data indicate that during the first few months of the test, the corrosion reaction had not yet stabilized at equilibrium, producing more hydrogen gas than would have been expected at equilibrium for the amount of iron present. (Docket A–93–02, Item II–G–1, CCA Reference #622) Therefore, the higher rate of gas generation observed in the short-term is unlikely to represent what happens in the repository over hundreds of years.

The DOE's assumption of high pH (about 10) is consistent with data on the use of magnesium oxide (MgO) backfill. Because DOE has committed to using MgO backfill in the repository in the CCA, EPA finds it reasonable to assume this pH in the repository. (See the preamble section ''Engineered Barriers'' for further discussion of MgO backfill.) Furthermore, even if the MgO were not fully effective and the pH were to drop from near 10 to between 7 and 8, the enhanced corrosion rate expected at that lower pH is already reflected in the probability distribution for the corrosion rate parameter. DOE's experimental data show that MgO backfill will function as assumed in the CCA. Therefore, EPA concludes that DOE considered the issue of pH and realistically incorporated it into the model.

The DOE took its minimum corrosion rate of zero from studies on steel corrosion rates when the steel is in a humid environment and also when steel is submerged in brine. The DOE found that virtually no corrosion occurred and no hydrogen gas was generated under humid conditions. Also, the studies show that the steel has an extremely low corrosion rate when it is submerged in brine at the higher pH expected in the WIPP. Some DOE studies also found that salt films may prevent corrosion, as the commenter mentioned. (Docket A–93–02, Item II–G–1, CCA Appendix MASS, Attachment MASS 8–2) Based on all these studies, EPA concludes that DOE's minimum corrosion rate is supported and appropriate.

The DOE assumed that the corrosion rates of steel submerged in brine were uniformly distributed from zero to 0.5 micrometers per year. The EPA believes that the bases for the parameter assumptions are adequately documented and the use of the particular parameter distribution is consistent with demonstrating the concept of reasonable expectation for the H_2 gas generation rates used in the CCA. However, EPA was concerned that the maximum corrosion rate value selected by DOE did not fully reflect other uncertainties. These uncertainties included the accelerated corrosion of steel in reactions with other materials such as backfill and aluminum. Data from DOE tests indicated that corrosion rates might be twice as high as those used in the PA. (Docket A–93–02, Item V–B–14) Thus, in the PAVT, EPA required DOE to double the maximum corrosion rate to assure that these other uncertainties were more fully reflected. (Docket A–93–02, Item II–G–28) (Doubling the corrosion rate would be expected to cause the gas generation rate to rise but not necessarily double, since other factors such as microbial degradation also influence gas generation.) This and other changes made in the PAVT showed that the repository remained in compliance with the standards.

The commenter correctly notes that the corrosion data from DOE's studies were used to set the upper limit of a uniform distribution of corrosion, rather than a mid-point. (Telander, M.R. and R.E. Westerman, 1997. See Docket A–93–02, Item V–B–1.) However, EPA does not agree that this practice would systematically understate the corrosion rate under the conditions expected to occur in the repository. The experimental rate was obtained under pH conditions substantially lower than those expected in the repository (i.e., 7.4 to 8.4 versus 9.2 to 9.9). The corrosion rate is expected to be at least an order of magnitude lower at the higher pH than at the pH expected in the repository in the presence of MgO. (Docket A–93–02, Item V–B–14) Therefore, the higher corrosion values (i.e., those based on the study) represent extreme conditions, rather than those expected in the repository, and the parameter range would account for all values that are likely to occur. In addition, as noted above, EPA required that the maximum corrosion rate be doubled in the PAVT to account for uncertainties in this parameter. The Agency believes that this addresses the concerns raised by the commenter.

The commenter notes that CO_2 and iron will enhance the corrosion of aluminum. Although EPA agrees this is true, the Agency believes it does not affect the results of the PA. Carbon dioxide reacts with MgO, so CO_2 will not be available to reduce the brine pH and to enhance corrosion. Second, accelerated corrosion of aluminum is not a significant factor in the WIPP's performance, since brine will be consumed in corrosion reactions and will lead to smaller direct brine releases. (This is also discussed in the following preamble section concerning two dimensional modeling of brine and gas flow.) The results of DOE's modeling show that iron is consistently left over after reacting with all available brine. (Docket A–93–02, Item II–G–7, Fig. 2.2.9) Based upon data on these reactions, the Agency concludes that enhanced corrosion of aluminum due to CO_2 and iron will not increase releases of radioactivity because brine will not be left over to go to the surface as direct brine releases. (Docket A–93–02, Item V–C–1)

g. Two-Dimensional Modeling of Brine and Gas Flow. The DOE modeled the flow of brine and gases within the repository in the BRAGFLO computer code. The DOE simplified this model by representing the repository as a space in two dimensions rather than in three dimensions, as it is in reality. The Department made this simplification in order to speed up computer calculations significantly. The DOE performed a screening analysis titled S1: Verification of 2D-Radial Flaring Using 3D Geometry to see if the two-dimensional BRAGFLO model would predict similar results to a three-dimensional model. (WPO #30840) In Appendix MASS, Attachment 4–1 of the CCA, DOE explained that the results of the screening analysis showed that a three-dimensional model would not give significantly different results from the two-dimensional model used in the PA. The EPA examined DOE's documentation to determine if the CCA complied with EPA's requirements for documentation of conceptual models and consideration of alternative conceptual models under §§ 194.23(a)(1) and (a)(2). The EPA reviewed the screening analysis and concluded in the proposal that DOE sufficiently documented its rationale and approach behind using a two-dimensional model for brine and gas flow in the repository. (62 FR 58808)

One commenter stated that DOE's screening analysis suggested that the two-dimensional (''2D'') BRAGFLO model might underestimate releases of radionuclides to the surface under higher gas pressures. The commenter stated that several three-dimensional (''3D'') BRAGFLO simulations of the repository should be performed using parameter values from the CCA PA. The recommended analysis would include calculations of direct brine releases (releases of brine contaminated with radioactive waste) and spallings (releases of solid waste pushed out of the repository under high pressure), and an assessment of how much brine would be consumed by chemical reactions. Another commenter stated that the screening analysis had been

misinterpreted because details of the assumptions used in the original screening analysis had not been considered. This commenter also stated that results of additional analysis submitted by DOE as comments showed that the two-dimensional BRAGFLO code used in the CCA PA results in a conservative estimate of the releases when compared to results from a three-dimensional code.

The EPA examined the screening analysis mentioned by the commenters. The Agency found that the divergence between the results of the two-dimensional and three-dimensional versions of BRAGFLO occurred only at very high (lithostatic [22]) pressures that would occur seldom if ever in the repository. (Docket A–93–02, Item V–C–1, Section 5) For simulations at the gas generation rates used in the CCA PA, the two-dimensional BRAGFLO code predicted greater brine inflows than the three-dimensional code. (Greater brine inflows could potentially lead to greater direct brine releases.)

The EPA also considered how much brine would be consumed in chemical reactions. One of DOE's studies showed that brine is consumed by corroding steel barrels and leaves behind at least 20 percent of the original steel at the end of 10,000 years for 99 percent of the sets of simulated conditions tested in the CCA PA. (Docket A–93–02, Item II–G–7, p. 2–12) Based on this study, EPA concluded that even if the 3D model predicted additional brine inflow (beyond that predicted in the current 2D model), this brine will simply be consumed in chemical reactions (i.e., corrosion of metal drums), and will not go to the surface as direct brine releases. In addition, the Agency looked at results of additional simulations that DOE conducted to compare BRAGFLO 2D and 3D results. (Docket A–93–02, Item IV–G–34, Attachment 1 and February 25, 1998, memorandum) DOE's results show that the use of a two dimensional representation does not result in an underestimate of direct brine release during human intrusion. In all cases investigated, the two dimensional simulations consistently predict either the same or higher repository pressures and brine saturations than their corresponding three-dimensional simulations, leading to larger releases. The Agency, therefore, concludes that the two-dimensional BRAGFLO code results in conservative estimates of releases from the repository compared to results from a three-dimensional model.

[22] Lithostatic pressure is the pressure exerted by overlying rock layers.

In addition, EPA found that DOE sufficiently documented its development of conceptual models and scenarios, including alternative conceptual models considered, in the CCA and additional documentation submitted to the Agency. Therefore, EPA finds DOE in compliance with the requirements of §§ 194.23(a)(1) and (a)(2) with respect to modeling of brine and gas flow.

h. Earthquakes. Several public comments raised concerns about the effect that earthquakes could have on the repository and the containment of waste. Several commenters refer to a recent (January 4, 1998) earthquake in New Mexico, over 100 miles from the WIPP site, as an indication of the weakness of the WIPP site for disposal purposes.

In the CCA, DOE examined seismicity as part of its features, events, and processes, analyses, and concluded earthquakes could be excluded from the PA calculations based on low consequences. This conclusion is drawn from a wealth of knowledge about the seismic activity and processes in the region, but is based primarily on the fact that the intensity of ground shaking (the primary cause of destruction from an earthquake) is significantly less underground than at the surface. In addition, the ductile nature of a salt deposit makes it deform differently than typical hard rocks, so the displacement due to rupture (if any) will be less. The EPA reviewed DOE's earthquake (seismic) scenario in the Technical Support Document for 194.14: Content of Compliance Application, Section IV.B.4.f. (Docket A–93–02, Item V–B–3) The EPA concurs with DOE's analysis, that the probability of a release of radionuclides from the repository due to the opening of fracture pathways caused by an earthquake is very small.

Many years of seismological monitoring, microseismal studies and geologic study demonstrate that there are no probable sources of large earthquakes at or near the WIPP site. (Docket A–93–02, Item II–G–1, Chapter 2.6) The only sources of significant earthquakes in the region lie far to the west of the site along the Rio Grande rift or to the south along major plate tectonic features in Mexico, although measurable earthquakes have occurred closer to the WIPP. (Docket A–93–02, Item II–G–1, Chapter 2 and Appendix SCR) Micro-earthquakes (magnitude 3.0 or smaller on the Richter scale), most of which are too small to be felt, or small, shallow teleseismal ground motion related to distant earthquakes are the only seismicity expected at the WIPP site during the very short period that the repository will persist as an underground opening. The EPA notes that the site of the January 4, 1998, earthquake is located in the Rio Grande Rift—over 100 miles east of WIPP—and seismic activity in that area, including the January 4, 1998 earthquake, was too small to have an impact at WIPP. Therefore, EPA finds that the effects of earthquakes need not be considered in performance assessments. (See Docket A–93–02, Item V–B–2, CARD 32, Section G)

i. Conclusion. The EPA finds that DOE adequately assessed the site characteristics for the purposes of the PA and use in comparison with EPA's radioactive waste disposal standards and WIPP compliance criteria. The results of EPA's review of the CCA and additional information provided by DOE is provided in CARDs 14, 23, 32 and 33. (Docket A–93–02, Item V–B–2)

4. Parameter Values

a. Introduction. Parameters are numerical values or ranges of numerical values used in the PA to describe different physical and chemical aspects of the repository, the geology and geometry of the area surrounding the WIPP, and possible scenarios for human intrusion. Some parameter values are well-established physical constants, such as the Universal Gas Constant or atomic masses of radionuclides. Parameters also can be physical, chemical or geologic characteristics that DOE established by experimentation. The DOE has also assigned parameters to aspects of human intrusion scenarios, such as the diameter of a drill bit used to drill a borehole that might penetrate the repository.

Section 194.23(c)(4) requires detailed descriptions of data collection procedures, data reduction and analysis, and code input parameter development. Section 194.14(d) requires DOE to describe the input parameters to the PA and to discuss the basis for their selection. Section 194.14(a) requires DOE to describe the characteristics of the WIPP site, including the natural and engineered features that may affect the performance of the disposal system, which is part of the process of parameter development.

The Agency reviewed the CCA, parameter documentation, and record packages for approximately 1,600 parameters used as input values to the CCA PA calculations. The EPA further reviewed parameters record packages and documentation in detail for 465 parameters important to performance of the disposal system. The Agency selected parameters to review in depth based on the following criteria:

- Parameters that were likely to contribute significantly to releases or seemed to be poorly justified;
- Parameters that control various functions of the CCA PA computer codes that were likely to be important to calculations of releases and important to compliance with the containment requirements of § 191.13; and
- Other parameters EPA used to evaluate the overall quality of Sandia National Laboratory's (''SNL'') documentation traceability.

After its initial review, EPA found that DOE had a great deal of documentation available in the SNL Records Center supporting most of the parameters used in the CCA PA. However, EPA had some concerns about the completeness of the list of CCA PA parameters in the CCA and the SNL Records Center, the description and justification to support the development of some code input parameters, and the traceability of data reduction and analysis of parameter-related records. The Agency did not agree with the technical justification of some parameter values and probability distributions.

The Agency later required DOE to perform additional calculations in a Performance Assessment Verification Test (''PAVT'') in order to verify that the cumulative impact of all required and other corrections to input parameters, conceptual models, and computer codes used in the PA was not significant enough to necessitate a new PA. The EPA directed DOE to incorporate modified values or distributions for twenty-four parameters in the PAVT. (Docket A–93–02, Item II–I–27) The PAVT showed that the calculated releases may increase by up to three times from those in the original CCA PA, but that the WIPP is still an order of magnitude below the containment requirements in § 191.13. The DOE satisfied EPA's concerns about the parameters by incorporating EPA's changes to the parameter values and parameter distributions in the PAVT.

During the public comment period on the proposed rule, members of the public expressed concern about a few specific parameters used in the PAVT: distribution coefficients (K_d), the permeability of borehole plugs, the characteristics of a potential brine pocket, and the solubility of different actinide ions in brine. Commenters stated these particular parameters could have an especially great impact on releases, and therefore, on the results of the PA.

b. Distribution Coefficient (K_d). As the primary radionuclide pathway during an intrusion, the Culebra was the subject of many public comments, especially related to distribution coefficients [23] (K_d values). In DOE's conceptual model the Culebra is characterized as a fractured dolomite that has dual-porosity and acts to physically retard movement of contaminants. In a dual-porosity rock unit, ground water is believed to flow through the fractures, but water and contaminants can access the pore space within the rock matrix away from the fractures. Movement of water and contaminants into the pore space slows (retards) their respective forward movement. This physical retardation is necessary in order to have chemical retardation. In the process of chemical retardation, contaminants diffuse from the fractures into the pore space where they can adsorb onto the rock mass. This adsorption is described by distribution coefficients, or K_d values.

The CCA indicated that there were no contributions to total releases from the ground water pathway. (Docket A–93–02, Item II–G–1, Chapter 2) This was due to the limited amount of contaminated brine predicted to reach the Culebra and the fact that radionuclides adsorbed into the Culebra dolomite did not move with the ground water flow. That is, the movement of the radionuclides were retarded with respect to the ground water flow. The estimate of the extent of the retardation (i.e., the K_d value) was based on laboratory tests using crushed rocks and small columns of rock. (CCA, Docket A–93–02, Item II–G–1, Chapter 6)

The EPA reviewed DOE's K_d values in detail. (Docket A–93–02, Item V–B–4) Based upon the review of DOE's data, methodologies, and conclusions, EPA proposed that the K_d ranges suggested by DOE were sufficient for the PA. (62 FR 58799) The EPA also concluded that the laboratory tests were conducted appropriately and that the K_d values DOE derived from this testing are reasonable, given the experimental evidence, and sufficient for PA purposes. (Docket A–93–02, Item V–B–2, CARD 14, Section 14.B.5)

Commenters stated that DOE's experiments did not produce K_d values that are representative of conditions in the Culebra. The DOE data on actinide K_d values are derived directly from the results of a number of experiments (e.g., crushed rock, column tests) conducted with brine solutions that are representative of brines in the disposal system. The DOE used samples of the Culebra Dolomite and brine solutions that are considered to be representative of the field situation. These data were supplemented by experiments with other natural dolomites and column experiments, in which the effects of a field-realistic solid to solution ratio could be investigated. The laboratory-derived K_d values are expected to overestimate the mobilities of the actinides, making them reflective of upper bounds for predicting the maximum possible rates of actinide migration in the PA calculations. Therefore, it is reasonable to expect that the range of actinide K_d values obtained from the DOE experiments are inclusive of any scale-effects that might produce a different average K_d value than the experimental average in either the greater or lesser directions. Docket A–93–02, Item V–B–4, Section 4.4 presents EPA's analysis of field K_d testing.

The DOE's experimental results show that each of the actinides tested is adsorbed to the rock matrix to varying extents; hence, they will not migrate as fast as the overall rate of horizontal water flow (i.e., the actinides will be attenuated). These results are consistent with general theories of the adsorptive behavior of cationic solutes under alkaline pH conditions.

The EPA reviewed DOE's actinide K_d values and concluded that the population of K_d values determined in DOE experiments was not well-represented by a uniform distribution. The Agency recommended that a loguniform distribution be used in the PA calculations. In the PAVT, loguniform distributions for the actinide K_d values were used. (WPO# 47258; Docket No A–93–02, Item II–G–39) The results of PAVT still resulted in compliance with regulatory release limits. Therefore, EPA determined that the CCA PA was adequate for the purpose of determining compliance. (Docket A–93–02, Item V–B–4)

The DOE also performed bounding calculations using the minimum K_d values necessary to achieve compliance with EPA limits. The bounding estimates were obtained for plutonium (^{239}Pu) and americium (^{241}Am), which are critical actinides with respect to releases to the accessible environment. Results of DOE's bounding assumptions (whereby all other factors are set to the least favorable value) indicate that a K_d of 3 milliliter per gram (ml/g) is sufficient for compliance for ^{239}Pu and

[23] Dissolved waste migrating out of the disposal site would migrate as atoms with a positive electrical charge, or cations; these could be cation species such as Pu^{+4} or U^{+6}. When liquid such as brine carries the cations through sediment or rock, some of the cations become attached to the surface of these solids. Therefore, the cations travel more slowly than the liquid as a whole. The rate of advance of the cation as the liquid migrates can be described with a number called a retardation factor. Distribution coefficients, or K_d's, are used in calculating the retardation factor.

^{241}Am. Estimates based on typical CCA sample sets indicate that K_d values greater than 1 ml/g are sufficient for compliance. (A higher K_d value indicates greater retardation—or less movement—of radionuclides.) The K_d ranges determined from DOE column experiments, conducted since submission of the CCA, for ^{239}Pu and ^{241}Am are typically greater than 100 ml/g, thus inferring that K_d values used in the PA are more than sufficient to ensure compliance with EPA limits with respect to accessible environment release through the Culebra. For these reasons, the actinide K_d values developed by DOE are considered to be adequate for representing actinide mobilities in the PA calculations. (Docket A–93–02, Item V–B–2, CARD 14, Section 14.G.5)

The EPA reviewed and responded to the public comments on K_d values and finds the K_d values used in the PA are sufficient. Refer to EPA Technical Support Document for Section 194.14: Assessment of K_d Values Used in the CCA for EPA's detailed review. (Docket A–93–02, Item V–B–4)

c. Actinide Solubility. Actinide solubilities are used in the computer codes to calculate the actinide concentrations released from the repository. They are important because as radionuclides dissolve in brine, they are more easily released from the disposal system through direct brine release mechanisms. Commenters questioned the analysis of certain chemical conditions in the disposal system relating to backfill, ligands, uncertainty, and oxidation state analogy.

An important factor influencing actinide solubility is the magnesium oxide (MgO) backfill DOE proposed to emplace in the WIPP. The DOE indicated that MgO backfill emplaced with transuranic waste would mitigate the solubility-enhancing effects of carbon dioxide from waste degradation. The DOE proposed to emplace a large amount of MgO in and around waste drums in order to provide an additional factor of safety and thus account for uncertainties in the geochemical conditions that would affect CO_2 generation and MgO reactions.

Commenters stated that DOE has not shown the predicted MgO chemical processes will take place. The DOE provided documentation in the CCA and supplementary information that MgO can effectively reduce actinide solubility in the disposal system. While the conceptual model peer review panel initially rejected DOE's conceptualization of the Chemical Conditions Model, DOE provided additional information on MgO processes and the peer review panel later concluded that MgO processes will indeed take place as initially postulated by DOE. The EPA concluded that DOE's qualitative justification was sufficient to show that the emplacement of MgO backfill in the repository will help prevent or substantially delay the movement of radionuclides toward the accessible environment by helping to maintain alkaline conditions in the repository, which in turn favors lower actinide solubilities. Furthermore, DOE's bounding of pH levels to a narrow range greatly reduces the uncertainty associated with pH and actinide solubility in the PA. Refer to CARD 24, Section 24.B.6, and CARD 44 for further discussion of the effects of MgO. (Docket A–93–02, Item V–B–2)

The EPA received numerous comments regarding DOE's lack of a sensitivity analysis on the effects of organic ligands and that organic ligands other than ethylene diaminetetraacetic acid (''EDTA'') should have been considered. Organic ligands are important since they can increase more mobile fractions, i.e., can make more radionuclides available for transport. Organic chemicals are expected to be part of the waste, especially because many were used in the separation of actinides during chemical processing of nuclear materials. DOE's bounding calculations and incorporation of uncertainty ranges to represent actinide concentrations in the PA calculations indicate that organic ligands will have only a minor effect on the solubilities of actinide solids under the expected repository conditions. The EPA found, through independent calculations, that there is no substantive information that could be gained by conducting a sensitivity analysis on the effects of organic ligands or conducting the calculations with citrate rather than EDTA, since EDTA provides a conservative assessment of the effects of ligands on solubility of actinide solids. (Docket A–93–02, Item V–B–2, CARD 24, Section 24.E.5) The EPA agrees with the conclusions of the Waste Characterization Independent Review Panel ''that under the conditions of MgO backfill, chelating agents (e.g., organic ligands) will have a negligible effect on repository performance. The Panel notes that, even at the basic pH in the repository, the availability of transition metals may be enhanced due to the formation of soluble halo complexes, making an even stronger case that base metals control ligand chemistry.''

Commenters also expressed concern about the solubility uncertainty range used in the PA computer codes. The DOE determined that the available experimental data for the oxidation state +IV actinides (i.e., plutonium, uranium, and neptunium) were insufficient for making such comparisons. However, the experimental procedures for determining the solubilities of +IV actinide solids are not substantially different from those used to determine the solubilities of +III and +V actinide solids. Therefore, EPA concluded that the uncertainties determined for the +III and +V actinide solids would be inclusive of those that would be obtained for +IV actinide solids, which are based on experimental measurements of thorium oxide. This expectation is based on the fact that DOE used the outermost limits of the differences between model results and experimental results for all data examined to define the breadth of the uncertainty limits. This procedure greatly expands the size of the uncertainty bounds beyond what might be calculated from statistical treatment of the distribution of the differences. (Docket A–93–02, Item V–B–2, CARD 24, Section 24.B.6; and Item V–B–17) The EPA therefore finds that the uncertainty bounds on actinide solubility are adequate for use in the PA.

Finally, commenters raised issues regarding the limitations of the oxidation state analogy in the Actinide Source Term Dissolved Species Model. In short, the actinide oxidation analogy means that actinides of the same oxidation state tend to have similar chemical properties under similar conditions. The oxidation state analogy is based on standard inorganic chemistry principles. This generalization can be made because chemical reactions involving ionic species are related primarily to the charge densities of the reacting species. Actinides with the same oxidation state have the same core electronic structure; hence they have similar ionic radii and charge densities, which in turn leads to analogous chemical behavior in solubility and aqueous speciation reactions. In addition to the theoretical basis, DOE conducted experimental studies that confirmed the validity of the oxidation state analogy, and subsequently employed it in its representation of the solubilities of actinides. The EPA finds that the actinide oxidation state is adequate for use in the PA. (Docket A–93–02, Item V–B–2, CARD 24, Section 2.B.6)

For details regarding chemical reactions of MgO, see CARD 24 (Waste Characterization) and CARD 44 (Engineered Barriers). For further

information regarding the PA modeling of solubility and chemical conditions in the repository, see CARD 23 (Models and Computer Codes). CARDs can be found in Docket A–93–02, Item V–B–2.

d. Brine Pockets. The Castile Formation lies underneath the Salado Formation, where the WIPP is located. This stratum contains pockets of brine under pressure. One of the parameters in the PA that commenters believed to be important is the probability that a driller will hit a brine pocket in the Castile. The CCA PA models the possibility that a drill bit could penetrate a brine pocket in the Castile Formation, allowing brine to rise up the borehole and into the repository. The brine could then dissolve radioactive waste and could carry it to the earth's surface if another driller bored a hole into the repository. This could increase the amount of radioactive waste reaching the accessible environment.

Some commenters expressed concern that brine from brine pockets in the Castile Formation could travel up to the level of the repository, or even to the earth's surface. The EPA believes that this is not a problem unless the repository is disturbed by human intrusion. Because it is difficult for water to travel in the Salado and Castile formations (i.e., they have low permeability), there is no natural connection between a Castile brine pocket and the waste panel area under undisturbed conditions. These brines are also either saturated or nearly saturated with soluble minerals such as salt (halite), and thus, the brine in pockets will not dissolve the surrounding material. (Docket A–93–02, Item II–G–1, CCA Chapter 2, Table 2–5) However, in the case of a deep drilling intrusion that goes through a waste panel and into the Castile, it is possible that the driller will intercept brine in the Castile and create a pathway for Castile brine to flow into the repository and interact with the waste. The probability of human intrusion through the WIPP repository to an underlying Castile brine pocket is a key component of the PA.

The 1992 draft PA considered the probability of a driller hitting a brine pocket under the waste area with a range of 25 percent to 62 percent, based on geophysical work that suggested brine may be present. (Docket A–93–02, Item II–G–1, Reference #563) In the CCA PA, DOE assigned a probability of hitting a brine pocket of 8 percent, based upon a geostatistical analysis of oil and gas wells in the vicinity of WIPP. The Agency believed that the assigned probability was low, based upon data from one particular DOE study using the Time Domain Electromagnetic (''TDEM'') method. In addition, EPA found there was considerable uncertainty in this parameter. Therefore, in the PAVT the Agency required DOE to change the constant value of this parameter to a uniform probability distribution from 1 percent to 60 percent, based upon data in the TDEM study. (Docket A–93–02, Item II–I–27)

Many commenters questioned the use of a uniform distribution from 1 percent to 60 percent as the range for the probability of hitting a brine pocket that EPA specified be used in the PAVT. Some believed that EPA should require DOE to examine a probability of 100 percent for hitting a brine pocket, based upon data from DOE's WIPP–12 borehole, which suggested that a large reservoir of brine might lie in the Castile Formation under the WIPP Land Withdrawal Area. Others recommended that EPA require DOE to repeat the PA assuming a constant probability of 60 percent.

The EPA carefully evaluated the potential occurrence of brine pockets below the WIPP. The EPA agrees that there is significant uncertainty concerning the existence of a brine pocket beneath the repository. For this reason, EPA required DOE to reevaluate the probability of hitting a brine pocket in the PAVT using a probability distribution rather than a constant value.

The EPA also considered the possibility that the brine pocket indicated by WIPP–12 data may underlie 100 percent of the repository. Based on reservoir volume and thickness data from WIPP–12, commenters found that a cylindrically-shaped reservoir could underlie the entire repository. However, EPA considers this unlikely because brine in the Castile does not reside in homogeneous and well-defined reservoirs. Instead, it is believed to reside in vertical or subvertical fracture systems, which may be extensive and contain significant volumes of brine. (Docket A–93–02, Item II–G–1, Appendix MASS, Attachment 18–6) Although EPA agrees that part of the WIPP–12 reservoir may underlie part of the repository, the time-domain electromagnetic (''TDEM'') survey data do not support speculation of a 100% probability of an encounter. (Docket A–93–02, Item II–G–1, Chapter 2.2.1.2.2, Item V–B–3, section IV; Item V–B–14, Sections 4.1, 4.4, and 4.5) In addition, as pointed out by one of the commenters recommending a probability of 60 percent, some boreholes adjacent to brine-producing boreholes near the WIPP site are known to be dry. In view of the lack of support from the TDEM data and the other concerns expressed above, EPA concludes that available data do not support a 100 percent probability of hitting a brine pocket.

The EPA established its 1 percent to 60 percent range of probability for hitting a brine pocket based upon data from the TDEM survey. The Agency examined the data and found that the probability distributions for encountering brine under the WIPP varied widely, depending on whether or not one assumed that brine pockets exist below the bottom of the Anhydrite III layer near the top of the Castile Formation. Using the base of the anhydrite layer as the cutoff, EPA's simulations showed that the fraction of the excavated area of the repository underlain by brine varies from 1 to 6 percent of the excavated area. Using the base of the Castile as the cutoff, the fraction of the excavated area of the repository underlain by brine would range from about 35 to 58 percent. According to the 1992 WIPP PA, Castile Formation brines are generally found in the uppermost anhydrite layer (usually Anhydrite III), rather than all the way through the Castile. (Docket A–92–03, Item II–G–1, CCA Reference #563, Vol. 3, p. 5–4) If brine is confined to the upper (Anhydrite III) layer, which is the more probable case based on geologic information, the maximum fraction of the repository area underlain by brine is 6 percent. However, in order to examine the possible effects of the more conservative case, EPA chose to assume an equal probability that a driller would hit a brine pocket in either the upper Anhydrite III layer or the base of the Castile. Therefore, EPA used a probability range in the PAVT with a low value of 1 percent based on the upper anhydrite layer and the high value of 60 percent derived by rounding up the highest value from the TDEM survey. The EPA believes that existing information supports the range used in the PAVT as valid, and probably conservative, values for the probability of hitting a brine pocket.

The Agency also notes that a sensitivity analysis of the PA parameters submitted in comments showed that the final results of the PA were not significantly affected by increasing the probability of hitting a brine pocket. Even when the Castile brine encounter probability was increased to 100 percent'the highest possible probability'there was no significant difference between the resulting mean CCDF and the mean CCDF in the CCA, which was based upon a brine encounter probability of 8 percent.

(Docket A–93–02, Item IV–G–43) The EPA believes that 100 percent is an unrealistically high probability. The results of this study confirm that examining such a probability in more detail would provide little added information about the performance of the WIPP.

Commenters stated that the range of the compressibility of rock surrounding a Castile brine pocket used in the CCA PA was too wide. They also believed that the brine pocket volume values used in the PA were too small. Castile rock compressibility is one of several parameters that affects the volume of brine pockets in the Castile. This is important because a drill bit would be more likely to hit a large brine pocket than a small one.

The EPA agrees with commenters that DOE's parameters for rock compressibility in the Castile and representation of brine pocket size/volume in the CCA PA were not consistent with available information. The EPA also believes that the parameters of the Castile brine pockets are highly uncertain. In order to capture this uncertainty, the Agency believed it would be appropriate to sample from a range of parameter values, rather than to use a single estimate, as DOE did in the CCA PA. In the PAVT, EPA required DOE to use a range of possible brine pocket volumes. (WPO#41887. See Docket A–93–02, Item V–B–1. See also Docket A–93–02, Item V–B–14.) Changing the rock compressibility of the Castile and the Castile porosity effectively modified the sampled brine pocket volume to include, more representatively, the possibility of larger brine pocket volumes like those expected based on data from the WIPP–12 borehole. The EPA found that modification of these parameters in the PAVT did not result in releases that exceed EPA's containment standards. Based on these results, EPA has concluded that the CCA PA was adequate for the purpose of demonstrating compliance.

e. Permeability of Borehole Plugs. In the PA modeling, DOE assumed that people drilling for resources would follow standard practice and plug the boreholes left behind. As long as these borehole plugs remain intact, the pressure of gases generated from the waste will build up inside the repository. The more permeable the borehole plugs are, the more gas will be capable of escaping from the repository. This would reduce pressure in the repository and therefore would reduce the potential for releases of radioactivity through spallings or direct brine release from a future drilling event. In the CCA PA, DOE modeled a situation in which borehole plugs between the Castile and Bell Canyon Formations would remain impermeable, and most borehole plugs closer to the earth's surface would disintegrate after two hundred years and would become more permeable.

One commenter stated that the CCA does not model the gas buildup which would result from impermeable plugs. The EPA does not agree that the CCA does not model gas buildup. In the CCA PA and PAVT, gas pressure is allowed to build up in the undisturbed repository. Pressure would be released if a borehole is drilled into the repository. In some of the PA simulations, pressure builds up again, although not to undisturbed levels, after it is released during a borehole intrusion. (Docket A–93–02, Item II–G–7, Figure 3.3.1) However, EPA was concerned about DOE's assumption that a relatively small number of borehole plugs would have low permeability. In the CCA PA, DOE assumed that 98 percent of the boreholes would be plugged with either two or three plugs, where the top plug would degrade and become more permeable, and 2 percent of the boreholes were plugged with a single low permeability plug. The EPA was concerned that an assumption that only 2 percent of the boreholes had low permeability might not be conservative. Therefore, EPA required that the permeability range for borehole plugs in the PAVT be broadened to include lower values (at which gas will not escape at a significant rate). This parameter change ensured that the PAVT would more frequently incorporate low borehole permeability and gas pressure buildup for more simulations than in the CCA PA, providing a more conservative result.

Other commenters expressed concern that the borehole plug permeabilities used in the CCA PA and the PAVT were too high, and might underestimate releases of radioactive material from the WIPP. One commenter pointed out that EPA retained the permeability used by DOE as a high value and then added a range of permeabilities extending to lower values after the Agency rejected DOE's initial value as too high.

In the PAVT, EPA required that two changes be made regarding the permeability of the borehole plugs. First, the Agency required that the permeability of the intact plugs during the first two hundred years of the plug lifetime be treated as a variable or probability distribution rather than as a fixed parameter, with a range bounded by values found in the literature. The range of values included borehole plug permeabilities both higher and lower than the constant permeability used in the CCA. In addition, EPA required DOE to use a range of permeability values to represent the permeability of borehole plugs that have started to degrade. The upper end of the new range was the same permeability as that used in the CCA, but the lower end of the range was reduced by three orders of magnitude and the median was reduced by an order of magnitude. The Agency believed that the upper end of the range chosen by DOE, based upon the permeability of silty sand, was reasonable because an abandoned borehole plug could degrade to this type of debris over long periods of time. Since the permeability of the actual borehole fill material at some time well into the future is unknowable, the Agency believes that the use of data based on natural materials is a reasonable approach. However, the Agency was not satisfied with the rationale for the lower end of the range originally chosen by DOE. The EPA believes that there is some probability that the concrete borehole plugs will not degrade as assumed in the CCA PA. Consequently, in the PAVT, EPA set the lower end of the range at a permeability value consistent with intact concrete.

One commenter stated that DOE had not sufficiently accounted for uncertainty in the lifetime of a borehole plug before it degrades. (A borehole plug with a longer lifetime would take longer to become more permeable and would allow more gas to build up in the repository.) This commenter stated that DOE should perform additional calculations to investigate how borehole plug lifetimes could influence repository conditions and compliance with the containment requirements.

The EPA also initially had concerns that uncertainty about the lifetime of borehole plugs had not been sufficiently represented in the CCA PA. In order to reflect this uncertainty, the Agency required DOE to use a probability distribution of borehole plug permeabilities for intact plugs during the first two hundred years of their lifetime in the PAVT, rather than a constant value. The sampled range of permeabilities includes values representing the permeability of both intact (newer) plugs and disintegrating (older) plugs. Therefore, EPA believes that this change made in the PAVT adequately addresses the effects of uncertainty in borehole plug life.

5. Other Performance Assessment Issues

The EPA used many methods to analyze specific scenarios or characteristics that DOE included in the PA. Commenters had concerns about

these methods, since the soundness of EPA's conclusions would depend upon the soundness of the methods used to reach those conclusions. Commenters disagreed with aspects of a few types of analyses in particular: sensitivity analysis, and the PA verification test (''PAVT''). Sensitivity analysis is a computer modeling technique that examines whether results of computer modeling will change significantly if a particular parameter value is changed. The EPA's approach to sensitivity analysis is documented in EPA's Technical Support Document for Section 194.23: Sensitivity Analysis. (Docket A–93–02, V–B–13) The PAVT was a set of 300 simulations of additional performance assessment calculations required by EPA. The PAVT implemented DOE's PA modeling using the same sampling methods as the CCA PA, but incorporating parameter values that were selected by EPA. Because some commenters disagreed with DOE's approach to the PA and EPA's approach to its analysis, they recommended that the Agency require DOE to repeat the PA using different scenarios or characteristics of the WIPP and its surroundings; these issues are discussed in preceding sections of this preamble related to the PA.

a. Sensitivity Analysis. Computer modelers perform a sensitivity analysis for a parameter in a model to find out if results of modeling are sensitive to (significantly affected by) that parameter. If the results of modeling are not sensitive to the parameter, then the exact value of the parameter is not important to the results of modeling.

The compliance criteria require DOE to document the development of input parameters for the PA under §§ 194.14(d), 194.23(c)(4), and 194.34(b). As part of its parameter development, DOE conducted a sensitivity analysis of parameters used in the CCA PA. (Docket A–93–02, Item II–G–1, Appendix SA, Volume XVI) The EPA reviewed this and supplementary information that documents DOE sensitivity analysis of the parameters sampled in the PA. (Docket A–93–02, Item II–G–7) As the Agency continued in its review of the CCA and supporting documentation, EPA found that there were three categories of parameters not fully documented in the CCA documents or in the Sandia National Laboratory WIPP Records Center. These categories were: (1) parameters lacking supporting evidence; (2) parameters having data records that support values other than those selected by DOE; and (3) parameters that are not explicitly supported by the relevant data or information. The EPA expressed concern about 58 parameters of the 465 parameters that EPA reviewed in detail. (Docket A–93–02, Item II–I–17) For these 58 parameters, EPA evaluated whether changing the parameter values would have a significant impact on the results of computer modeling, primarily through the use of a sensitivity analysis. (Docket A–93–02, Item V–B–13) (Distribution coefficients, or Kd values, were examined in separate calculations and analyses conducted by EPA. (Docket A–93–02, Items V–B–4, V–B–7, and V–B–8)) In its sensitivity analysis, the Agency examined changes in output from the PA models' major submodels that calculate releases and solubility of actinides: BRAGFLO [24], BRAGFLO—DBR [25], CUTTINGS—S [26], SOURCE TERM [27], and CCDFGF [28]. The EPA found that 27 of the 58 parameters have a significant impact on the results of modeling and that 31 of the 58 parameters did not have a significant impact. Some of these parameters (both significant and insignificant to results) were subsequently determined to be adequately supported based on additional documentation provided by DOE or Sandia National Laboratory. (Docket A–93–02, Items II–I–25 and II–I–27) For parameters that might have an impact on the results of the PA and were found not to be adequately supported, EPA required DOE to perform a Performance Assessment Verification Test with revisions to the significant parameters.

Commenters stated that they had concerns about the submodel approach used in EPA's sensitivity analysis. One commenter stated that EPA had not justified this approach, beyond stating that it was ''a more sensitive method'' than examining the final results of the complete PA model. Another commenter stated that EPA had not shown that the submodel approach for testing sensitivity related in any particular way to the compliance demonstration with the containment requirements. This commenter also stated that EPA had not explained or justified why the analysis used the average of changes in the outputs of the submodels, and that averaging output changes might disguise the significance of a parameter value change if some outputs change in direct response and others change inversely.

The DOE's PA model uses almost 1600 parameters. Even an important parameter may change the final results of the PA by a relatively small percentage because so many parameters contribute to the final results. The different submodels contain far fewer parameters than the complete PA. Therefore, a change in any one parameter will cause a greater percentage change in the output from a submodel than in the final result of the entire PA modeling. It is for this reason that EPA chose to use submodels. This approach provided intermediate results that would be a more sensitive measure of reactions of a model to changes in input parameters than the resultant complementary cumulative distribution functions (''CCDFs'') used to determine compliance.

The submodel outputs that EPA analyzed for sensitivity included the outputs most closely linked with radionuclide release and the ability of the WIPP to meet EPA's containment requirements. Examples of submodel outputs are gas pressure in the repository; cumulative brine release into the Culebra dolomite; cumulative cavings release and cumulative spallings release to the earth's surface; and brine flow into the anhydrite interbeds away from the repository. If a parameter changes the submodel outputs significantly, it may have a significant impact on the final results of the PA; however, if a parameter does not change the submodel output significantly, then it cannot change the final results of the PA significantly. In addition, EPA notes that the nature of the testing—which included three model runs at low, average, and high parameter values—means that it is not practical to develop mean CCDFs. It would be necessary to run all of the PA codes for each parameter change a hundred times to create a single CCDF. Therefore, except for those parameters included in the CCDFGF code, it would have been extremely cumbersome and time-consuming to perform a sensitivity analysis on the final results of the PA.

The Agency disagrees that averaging the submodel outputs disguises the significance of a parameter value change

[24] BRAGFLO predicts gas generation rates, brine and gas flow, and fracturing within the anhydrite marker beds in order to predict the future state of the repository.

[25] BRAGFLO—DBR calculates the amount of waste that dissolves in brine and travels in the contaminated brine as a direct brine release.

[26] CUTTINGS—S predicts the volume of solid waste released from the repository because of human intrusion drilling. This includes releases from cavings (material that falls from the walls as a drill bit drills through), cuttings (material that is actually cut by a drill bit during drilling, including any waste), and spallings (releases of solids pushed up and out by gas pressure in the repository).

[27] SOURCE TERM calculates actinide solubilities within the repository. The solubility values are then used in the NUTS and PANEL codes to calculate the actinide concentrations in brine released from the repository.

[28] CCDFGF calculates the complementary, cumulative distribution functions (''CCDFs'') used to show compliance with EPA's containment requirements.

if some outputs change in direct response and others change inversely. The EPA used absolute values [29] of the percent changes in computing the average percent changes. If two parameters had inverse relationships, those relationships would not cancel each other out because the final results would be an average of the absolute values. Averaging of the percent changes in the key submodel outputs was a significant step only for the parameters in the BRAGFLO code, where average changes to output were developed based on 11 model outputs. The EPA averaged the results of these eleven outputs in order to give equal weight to each in determining the sensitivity of BRAGFLO parameters.

Several members of the public commented that most of the sensitivity analyses varied only one parameter, rather than varying several parameters at a time, which potentially could show a significant combined result. The EPA varied single parameters in most of the analyses to identify those parameters that were most important to the PA results. One of the problems with varying multiple parameters simultaneously is that it is difficult to determine which parameter (or parameters) led to the observed result. Analysis of groups of parameters requires the Agency to find that the entire group of parameters is sensitive or not sensitive. In addition, if some parameters in a group increase releases while others reduce releases, a group analysis may not detect actual sensitivity for individual parameters. This is because the sensitivity analysis typically looks at low, high, and average values for all parameters in the group simultaneously. Without examining the sensitivity of individual parameters, the analyst would not always know enough about the parameters to be able to predict the most extreme situation with the greatest consequences of releases. The ability to determine the significance of individual parameters is important because this allows one to improve the model's predictive capability by focusing resources on those parameters that are most sensitive and have the greatest impact on results. It is true that EPA did not perform a separate sensitivity analysis run on groups of parameters that it determined were insensitive through individual parameter tests. The Agency believes that this is not necessary because the cumulative calculated sensitivity of these insensitive parameters is so small compared to the sensitive parameters. For example, the sum of the percent changes for all 33 insensitive parameters in BRAGFLO together was 47 percent (ranging from 0 percent to 10 percent each), while the percent change for the individual sensitive parameters ranged from 101 percent to 103,611 percent each. (Docket A–93–02, Item V–B–13, Table 3.1–1) Therefore, EPA concluded that those parameters it found insensitive through analysis of individual parameters will not have a significant effect on results of the PA and do not need to be re-analyzed in groups.

In addition to performing its own sensitivity analysis on parameters, the Agency required DOE to complete a comprehensive recalculation of the entire PA in the Performance Assessment Verification Test (''PAVT''). The purpose of the PAVT was to perform a complete evaluation of the synergistic effects of changing important and questionable parameters on the outcome of the PA calculations. The results of the PAVT indicate that the calculated releases would increase when changes are made to the sensitive parameters identified by the Agency, but the revised results of the PA with these more conservative parameter values would still be an order of magnitude less than the containment requirements of 40 CFR 191.13.

A commenter stated that EPA's sensitivity analysis did not vary conceptual models. The Agency agrees that this is true. The objective of EPA's sensitivity analysis was to determine the importance of selected individual parameters and groups of parameters to the PA results. The purpose of a sensitivity analysis on conceptual models would be to determine if model results would change significantly using different assumptions or using alternative conceptual models. The EPA examined the conceptual models and alternatives, under §§ 194.23(a)(1) and (a)(2). As a result of this review, EPA required DOE to conduct a sensitivity analysis on Culebra transmissivity and to examine the assumption that the Culebra acts as a fully confined system as it pertains to hydrogeochemistry of the Culebra. (Docket A–93–02, Item II–I–17) The EPA found that the sensitivity analysis results supported DOE's treatment of Culebra transmissivity and treatment of the Culebra as a confined system because of the minimal impact on results when changing assumptions. (Docket A–93–02, Item II–I–31) In addition, the Conceptual Models Peer Review Panel reviewed the conceptual models, as required by §§ 194.27 and 194.23(a)(3)(v). The Agency finds that it is not necessary to perform further sensitivity analysis on conceptual models because both the Agency's and the Panel's reviews accomplished the purpose of evaluating the impact of using different assumptions or using alternative conceptual models. These reviews found all the conceptual models except the spallings model to be adequate for use in the PA, and concluded that the spallings values used in the CCA PA are reasonable for use in the PA. (Docket A–93–02, Item V–B–2, CARD 23, Section 7)

The EPA determined that DOE adequately provided a detailed listing of the code input parameters; listed sampled input parameters; provided a description of parameters and the codes in which they are used; discussed parameters important to releases; described data collection procedures, sources of data, data reduction and analysis; and described code input parameter development, including an explanation of quality assurance activities. The DOE also documented the probability distribution of these parameters, as required by § 194.34(b). The Agency analyzed parameter values used in the CCA, including DOE's documentation of the values and EPA's sensitivity analysis. The EPA also required DOE to change these parameter values in the PAVT and found that the WIPP is still an order of magnitude below the containment requirements in § 191.13. (For further discussion of values for several specific parameters, refer to the preceding preamble discussion, ''Parameter values.'' See also Docket A–93–02, Item V–B–2, CARD 23, Sections 8 and 9.) Therefore, the Agency determines that the CCA complies with §§ 194.14(d), 194.23(c)(4) and 194.34(b).

b. Performance Assessment Verification Test. The containment requirements at § 191.13 indicate that a disposal system is to be tested through a PA that predicts the likelihood of occurrence of all significant processes and events that may disturb the disposal system and affect its performance, and that predicts the ability of the disposal system to contain radionuclides. Section 191.13 requires that a disposal system be designed so that there is reasonable expectation that cumulative releases (1) have a probability of less than one in ten (0.1) of exceeding the calculated release limits, and (2) have no more than a one in one thousand (0.001) chance of exceeding ten times the calculated release limits.

In the process of reviewing the CCA, the Agency found problems with some computer codes and with documentation of parameter

[29] Absolute value is the magnitude of a number, without a positive or negative sign. For example, positive three and negative three both have an absolute value of three.

development. Commenters also voiced concerns about some parameters used in the CCA PA during the public comment period for the Advanced Notice of Proposed Rulemaking. The Conceptual Models Peer Review Panel initially found that one of the conceptual models used for the PA, the spallings conceptual model, was not adequate. The DOE itself found some problems with some of its codes, particularly concerning code stability. Because of these many concerns, the Agency required DOE to perform additional calculations in a Performance Assessment Verification Test (''PAVT'') in order to verify that the cumulative impact of all changes to input parameters, conceptual models, and computer codes used in the PA was not significant enough to necessitate a new PA. (PAVT, Docket A–93–02, Items II–G–26 and II–G–28) The PAVT used modified parameter values and ranges, selected by EPA, in DOE's PA model. Many of these parameter values were suggested by public comments. The PAVT results showed releases that were higher, on average, than DOE's original calculations in the CCA. However, the PAVT results were still well within the EPA release limits stated in 40 CFR 191.13.

During the public comment period on EPA's proposed certification decision for the WIPP, commenters raised several issues about the PAVT and about the PA in general. Some commenters stated that the PAVT incorporated extremely conservative ranges for 24 critical parameters, and that the PA in general was done in a conservative fashion. Other commenters stated that specific parameter values needed to be changed in order to make more conservative assumptions. In particular, the public mentioned parameters for actinide solubility, distribution coefficients (K_d), the probability of hitting a brine pocket, and the permeability of borehole plugs. (These parameters are discussed above.) Commenters also said that DOE needed to investigate possible human intrusion scenarios more thoroughly. Among the human intrusion scenarios commenters identified for further study were air drilling, fluid injection, CO_2 injection, and potash mining. Members of the public commented that DOE had incorrectly assessed geology of the WIPP site and the future state of the waste to go into the WIPP. They stated concerns about the potential for dissolution, for the recharge of ground water in the Rustler Formation with contaminated brine, for earthquakes, and for water entering the Salado layer and the modeling of gas generation and flow of brine and gas in the repository. Many commenters stated that the Agency should require DOE to run another PA using different assumptions about these topics.

The EPA initially had many of the same concerns as those mentioned by the public, particularly concerning parameters and human intrusion scenarios. As discussed in the above preamble sections on the PA, EPA questioned the values and distributions of many values of the parameters. The Agency even required DOE to revise some parameter values for the PAVT. The EPA also asked DOE to investigate fluid injection further. After receiving public comments, the Agency did independent work on the possible impacts of fluid injection and air drilling, as well as analysis of the likelihood of air drilling and CO_2 injection in the Delaware Basin. (Docket A–93–02, Item V–C–1, Sections 5 and 8) After reviewing the information available, the Agency concludes that DOE's PA incorporates the appropriate human intrusion scenarios and geologic and disposal system characteristics. The PAVT and additional analyses of intrusion scenarios by both DOE and EPA have adequately addressed concerns raised by commenters.

Based upon results of the CCA PA (as confirmed by the PAVT), EPA finds that the WIPP complies with the containment requirements by a comfortable margin, even when using more conservative parameter values that were changed significantly from those in the CCA PA. This modeling shows that the WIPP will contain waste safely under realistic scenarios, and even in many extreme cases. The EPA found that the scenarios and parameter changes suggested by commenters either had already been adequately addressed by DOE, were inappropriate for the Delaware Basin, would impact neither releases nor the results of the PA sufficiently to justify further analysis, or were not realistic. Therefore, the Agency concludes that no further PA is required to determine if the WIPP is safe or to make its certification decision.

Many comments were based on a philosophy that DOE should use an unrealistically conservative approach to the PA. For example, a commenter stated that air drilling should be incorporated in the PA at the most conservative rate predicted by DOE in the near future for the entire U.S., even if air drilling is not currently a standard practice in the Delaware Basin. Another commenter suggested using the most conservative value from the PAVT for the probability of hitting a brine pocket, even after the commenter's own sensitivity analysis showed that this parameter did not have a significant impact on WIPP compliance at still higher values. A different commenter stated that DOE and EPA should analyze actinide solubilities as if DOE were not adding MgO to reduce those solubilities, even though the Department has committed to adding MgO. The Agency found all of these suggestions to be inappropriate, either because they were unrealistic or because they required additional analysis when the change had already been demonstrated to have little or no impact on the PA results. The Agency believes that the PA should be a reasonable assessment with some conservative assumptions built in, rather than an assessment comprised entirely of unrealistic assumptions and worst-case scenarios. The disposal regulations at 40 CFR Part 191 require the PA to show there is a reasonable expectation that cumulative releases will meet the containment requirements. This philosophy is reflected elsewhere in EPA's requirements, such as in the requirement for the mean CCDF to comply with the containment requirement, rather than for every CCDF to comply. If unrealistically conservative assumptions were used in the PA, then results of the PA would not reflect reality and would not be a reasonable measure of the WIPP's capability to contain waste.

6. Conclusions

Section 194.23 sets forth specific requirements for the models and computer codes used to calculate the results of performance assessments (''PA'') and compliance assessments. In order for these calculations to be reliable, DOE must properly design and implement the computer codes used in the PA. To that end, § 194.23 requires DOE to provide documentation and descriptions of the PA models, progressing from conceptual models through development to mathematical and numerical models, and finally to their implementation in computer codes.

The CCA and supporting documents contain a complete and accurate description of each of the conceptual models used and the scenario construction methods used. The scenario construction descriptions include sufficient detail to understand the basis for selecting some scenarios and rejecting others and are adequate for use in the CCA PA calculations. Based on information provided in the CCA, together with supplementary information provided by DOE in response to specific EPA requests, EPA

concluded that DOE provided an adequate and complete description of alternative conceptual models seriously considered but not used in the CCA. The information on peer review in the CCA and in supplementary information demonstrates that all conceptual models have undergone peer review consistent with the requirements of § 194.27. Related issues discussed above in today's preamble include spallings, fluid injection, air drilling, CO_2 injection, and the gas generation conceptual model. The Agency determines that the DOE has demonstrated compliance with the requirements of §§ 194.23 (a)(1), (a)(2) and (a)(3)(v).

The Conceptual Models Peer Review Panel found all the conceptual models to reasonably represent possible future states of the repository and to be adequate for use in the PA except the spallings conceptual model. However, as discussed above in this preamble, additional modeling conducted by DOE, and additional data presented by DOE, provide a substantial basis for EPA to conclude that the results of the spallings model are adequate and useful for the purpose for which conceptual models are intended, i.e., to aid in the determination of whether the WIPP will comply with the disposal regulations during the regulatory time period. Public comments received on this issue are discussed above in the preamble section on spallings. Because the spallings model produces reasonable and conservative results, and because the Peer Review Panel found that all other conceptual models reasonably represent possible future states of the repository, EPA finds DOE in compliance with § 194.23(a)(3)(i).

Based on information contained in the CCA and supporting documentation for each code, EPA concludes that the mathematical models used to describe the conceptual models incorporate equations and boundary conditions which reasonably represent the mathematical formulation of the conceptual models. Some of the specific issues related to this criterion are in the section of the preamble entitled, ''Two-dimensional modeling of brine and gas flow.'' Based on the CCA and supplementary information provided by DOE, the Agency determines that DOE provided sufficient technical information to document the numerical models used in the CCA. Based on verification testing, EPA also determined that the computer codes accurately implement the numerical models and that the computer codes are free of coding errors and produce stable solutions. The DOE resolved coding error problems and stability problems identified in numerical models by completing code revisions and supplementary testing requested by the Agency. Therefore, the Agency concludes that DOE has demonstrated compliance with §§ 194.23(a)(3) (ii), (iii) and (iv).

Based on EPA audits and CCA review, EPA found that code documentation meets the quality assurance requirements of ASME NQA–2a–1990 addenda, part 2.7, to ASME NQA–2–1989 edition. Thus, the Agency finds that DOE complies with § 194.23(b).

Based on DOE's documentation for each code and supplementary information requested by EPA, the Agency found that DOE provided adequate documentation so that individuals knowledgeable in the subject matter have sufficient information to judge whether the codes are formulated on a sound theoretical foundation, and whether the code has been used properly in the PA. The EPA found that the CCA and supplementary information included an adequate description of each model used in the calculations; a description of limits of applicability of each model; detailed instructions for executing the computer codes; hardware and software requirements to run these codes; input and output formats with explanations of each input and output variable and parameter; listings of input and output files from sample computer runs; and reports of code verification, bench marking, validation, and QA procedures. The EPA also found that DOE adequately provided a detailed description of the structure of the computer codes and supplied a complete listing of the computer source code in supplementary documentation to the CCA. The documentation of computer codes describes the structure of computer codes with sufficient detail to allow EPA to understand how software subroutines are linked. The code structure documentation shows how the codes operate to provide accurate solutions of the conceptual models. The EPA finds that DOE did not use any software requiring licenses. Therefore, EPA determines that DOE has complied with the requirements of §§ 194.23(c) (1),(2),(3) and (5).

The EPA determined that DOE, after additional work and improvement of records in the SNL Record Center, adequately provided a detailed listing of the code input parameters; listed sampled input parameters; provided a description of parameters and the codes in which they are used; discussed parameters important to releases; described data collection procedures, sources of data, data reduction and analysis; and described code input parameter development, including an explanation of QA activities. The EPA determined that the CCA and supplementary information adequately discussed how the effects of parameter correlation are incorporated, explained the mathematical functions that describe these relationships, and described the potential impacts on the sampling of uncertain parameters. The CCA also adequately documented the effects of parameter correlation for both conceptual models and the formulation of computer codes, and appropriately incorporated these correlations in the PA. Public comments regarding parameters are discussed above in the preamble in the section titled ''Parameter Values.'' The Agency finds that DOE has demonstrated compliance with the requirements of § 194.23(c) (4) and (6).

Because DOE provided EPA with ready access to the necessary tools to permit EPA to perform independent simulations using computer software and hardware employed in the CCA, EPA finds DOE in compliance with § 194.23(d).

Section 194.31 of the compliance criteria requires DOE to calculate release limits for radionuclides in the WIPP in accordance with 40 CFR Part 191, Appendix A. Release limits are to be calculated using the activity, in curies, from radioactive waste that will exist in the WIPP at the time of disposal. The CCA PA and the PAVT were calculated using release limits calculated according to Appendix A of 40 CFR Part 191 using DOE's projected inventory of waste radioactivity at the time of disposal. Therefore, EPA concludes that DOE has met the requirements of § 194.31.

Section 194.32 requires DOE to consider, in the PA, both natural and man-made processes and events which can have an effect on the disposal system. The EPA expected DOE to consider all features, events and processes (''FEPs'') that may have an effect on the disposal system, including both natural and human-initiated processes. The Department is not required to consider FEPs that have less than one change in 10,000 of occurring over 10,000 years.

The EPA concluded that the initial FEP list assembled by DOE was sufficiently comprehensive, in accordance with §§ 194.32(a) and (e)(1). Based on quantitative and qualitative assessments provided in the CCA and supporting documents, EPA concluded that DOE appropriately rejected those FEPs that exhibit low probability of occurrence during the regulatory period,

in accordance with § 194.32(d). In addition, EPA found DOE's inclusion of various scenarios in the PA to be reasonable and justified, and meets the requirement of § 194.32(e)(2). The DOE provided documentation and justification for eliminating those FEPs that were not included in the PA. In some cases (e.g., fluid injection, CO_2 injection, potash mining and dissolution), the CCA did not initially provide adequate justification or convincing arguments to eliminate FEPs from consideration in the PA. However, DOE provided supplemental information and analyses, which EPA determined was sufficient to demonstrate compliance with § 194.32(e)(3).

The EPA verified, through review of the CCA and supporting documents, that DOE included, in the PA, appropriate changes in the hydraulic conductivity values for the areas affected by mining. The area considered to be mined for potash in the controlled area is consistent with the requirement of § 194.32(b), that the mined area be based on mineral deposits of those resources currently extracted from the Delaware Basin. Thus, EPA finds that DOE complies with § 194.32(b).

In accordance with § 194.32(c), DOE considered the possibility of fluid injection, identified oil and gas exploration and exploitation, and water and potash exploration as the only near future human-initiated activities that need to be considered in the PA. The EPA's review of the CCA and supporting documents referenced in the CCA with respect to § 194.32(c), indicated that DOE adequately analyzed the possible effects of current and future potential activities on the disposal system. In response to concerns expressed by EPA and stakeholders, DOE conducted additional analyses and submitted follow-up information. In addition, EPA has performed its own analysis of fluid injection. Public comments concerning human intrusion FEPs are discussed in the preamble sections above titled, ''Fluid injection,'' ''Potash mining,'' and ''CO_2 injection.'' The collected information provided by DOE was adequate. Therefore, EPA concludes that DOE's analysis meets the requirements of § 194.32(c).

Section 194.33 requires DOE to make specific assumptions about future deep and shallow drilling in the Delaware Basin. The EPA found that the documentation in the CCA demonstrated that DOE thoroughly considered deep and shallow drilling activities and rates within the Delaware Basin in accordance with § 194.33 (a) and (b). The EPA found that DOE appropriately screened out shallow drilling from consideration in the PA. The EPA also found that DOE appropriately incorporated the assumptions and calculations for drilling into the PA as stipulated in §§ 194.33 (b) and (c). In accordance with § 194.33(c), DOE evaluated the consequences of drilling events assuming that drilling practices and technology remain consistent with practices in the Delaware Basin at the time the certification application was prepared. Public comments concerning this issue are discussed in the preamble section above titled, ''Air drilling.'' The EPA determined that the PA models did not incorporate the effects of techniques used for resource recovery, as allowed by § 194.33(d). The EPA further concludes that the drilling information in the CCA is consistent with available data. Therefore, the Agency finds DOE in compliance with the requirements of § 194.33.

Section 194.34 of the compliance criteria provides specific requirements for presenting the results of the PA for the WIPP. Section 194.34 requires DOE to use complementary cumulative distribution functions (''CCDFs'') to express the results of the PA. The Department also must document the development of probability distributions, and the computational techniques used for drawing random samples from these probability distributions, for any uncertain parameters used in the PA. The PA must include a statistically sufficient number of CCDFs. The CCA must display the full range of CCDFs generated. Finally, the CCA must demonstrate that the mean of the population of CCDFs meets the containment requirements of § 191.13 with at least a 95 percent level of statistical confidence.

The CCA presented the results of the PA in the form of CCDFs. The PA used Latin Hypercube Sampling to sample values randomly from probability distributions of uncertain parameters. Parameter values and their distributions were documented in the CCA and in Sandia National Laboratory's Records Center. The CCA presented the full range of the 300 CCDFs generated in the PA, as well as mean CCDF curves. The CCDFs showed that the mean CCDF curve met the containment requirements of § 191.13. Less than one percent of CCDF curves in the CCA PA exceeded one times the release limit, and no CCDF curves exceeded ten times the release limit. Based on these results, DOE concluded that the WIPP met EPA's requirements.

The EPA also examined the results of the PAVT in light of the requirements of § 194.34. The PAVT presented the results of the PA in CCDFs, and presented the complement of 300 CCDFs. DOE's documentation and EPA's separate analysis demonstrated that 300 CCDFs are sufficient, statistically speaking. The PAVT used the same random sampling technique of Latin Hypercube Sampling that the PA model used for the CCA PA. The DOE used parameter values assigned by EPA, as well as other parameter values and their distributions documented earlier for the CCA PA. The mean CCDF curve for the PAVT showed that releases were roughly three times those calculated in the CCA PA, but releases still met the containment requirements of § 191.13 by more than an order of magnitude at the required statistical confidence level. Less than ten percent of CCDF curves in the PAVT exceeded one times the release limit, and no CCDF curves exceeded ten times the release limit. The PAVT confirmed that the CCA PA was adequate for determining compliance. Therefore, EPA concludes that the CCA PA meets EPA's containment requirements and that DOE complies with the requirements of § 194.34.

C. General Requirements

1. Quality Assurance (§ 194.22)

Section 194.22 establishes quality assurance (''QA'') requirements for the WIPP. QA is a process for enhancing the reliability of technical data and analyses underlying DOE's CCA. Section 194.22 requires DOE to (a) establish and execute a QA program for all items and activities important to the containment of waste in the disposal system, (b) qualify data that were collected prior to implementation of the required QA program, (c) assess data for their quality characteristics, to the extent practicable, (d) demonstrate how data are qualified for their use, and (e) allow verification of the above measures through EPA inspections/audits. The DOE's QA program must adhere to specific Nuclear Quality Assurance (''NQA'') standards issued by the American Society of Mechanical Engineers (''ASME'').

The EPA assessed compliance with the QA requirements in two ways. First, EPA reviewed general QA information submitted by DOE in the CCA and reference documents. The EPA's second level of review consisted of visits to the WIPP site, as well as WIPP-related facilities, to perform independent audits and inspections to verify DOE's compliance with the QA requirements. The proper establishment and execution of a QA program is verified strictly by way of inspections and audits.

Therefore, EPA conducted audits to verify the proper execution of the QA program at DOE's Carlsbad Area Office (''CAO''), Sandia National Laboratories (''SNL''), and Westinghouse's Waste Isolation Division (''WID'') at the WIPP facility. The EPA auditors observed WIPP QA activities, interviewed WIPP personnel, and reviewed voluminous records required by the NQA standards, but not required to be submitted as part of the CCA.

Section 194.22(a)(1) requires DOE to adhere to a QA program that implements the requirements of the following: (1) ASME NQA–1–1989 edition; (2) ASME NQA–2a–1990 addenda, part 2.7, to ASME NQA–2–1989 edition; and (3) ASME NQA–3–1989 edition (excluding Section 2.1 (b) and (c), and Section 17.1). The EPA verified that DOE established these requirements in the Quality Assurance Program Document (''QAPD'') contained in the CCA. The QAPD is the documented QA program plan for the WIPP project, as a whole, to comply with the NQA requirements. The QAPD is implemented by DOE's CAO, which has the authority to audit all other organizations associated with waste disposal at the WIPP (such as WID, SNL and waste generator sites) to ensure that their lower-tier QA programs establish and implement the applicable requirements of the QAPD. The EPA audited DOE's QA program at CAO and determined that DOE properly adhered to a QA program that implements the NQA standards. Therefore, EPA finds DOE in compliance with § 194.22(a)(1).

Section 194.22(a)(2) requires DOE to include information in the CCA that demonstrates that the requisite QA program has been ''established and executed'' for a number of specific activities. Section 194.22(a)(2)(i) requires DOE to include information which demonstrates that the QA program has been established and executed for waste characterization activities and assumptions. In the CCA, DOE provided the QAPD, which is DOE's central QA document program plan that then must be incorporated into site-specific QA program plans. The DOE generator sites will prepare site certification Quality Assurance Plans (''QAPs'') that, together with Quality Assurance Project Plans (''QAPjPs''), will constitute site-specific QA program plans.[30] The EPA finds that the QAPD, as it applies to waste characterization, is in conformance with the NQA requirements and that DOE's QA organization can properly perform audits to internally check the QA programs of the waste generator sites. However, as discussed below, the Agency will verify the establishment and execution of site-specific QA programs.

The compliance criteria require that QA programs be established and executed specifically with respect to the use of process knowledge and a system of controls for waste characterization. (§§ 194.22(a)(2)(i) and 194.24(c)(3) through (5)) To accomplish this, waste generator site-specific QA programs and plans must be individually examined and approved by EPA to ensure adequate QA programs are in place before EPA allows individual waste generator sites to transport waste for disposal at the WIPP. Since waste characterization activities have not begun for most TRU waste generator sites and storage facilities, EPA has not yet evaluated the compliance of many site-specific QA plans and programs.

To date, one WIPP waste generator site, Los Alamos National Laboratory (''LANL''), has been approved by EPA to have established an adequate QA program plan and to have properly executed its QA program in accordance with the plan. Prior to approval of LANL's site-specific QA program, EPA conducted an audit of DOE's overall WIPP QA program and approved its capability to perform audits in accordance with the requirements of NQA–1. The EPA then inspected three DOE audits of LANL's QA program. Based on the results of the inspections, the EPA inspectors determined that the QA program had been properly executed at LANL.[31] Therefore, EPA finds that the requirements of § 194.22(a)(2)(i) have been met for waste characterization activities at LANL.

With respect to other waste generator sites, EPA will verify compliance with § 194.22(a)(2)(i) conditioned on separate, subsequent approvals from EPA that site-specific QA programs for waste characterization activities and assumptions have been established and executed in accordance with applicable NQA requirements at each waste generator site.

As waste generator facilities establish QA programs after LANL, EPA will assess their compliance with NQA requirements. The approval process for site-specific QA programs includes a **Federal Register** notice, public comment period, and on-site EPA audits or inspections to evaluate implementation. For further information on EPA's approval process, see Condition 2 and § 194.8. For further discussion of waste characterization programs and approval of the processes used to characterize waste streams from generator sites, see the discussion of § 194.24 below in this preamble.

Section 194.22(a)(2)(ii) requires DOE to include information which demonstrates that the QA program has been established and executed for environmental monitoring, monitoring of performance of the disposal system and sampling and analysis activities. Westinghouse's WID was responsible for establishing this requirement under the WID QAPD described in the CCA. The EPA conducted an audit of the WID and found that the requisite QA program had been established and executed for environmental monitoring, sampling and analysis activities. The EPA also finds that Chapter 5 of the CCA and referenced documents contain a satisfactory description of compliance with this section. Therefore, EPA finds the WIPP in compliance with § 194.22(a)(2)(ii).

Section 194.22(a)(2)(iii) requires DOE to include information which demonstrates that the QA program has been established and executed for field measurements of geologic factors, ground water, meteorologic, and topographic characteristics. WID is responsible for conducting field measurements of geologic factors, ground water, meteorologic and topographic characteristics. The EPA conducted an audit of the WID QA program and found it to be properly established and executed in accordance with the applicable NQA requirements. The EPA also finds that Chapter 5 of the CCA and referenced documents contain a satisfactory description of compliance with this section. Therefore, EPA finds DOE in compliance with § 194.22(a)(2)(iii).

[30] NQA–1 (Element II–2) requires that organizations responsible for activities affecting quality (in the case of the WIPP, affecting the containment of waste in the disposal system) must have documented QA programs in accordance with the applicable NQA requirements. The documentation for such programs is commonly referred to as a ''quality assurance program plan,'' or ''QAPP.'' For WIPP waste generator sites, the role of the QAPP is fulfilled by documents with other titles, such as the QAP and the QAPjP. The ''TRU QAPP'' referenced by DOE in the CCA is not a QAPP as described by the NQA standards; rather, it is a technical document that describes the quality control requirements and performance standards for characterization of TRU waste coming to the WIPP facility. The TRU QAPP is addressed more specifically in the preamble discussion of § 194.24, Waste Characterization.

[31] The terms ''audits'' and ''inspections'' are not synonymous. At waste generator sites, EPA may either conduct its own audits or inspect audits conducted by DOE. (The DOE–CAO conducts audits to evaluate waste characterization programs at waste generator sites.) The difference is that for an inspection, EPA's role is to review DOE's QA checks, and not actually conduct all of the checks itself.

Section 194.22(a)(2)(iv) requires DOE to include information to demonstrate that the QA program has been established and executed for computations, computer codes, models and methods used to demonstrate compliance with the disposal regulations. SNL and WID are responsible for computations and software items. The EPA reviewed information in the CCA and conducted audits of both SNL and WID QA programs. The Agency found that computer codes were documented in a manner that complies with the applicable NQA requirements, and that software QA procedures were implemented in accordance with ASME NQA–2a, part 2.7. The EPA also finds that Chapter 5 of the CCA and referenced documents contain a satisfactory description of compliance with this section. The EPA therefore finds that DOE complies with § 194.22(a)(2)(iv).

Section 194.22(a)(2)(v) requires DOE to include information which demonstrates that the QA program has been established and executed for procedures for implementation of expert judgment elicitation. CAO and CAO's Technical Assistance Contractor were responsible for developing the procedures for the expert elicitation that was conducted (after the publication of the CCA). The EPA found that the requirements of this regulation were met by the development and implementation of CAO Team Procedure 10.6 (Revision 0), CAO Team Plan for Expert Panel Elicitation (Revision 2), and CAO Technical Assistance Contractor Experimental Programs Desktop Instruction No.1 (Revision 1). The EPA finds DOE in compliance with § 194.22(a)(2)(v). The process of expert judgment elicitation is discussed in further detail in the section of this preamble related to § 194.26 of the compliance criteria.

Section 194.22(a)(2)(vi) requires DOE to include information which demonstrates that the QA program has been established and executed for design of the disposal system and actions taken to ensure compliance with the design specifications. Most of the WIPP's design was conducted before the EPA required a QA program. Design work for the repository sealing system was conducted under the SNL QA program. The QA procedures established and implemented by SNL and WID address the requirements of the NQA standards; design verification was accomplished by a combination of NQA–1 Supplement 3S–1 methods. The EPA audits of SNL and WID showed that the QA programs are properly established and executed. The EPA also finds that Chapter 5 of the CCA and referenced documents contain an adequate description of compliance with this section. Therefore, EPA finds DOE in compliance with § 194.22(a)(2)(vi).

Section 194.22(a)(2)(vii) requires DOE to include information which demonstrates that the QA program has been established and executed for the collection of data and information used to support compliance applications. SNL was responsible for this activity. SNL adequately addressed these requirements by implementing numerous QA procedures to ensure the quality of data and information collected in support of the WIPP. The EPA's audit of SNL concluded that the QA program is properly established and executed. Therefore, EPA finds DOE in compliance with § 194.22(a)(2)(vii).

Section 194.22(a)(2)(viii) requires DOE to include information which demonstrates that the QA program has been established for any other item or activity not listed above that is important to the containment of waste in the disposal system. The DOE has not identified any other item or activity important to waste isolation in the disposal system that require QA controls to be applied as described in the CAO QAPD. To date, the EPA has also not identified any other items or activities which require controls. The EPA audits determined that the QA organizations of CAO, WID, and SNL have sufficient authority, access to work areas, and organizational freedom to identify other items and activities affecting the quality of waste isolation. Therefore, EPA finds DOE in compliance with § 194.22(a)(2)(viii).

Section 194.22(b) requires DOE to include information which demonstrates that data and information collected prior to the implementation of the QA program required by § 194.22(a)(1) have been qualified in accordance with an alternate methodology, approved by the Administrator or the Administrator's authorized representative, that employs one or more of the following methods: peer review; corroborating data; confirmatory testing; or a QA program that is equivalent in effect to § 194.22(a)(1) ASME documents.

The EPA conducted two audits that traced new and existing data to their qualifying sources. The two audits found that equivalent QA programs and peer review had been properly applied to qualify existing data used in the PA. The EPA also concluded that the use of existing data from peer-reviewed technical journals was appropriate, since the level of such reviews was equivalent to NUREG–1297 peer reviews conducted by DOE. Therefore, EPA finds DOE in compliance with § 194.22(b). Furthermore, the Agency is approving the use of any one of the following three methods for qualification of existing data: (1) peer review, conducted in a manner that is compatible with NUREG–1297; (2) a QA program that is equivalent in effect to ASME NQA–1–1989 edition, ASME NQA–2a–1990 addenda, part 2.7, to ASME NQA–2–1989 edition, and ASME NQA–3–1989 edition (excluding Section 2.1(b) and (c) and Section 17.1); or (3) use of data from a peer-reviewed technical journal.

Sections 194.22(c)(1) through (5) require DOE to provide information which describes how all data used to support the compliance application have been assessed, to the extent practicable, for specific data quality characteristics (''DQCs''). In the CCA, DOE stated that in most cases it was not practicable to document DQCs for performance assessments, but asserted that the intent of DQCs was fulfilled by other QA programs and quality control measures.

The Agency agrees with DOE that it is not appropriate to apply DQCs retroactively to all of the parameters and existing data used in the PA, but believes that they can and should be applied to measured data (i.e., field monitoring and laboratory experiments) as they are developed and used. The EPA found that, because DOE deemed it impractical to apply DQCs in some instances, the CCA and supplementary information did not systematically or adequately address DOE's consideration of DQCs for measured data related to the PA. Therefore, EPA reviewed parameter records to determine whether DOE could in fact show that various data quality characteristics had been considered for measured data. The Agency reviewed additional materials, primarily data record packages at the SNL records center, to independently determine whether DQCs had been assessed for data used in the PA. The EPA found that for recent data (five to ten years old), DOE's experimental program plans in the data record packages generally addressed data quality in measured data, including accuracy, precision, representativeness, completeness, and comparability during measurement and collection.

For older existing data, EPA found less documentation of assessment of DQCs. However, laboratory notebooks'which provide first-hand documentation of measurement procedures and results'supporting data

record packages provided some information related to the quality of measurements (e.g., how well DOE's measured values compared with values found in peer-reviewed publications). Many existing data were also subject to peer review in order to qualify them for use in the CCA; EPA concluded that the peer review panels considered the use of DQCs in determining that such data were adequate. The EPA also agreed with DOE's argument in supplementary information that for most of the existing data, collection under a program equivalent to the NQA standards in § 194.22(a)(1) provided adequate evidence that the quality of data had been evaluated and controlled. Finally, EPA concurred with DOE's conclusion that the uncertainties in measured data reflected in DQCs have a small effect on compliance certainty, compared to other uncertainties in the PA (such as extrapolation of processes over 10,000 years).

The EPA found that data quality received considerable attention from peer reviewers and Independent Review Teams assembled by DOE, and was subject to NQA requirements as specified in the Quality Assurance Program Document (''QAPD''). Section § 194.22(a) requires DOE to implement NQA–3–1989 in its quality assurance program. NQA–3–1989 states, ''Planning shall establish provisions for data quality evaluation to assure data generated are valid, comparable, complete, representative, and of known precision and accuracy.'' This requirement was satisfactorily incorporated in the QAPD, which is the quality assurance ''master'' document that establishes QA requirements for all activities overseen by the DOE Carlsbad Area Office. The EPA determined by means of audits that DOE adequately implemented the requirements of the QAPD, and also determined that DOE adequately qualified existing data in accordance with Section § 194.22(b). (See Docket A–93–02, Item V–B–2, CARD 22, Sections 22.A.6 and 22.J.5.) Therefore, EPA finds that DOE's data qualification was sufficiently rigorous to account for the DQCs identified in the WIPP compliance criteria.

Based on its review of data record packages and the QAPD, the Agency finds that DOE has assessed DQCs, to the extent practicable, for data used in the CCA. The EPA thus finds that DOE complies with § 194.22(c). The Agency expects that DOE will assess DQCs for future waste characterization and monitoring activities.

Section 194.22(d) requires DOE to provide information which describes how all data are qualified for use. SNL generated a table providing information of how all data in the PA were qualified. The EPA audited the existing QA programs and determined that the data were qualified for use by independent and qualified personnel in accordance with NQA requirements. On this basis, EPA finds DOE in compliance with § 194.22(d).

Section 194.22(e) allows EPA to verify execution of QA programs through inspections, record reviews, and other measures. As discussed above, EPA has conducted numerous audits of DOE facilities, and intends to conduct future inspections of waste generator site-specific QA plans under its authority. The Agency also intends to conduct inspections or audits to confirmed DOE's continued adherence to QA requirements for which EPA is certifying compliance.

In summary, EPA finds DOE in compliance with the requirements of § 194.22 subject to the condition that EPA separately approve the establishment and execution of site-specific QA programs for waste characterization activities at waste generator sites. (See Condition 2 of the proposed Appendix A to 40 CFR Part 194.)

The EPA received many public comments on § 194.22, but the most significant issue identified by commenters was the lack of objective evidence in the CCA to justify meeting the requirements at § 194.22(a)(2). The comments posed the fundamental question of whether or not EPA could certify, based solely on information provided by DOE in the CCA, that DOE established and executed a QA program for the eight areas considered important to the containment of waste in the disposal system. In response to such concerns, EPA believes it is necessary to explain and clarify the verification of these QA requirements.

The CCA does not alone provide all the documentation to verify compliance with the requirement of § 194.22(a)(2). Section § 194.22(e) requires EPA to verify that DOE has established and executed a QA program for the areas indicated in § 194.22(a)(2). The ''objective evidence'' for determining whether or not a QA program has been established and executed exists at the WIPP-related facilities and generator sites, and is gathered in the field audits and inspections. The function of the audits and inspections is to gather objective evidence to determine compliance of the QA programs with the applicable NQA standards.

Several WIPP organizations are responsible for establishing and executing the activities and items listed in the eight areas of § 194.22(a)(2). The CCA states that DOE provides the overall QA program requirements for WIPP via the CAO QAPD. The CAO QAPD requirements are further supported and amplified by the next tier of QA program documents, which includes the SNL quality assurance procedures (SNL QAPs), the WID Quality Assurance Program Description, and the individual site quality assurance program plans (e.g., QAPjPs). More documentation is found in DOE, WID and SNL implementing procedures and QA records. For example, ''Corrective Action Reports'' and ''Audit Reports'' provide objective evidence of implementation of certain NQA elements. Therefore, EPA finds that sufficient information for compliance with § 194.22(a)(2)(ii)–(viii), and for QA program implementation for waste characterization activities at LANL (§ 194.22(a)(2)(i)) was provided in the CCA and supporting documents to the extent practical.

The EPA verified that QA programs were established in accordance with § 194.22 through the CAO QAPD and supporting documents. The EPA expected to find objective evidence of compliance or noncompliance with the QA requirements within the QA records and activities of the WIPP organizations, including CAO, SNL, and WID. In accordance with § 194.22(e), the Agency conducted audits of these WIPP organizations to verify the appropriate execution of QA programs. (Docket A–93–02; Items II–A–43, II–A–44, II–A–45, II–A–46, II–A–47, II–A–48, and II–A–49) Documentation of evidence of audits that verified the execution of the QA programs is found in EPA's audit reports. The EPA's audits of CAO, SNL, and WID covered all aspects of the programs including, but not limited to: the adoption of the requirements of § 194.22 through the CAO QAPD, quality assurance procedures (''QAPs''), reports from previous audits, surveillance reports, and corrective action reports (''CARs''). The audits assessed the adequacy and implementation of the SNL and WID quality assurance programs in accordance with the requirements of § 194.22(a)(1). For example, for § 194.22(a)(2)(iv), the ''computations, computer codes, models and methods used to demonstrate compliance with the disposal regulations,'' EPA conducted audits of the SNL and WID quality assurance programs for computations, computer codes, methods and models. For all of the other areas in § 194.22(a)(2), CARD 22 (Section 22.B) should be consulted for information and

citations to audit reports. (Docket A–93–02, Item V–B–2)

In summary, EPA certifies compliance with the eight areas in § 194.22(a)(2) through inspections and audits. Most of the evidence demonstrating compliance is found at the WIPP-related facilities and generator sites. Such evidence was unreasonable to include in the CCA due to the voluminous nature of the information.

2. Waste Characterization (§ 194.24)

Section 194.24, waste characterization, generally requires DOE to identify, quantify, and track the chemical, radiological and physical components of the waste destined for disposal at the WIPP that can influence disposal system performance.

Section 194.24(a) requires DOE to describe the chemical, radiological and physical composition of all existing and to-be-generated waste, including a list of waste components and their approximate quantities in the waste. The DOE provided the required information on existing waste (35% of the total WIPP inventory) by combining similar waste streams into waste stream profiles. The waste stream profiles contain information on the waste material parameters, or components, that could affect repository performance. For to-be-generated waste (65% of the total WIPP inventory), DOE extrapolated information from the existing waste streams to determine the future amount of waste. The EPA reviewed this information and determined that DOE's waste stream profiles contained the appropriate specific information on the components and their approximate quantities in the waste. Therefore, EPA finds DOE in compliance with § 194.24(a).

Section 194.24(b) requires DOE to analyze waste characteristics and waste components for their impact on disposal system performance. Waste components affect waste characteristics and are integral to disposal system performance. The DOE identified waste-related elements pertinent to the WIPP as part of its screening for features, events, and processes. The features, events, and processes used in the performance assessment (''PA'') served as the basis from which characteristics and associated components were identified and further analyzed. (For further information on features, events, and processes, see Docket A–93–02, Item V–B–2, CARD 32; and the above preamble sections related to the PA.)

The DOE concluded that six characteristics were expected to have a significant effect on disposal system performance and were used in the PA as parameters or in conceptual models: solubility, formation of colloidal suspensions containing radionuclides, gas generation, shear strength of waste, radioactivity of specific isotopes, and transuranic (''TRU'') activity at disposal. The DOE identified eight waste components influencing the six significant waste characteristics: ferrous metals, cellulose, radionuclide identification, radioactivity of isotopes, TRU activity of waste, solid waste components, sulfates, and nitrates. Finally, DOE provided a list of waste characteristics and components assessed, but determined not to be significant for various reasons such as negligible impact on the PA. The EPA found that DOE used a reasonable methodology to identify and assess waste characteristics and components. The analysis appropriately accounted for uncertainty and the quality of available information. Therefore, EPA finds DOE in compliance with requirements in § 194.24(b).

Section 194.24(c)(1) requires DOE to specify numeric limits on significant waste components and demonstrate that, for those component limits, the WIPP complies with the numeric requirements of §§ 194.34 and 194.55. Either upper or lower limits were established for components that must be controlled to ensure that the PA results comply with the containment requirements. The DOE explicitly included numeric limits, identified as fixed values with no associated uncertainty, for four waste components. Lower limits were established for (1) ferrous and (2) non-ferrous metals (not included in DOE's original list of components, but added later due to its binding effect on organic ligands); upper limits were established for (3) cellulosics and (4) free water (not included in DOE's original list of components, but added later due to its inclusion in the Waste Acceptance Criteria).

The three components related to radioactivity (radionuclide identification, radioactivity of isotopes, TRU activity of waste) were effectively limited by the inventory estimates used in the PA and the WIPP LWA fixed-value limits. Both the PA inventory estimates and the WIPP LWA fixed-value limits were included in the PA calculations through parameters closely related to these components, and the results demonstrated compliance with EPA's standards.

Explicit limits were not identified for solid waste, sulfates, and nitrates, even though DOE identified these as components significant to performance. For solid waste, EPA determined that in the PA, DOE took no credit for the potential gas-reducing effects of solid waste (i.e., assumed a lower limit of zero) and demonstrated that the WIPP would still comply. For nitrates and sulfates, EPA determined that these components would not significantly affect the behavior of the disposal system as long as cellulosics were limited. Thus, EPA concurred that it is unnecessary to specify limits for nitrates, sulfates, and solid waste.

The EPA finds DOE in compliance with § 194.24(c)(1). The EPA concurred with DOE that it was not necessary to provide estimates of uncertainty for waste limits, so long as the PA demonstrated compliance at the fixed limits. However, since DOE's waste limits do not address uncertainty, the Department must account for uncertainty in the quantification of waste components when tracking compliance with the waste limits. That is, the fixed waste limits essentially constitute an upper confidence level (in the case of limits on the maximum amount of a waste component) or a lower confidence level (in the case of limits on the minimum amount of a component) for measurements or estimates of waste components that must be tracked. The DOE must demonstrate that the characterized waste components, including associated uncertainty (i.e., margin of error), meet the fixed waste component limits.

Section 194.24(c)(2) requires DOE to identify and describe the methods used to quantify the limits of important waste components identified in § 194.24(b)(2). The DOE proposed to use non-destructive assay (''NDA''), non-destructive examination (''NDE''), and visual examination (''VE'') as the methods used to quantify various waste components. (See Docket A–93–02, Item V–B–2, CARD 24, Section 24.F.1 for further information about the methods.) The DOE described numerous NDA instrument systems and described the equipment and instrumentation found in NDE and VE facilities. The DOE also provided information about performance demonstration programs intended to show that data obtained by each method could meet data quality objectives established by DOE. The EPA found that these methods, when implemented appropriately, would be adequate to characterize the important waste components. Therefore, EPA finds DOE in compliance with § 194.24(c)(2).

Section 194.24(c)(3) requires DOE to demonstrate that the use of process

knowledge[32] to quantify components in waste for disposal conforms with the quality assurance (''QA'') requirements found in § 194.22. The DOE did not submit site-specific information on the process knowledge to be used at waste generator sites as part of the CCA. The EPA requires such information to conduct proper review of whether use of the process knowledge is appropriate and reliable. The DOE provided some information on its overall plans for using process knowledge in the CCA. The DOE did not, however, provide specific information on the use of process knowledge or Acceptable Knowledge (''AK''—hereafter only ''AK'' is used; process knowledge is a subset of acceptable knowledge) at any waste generator site in the CCA, nor did it provide information demonstrating establishment of the required QA programs.

After submission of the CCA, EPA subsequently received information regarding AK to be used at the Los Alamos National Laboratory (''LANL''). The EPA determined that DOE adequately described the use of AK for legacy debris waste at LANL. The EPA has confirmed establishment and execution of the required QA programs at that waste generator site through inspections. Therefore, EPA finds that DOE has demonstrated compliance with the § 194.24(c)(3) QA requirement for LANL. The EPA does not find, however, that DOE has adequately described the use of AK for any waste at LANL other than the legacy debris waste which can be characterized using the processes examined in EPA's inspection. (See Docket A–93–02, Item V–B–15 for further information on the conclusions of EPA's inspection. See Docket A–93–02, Item II–I–70 for a list of the items and processes inspected by EPA.) Furthermore, DOE has not demonstrated compliance with § 194.24(c)(3) for any other waste generator site. For any LANL waste streams using other characterization processes or any other waste generator site, before waste can be shipped to the WIPP, EPA must determine that the site has provided information on how AK will be used for waste characterization of the waste stream(s) proposed for disposal at the WIPP. Condition 3 of the final rule embodies this limitation. The site-specific use of process knowledge must conform with QA requirements, as addressed by Condition 2. (For further information on EPA's approval process, see § 194.8, ''Approval Process for Waste Shipment from Waste Generator Sites for Disposal at the WIPP.'')

Sections 194.24(c) (4) and (5) require DOE to demonstrate that a system of controls has been and will continue to be implemented to confirm that the waste components emplaced in the WIPP will not exceed the upper limit or fall below the lower limit calculated in accordance with § 194.24(c)(1) and that the system of controls conforms to the QA requirements specified in § 194.22. The DOE described a system of controls over waste characterization activities, such as the requirements of the TRU QA Program Plan (''TRU QAPP'') and the Waste Acceptance Criteria (''WAC''). The EPA found that the TRU QAPP established appropriate technical quality control and performance standards for sites to use in developing site-specific sampling plans. Further, DOE outlined two phases in waste characterization controls: (1) waste stream screening/verification (pre-shipment from waste generator site); and (2) waste shipment screening/verification (pre-receipt of waste at the WIPP). The tracking system for waste components against their upper and/or lower limits is found in the WIPP Waste Information System (''WWIS''). The EPA finds that the TRU QAPP, WAC, and WWIS are adequate to control important components of waste emplaced in the WIPP. The EPA audited DOE's QA programs at Carlsbad Area Office, Sandia National Laboratory and Westinghouse Waste Isolation Division and determined that DOE properly adhered to QA programs that implement the applicable Nuclear Quality Assurance standards and requirements. (See the preamble discussion of § 194.22, Quality Assurance, for further information.) However, in the CCA, DOE did not demonstrate that the WWIS is fully functional and did not provide information regarding the specific system of controls to be used at individual waste generator sites.

After submission of the CCA, EPA subsequently received information regarding the system of controls (including measurement techniques) to be used at LANL. The Agency confirmed through inspections that the system of controls—and in particular, the measurement techniques—is adequate to characterize waste and ensure compliance with the limits on waste components for some waste streams, and also confirmed that a QA program had been established and executed at LANL in conformance with Nuclear Quality Assurance requirements. Moreover, DOE demonstrated that the WWIS is functional with respect to LANL—i.e., that procedures are in place at LANL for adding information to the WWIS system, that information can be transmitted from LANL and incorporated into the central database, and that data in the WWIS database can be compiled to produce the types of reports described in the CCA for tracking compliance with the waste limits. At the same time, DOE demonstrated that the WWIS is functional with respect to the WIPP facility—i.e., that information incorporated into the central database can be retrieved at the WIPP and compiled to produce reports for tracking compliance with the waste limits. Therefore, EPA finds DOE in compliance with §§ 194.24(c)(4) and (5) for legacy debris waste at LANL. (Docket A–93–02, Items V–B–15 and V–B–2, CARD 24) The EPA's decision is limited to the waste that can be characterized using the systems and processes audited by DOE, inspected by EPA, and found to be adequately implemented at LANL.[33] The EPA does not find, however, that DOE has demonstrated compliance with § 194.24(c)(4) for any other waste stream at LANL, or with §§ 194.24(c)(4) and (5) at any other waste generator site.

For any LANL waste streams using other characterization processes or any other waste generator site, before waste can be shipped to the WIPP, EPA must determine that the site has implemented a system of controls at the site, in accordance with § 194.24(c)(4), to confirm that the total amount of each waste component that will be emplaced in the disposal system will not exceed the upper limiting value or fall below the lower limiting value described in the introductory text of paragraph (c) of § 194.24. The implementation of such a system of controls shall include a demonstration that the site has procedures in place for adding data to the WWIS, and that such information can be transmitted from that site to the WWIS database; and a demonstration that measurement techniques and control methods can be implemented in accordance with § 194.24(c)(4) for the

[32] Process knowledge refers to knowledge of waste characteristics derived from information on the materials or processes used to generate the waste. This information may include administrative, procurement, and quality control documentation associated with the generating process, or past sampling and analytic data. Usually, the major elements of process knowledge include information about the process used to generate the waste, material inputs to the process, and the time period during which the waste was generated.

[33] See Docket A–93–02, Item II–I–70 for a list of the systems and processes audited by DOE. See Docket A–93–02, Item II–I–51 for a description of the waste identifier and a discussion of the items and activities inspected by EPA. They include characterization methodologies and relevant procedures, such as that used for entering data into the WWIS database.

waste stream(s) proposed for disposal at the WIPP. Condition 3 prohibits DOE from shipping waste for disposal at WIPP until EPA has approved site-specific waste characterization programs and controls. The system of controls must also be implemented in accordance with the QA requirements of 40 CFR 194; see Condition 2. (For further information on EPA's approval process, see § 194.8, ''Approval Process for Waste Shipment from Waste Generator Sites for Disposal at the WIPP.'')

Section 194.24(d) requires DOE either to include a waste loading scheme which conforms to the waste loading conditions used in the PA and in compliance assessments, or to assume random placement of waste in the disposal system. The DOE elected to assume that radioactive waste would be emplaced in the WIPP in a random fashion. The DOE examined the possible effects of waste loading configurations on repository performance (specifically, releases from human intrusion scenarios) and concluded that the waste loading scheme would not affect releases. The DOE incorporated the assumption of random waste loading in its performance and compliance assessments (pursuant to §§ 194.32 and 194.54, respectively).

The EPA determined that, because the DOE had assumed random waste loading, a final waste loading plan was unnecessary. The EPA determined that, in the PA, DOE accurately modeled random placement of waste in the disposal system. Since EPA concurred with DOE that a final waste loading plan was unnecessary, DOE does not have to further comply with § 194.24(f), requiring DOE to conform with the waste loading conditions, if any, used in the PA and compliance assessment. Therefore, EPA finds that DOE complies with §§ 194.24(d) and (f).

Section 194.24(e) prohibits DOE from emplacing waste in the WIPP if its disposal would cause the waste component limits to be exceeded. Section 194.24(g) requires DOE to demonstrate that the total inventory emplaced in the WIPP will not exceed limitations on TRU waste described in the WIPP LWA. Specifically, the WIPP LWA defines limits for: surface dose rate for remote-handled (''RH'') TRU waste, total amount (in curies) of RH–TRU waste, and total capacity (by volume) of TRU waste to be disposed. (WIPP LWA, Section (7)(a)) In order to meet the §§ 194.24(e) and (g) limits, DOE intends to rely on the TRU QAPP, WAC, and a two-phase system of controls for waste characterization—pre-shipment (at waste generator sites) and pre-receipt (at the WIPP). The DOE stated that the WWIS will be used to track specific data related to each of the WIPP LWA limits; by generating routine WWIS reports, DOE will be able to determine compliance with the imposed limits. The WWIS will also be used to track information on each of the important waste components for which limits were established. The EPA finds that the WWIS is adequate to track adherence to the limits, and that the WWIS has been demonstrated to be fully functional at the WIPP facility; as discussed above, waste generator sites will demonstrate WWIS procedures before they can ship waste for disposal at the WIPP. Therefore, EPA finds DOE in compliance with §§ 194.24(e) and (g).

Section 194.24(h) allows EPA to conduct inspections and record reviews to verify compliance with the waste characterization requirements. As discussed above, EPA intends to monitor execution of waste characterization and QA programs at waste generator sites through inspections and record reviews.

In summary, EPA finds that DOE is in compliance with § 194.24, and that LANL has demonstrated compliance with §§ 194.24(c)(3) through (5) for legacy debris waste and may therefore ship TRU waste for disposal at the WIPP (as such shipments relate solely to compliance with EPA's disposal regulations; other applicable requirements or regulations still may need to be fulfilled before disposal may commence). The EPA's final determination of compliance is limited to the EPA's decision is limited to the legacy debris waste that can be characterized using the systems and processes audited by DOE, inspected by EPA, and found to be adequately implemented at LANL. It is important to note that EPA's LANL approval does not imply that DOE's internal certification processes can substitute for EPA's approval of waste generator sites or processes used to characterize waste stream(s)—including QA measures, use of process knowledge, and the system of controls (other than LANL's legacy debris waste approved in today's action). The EPA will inspect the individual certification process for each waste generator site and for one or more waste stream(s). (For further information on EPA's approval process, see § 194.8, ''Approval Process for Waste Shipment from Waste Generator Sites for Disposal at the WIPP.'')

The DOE may not ship other waste streams for emplacement at the WIPP until EPA determines that (1) DOE has provided adequate information on how process knowledge will be incorporated into waste characterization activities for a particular waste stream (or group of waste streams) at a generator site, and (2) DOE has demonstrated that the system of controls described in § 194.24(c)(4) and (5) has been established for the site. In particular, DOE must demonstrate that the WWIS system is functional for any waste generator site before waste may be shipped, and that the system of controls (including measurement techniques) can be implemented for each waste stream which DOE plans to dispose in the WIPP. As discussed in the preamble for § 194.22, DOE must also demonstrate that sites have established and executed the requisite QA programs described in §§ 194.22(a)(2)(i) and 194.24(c)(3) and (5).

The EPA received many public comments on § 194.24. The majority of the comments focused primarily on whether or not DOE could adequately characterize waste to be sent to the WIPP. In response to such concerns, EPA believes it is useful to explain and clarify the general process of waste characterization as required by § 194.24, and to describe the activities EPA expects to monitor for future waste characterization. First, § 194.24(a) requires DOE to describe the chemical, radiological, and physical composition of the wastes to be emplaced in the WIPP. Second, DOE must conduct an analysis that substantiates that: (1) all characteristics of the wastes which may influence containment in the repository have been identified and assessed (§ 194.24(b)(1)); (2) all components of the wastes which influence such waste characteristics have been identified and assessed (§ 194.24(b)(2)); and (3) any decision not to consider a waste characteristic or component on the basis that it will not significantly influence containment of the waste. (§ 194.24(b)(3)) Third, for each waste component identified as being significant, DOE is to specify a ''limiting value'' of the total inventory of such waste components to be emplaced in the repository. (§ 194.24(c)) Fourth, DOE must demonstrate that, for the total inventory of waste proposed to be emplaced in the disposal system, the WIPP will comply with the numeric requirements of §§ 194.34 and 194.55 for the upper and lower limiting values of the identified waste components. (§ 194.24(c)(1)) Fifth, DOE must identify and describe the methods used to quantify the limits of waste components. (§ 194.24(c)(2))

At this point, § 194.24 imposes requirements that shift the focus from information on, and assessment of, the total waste inventory to procedures for

characterization of the waste at individual waste generator sites and accurate assessment of the waste inventory. First, DOE must show that the AK used to quantify the waste components at the waste generator sites will conform with QA requirements of § 194.22. Then, to ensure that the generator sites ship only waste that conforms with the waste component limits, a system of controls must be implemented that tracks and measures the waste components destined for the WIPP. This system of controls must also comply with the QA requirements of § 194.22.

The approval process for site-specific waste characterization controls and QA programs includes a **Federal Register** notice, public comment period, and on-site EPA audits or inspections to evaluate implementation. (See Condition 2, Condition 3, and § 194.8.) Prior to an EPA audit or inspection, EPA expects to receive certain documents from DOE. To determine that the procedures used to characterize waste (e.g., measuring and testing, sample control, equipment assessments) are based on good technical practices, and the personnel are qualified to perform the task, EPA expects to receive the following general documents which conform with the requirements of § 194.22: Site-Specific Quality Assurance Program Plan (''QAPP'') and a report or reports from CAO's QA organization that verifies the establishment and implementation of the Nuclear Quality Assurance requirements identified in § 194.22.

Likewise, DOE will provide technical documents prior to an audit or inspection to verify the methods for characterizing, quantifying, and tracking waste. Such technical documents will include information on the use of both process knowledge and measurement methods for waste characterization. First, for measurement equipment such as NDA, NDE, and VE, DOE may provide information on measuring and testing, equipment assessments, sample control, data documentation, and software control. For AK, DOE may provide the AK package which provides information on the areas and buildings from which the waste stream was generated, the waste stream volume and time period of generation, the waste generating process described for each building, the process flow diagrams, and the material inputs or other information that identifies the chemical and radionuclide content of the waste stream and the physical waste form. In addition, the following supplemental information may be provided for AK records: process design documents, standard operating procedures, preliminary and final safety analysis reports and technical safety requirements, waste packaging logs, site databases, information from site personnel, standard industry information, previous analytical data relevant to the waste stream, material safety data sheets or other packaging information, sampling and analysis data from comparable or surrogate waste streams, and laboratory notebooks that detail the research processes and raw materials used in experiments.

The fundamental objective of EPA's review of DOE's waste characterization at waste generator sites is to ensure that the proposed system of controls can quantify and track both the radionuclides and the four waste component limits identified as important for the repository performance. Because DOE's defense missions varied at the sites, the waste generated and the methods to characterize waste vary accordingly. These variations in practices and methods result in the need to review two general areas: (1) AK packages and (2) the system of controls, including measurement methods and tracking procedures. Therefore, EPA finds that it is important to clarify what is entailed by both general areas.

Thirty-five percent of WIPP waste is currently classified as ''retrievably stored waste,'' which is TRU waste generated after the 1970's but before the implementation of the TRU Waste Characterization Quality Assurance Program Plan (''QAPP''). Retrievably stored waste containers will be classified into waste streams using acceptable knowledge.[34] All retrievably stored waste containers will be examined using radiography or visual examination to confirm the physical waste form (or ''Summary Category Group''), to verify the absence of prohibited items, and to determine the waste characterization techniques to be used. To confirm the results of radiography, a statistically selected number of the Contact-Handled Transuranic waste container population will be visually examined by opening the containers to inspect waste contents to verify the radiography results. If visual examination results for a drum conflict with the results of radiography, the drum and possibly the entire waste stream is reclassified, and a higher percentage of future drums will be required to undergo visual examination. Representativeness of containers selected for visual examination will be validated by reviewing documents that show that true random samples were collected. Repackaged retrievably stored waste may be handled as newly generated waste, with the Summary Category Group confirmed by using visual examination instead of radiography. Retrievably stored waste will be assayed using Non Destructive Assay (''NDA'')[35], and will undergo headspace-gas sampling and analysis for volatile organic compound concentrations.[36]

Sixty-five percent of all WIPP waste is to-be-generated TRU waste. To-be-generated waste characterization will begin with verification that processes generating the waste have operated within established written procedures. Waste containers will be classified into waste streams using acceptable knowledge. Hazardous and radioactive constituents in to-be-generated wastes will be documented and verified at the time of generation to provide acceptable knowledge for the waste stream.

Verifying that the physical form of the waste (Summary Category Group) corresponds to the physical form of the assigned waste stream is accomplished by visual examination during packaging of the waste into the drums. This process consists of operator confirmation that the waste is assigned to a waste stream that has the correct Summary Category Group for the waste being packaged into the drums. If confirmation cannot be made, corrective actions will be taken. A second operator, who is equally trained to the requirements of the WAC and TRU Waste Characterization QAPP, will provide additional verification by reviewing the contents of the waste

[34] AK is used by DOE to (1) delineate waste streams to facilitate further characterization; (2) identify radionuclide content as a basis for further radioassay (''NDA'') determinations, and identify the combustible and metal content to determine the radionuclide content as a basis for radiography and/or visual examination (''NDE/VE''); and (3) make hazardous waste determinations for wastes regulated under the Resource Conservation and Recovery Act.

[35] All waste containers will undergo NDA techniques to allow an item to be tested without altering its physical or chemical form. NDA techniques approved for use on WIPP containers can be classified as active or passive. Passive NDA methods measure spontaneously emitted radiations produced through radioactive decay of isotopes inside the waste containers. Active NDA methods measure radiations produced by artificially generated reactions in waste material.

[36] Results of head-space gas sampling and chemical analyses are compared with acceptable knowledge determinations to assess the accuracy of acceptable knowledge. Additional analysis of head-space gas for volatile organic compounds, and additional use of NDA, radiography, and other characterization methods may be employed to further characterize waste to meet regulations that apply to the hazardous (but not necessarily radioactive) portions of the WIPP waste. The requirements for hazardous waste are enforced by the State of New Mexico.

container to ensure correct reporting. If the second operator cannot provide concurrence, corrective actions will be taken. To-be-generated waste will not undergo radiography, as the waste will be identified by visual examination during packaging. All to-be-generated waste containers will undergo headspace-gas analysis for volatile organic compound and their concentrations, and NDA for radioisotopes and their activities.

Acceptable knowledge, visual examination during packing, NDA and headspace-gas sampling and analysis are used to further characterize homogeneous solids, soils/gravel, and debris waste. In addition, newly generated streams of such wastes will be randomly sampled a minimum of once per year and analyzed for total volatile and semi-volatile organic compounds and metals.

A system of controls is used to confirm that the total amount of each waste component that will be emplaced in the disposal system does not exceed the upper limiting value or fall below the lower limiting value for the component. The system of controls for WIPP waste has two phases for DOE's internal process. Phase I entails Waste Stream Screening and Verification, which will occur before waste is shipped to the WIPP, and is a three-step process. First, an initial audit of the site will be conducted by DOE's Carlsbad Area Office as part its audit program before the WIPP could begin the process of accepting waste from a site. The audit provides on-site verification of characterization procedures, data package preparation and recordkeeping. Second, the generator site personnel perform the waste characterization data package completeness/accuracy review and either accept or reject the data. Third, if the data are accepted, the site waste characterization data are transferred manually or electronically via the WWIS to the WIPP. At the WIPP, screening includes verification that all of the required elements of a waste characterization data package are present and that the data meet acceptance criteria required for compliance. Waste stream approval or rejection to ship to the WIPP is the outcome of Phase I.

Phase II includes examination of a waste shipment after it has arrived at the WIPP, and is a three-step process. First, upon receipt of a waste shipment, the WIPP personnel determine manifest completeness and sign the manifest before the driver may depart. Second, WIPP personnel determine waste shipment completeness by checking the bar-coded identification number found on each TRU waste container. The bar-coded identification number is noted and checked against the WWIS. The WWIS maintains waste container receipt and emplacement information. Third, waste shipment irregularities or discrepancies are identified and resolved. If there are discrepancies, the generator site is contacted for resolution. Finally, WIPP personnel compare the container identification number with a list of those approved for disposal at the WIPP. Waste shipment approval or rejection for disposal at the WIPP is the outcome of Phase II. (For further information on the system of controls, see Docket A–93–02, Item V–B–2, CARD 24, Section 24.H.2.)

In summary, all waste sent to WIPP will be appropriately and thoroughly characterized. First, the acceptable knowledge provides essential waste content information that later determines the waste categories. The AK process undergoes quality assurance checks to confirm good technical practices and qualified personnel. Then, the measurement techniques (NDA, NDE, VE) confirm the AK data, and further define the content and limits of the waste. Further confirmation of the accuracy of the waste characterization is provided by the extensive tracking system. Again, quality assurance checks are applied to the tracking and measurement controls. The waste characterization process, if implemented accordingly, provides complete and thorough characterization of the waste. The DOE has committed to implement this process. No waste generator site will be allowed to ship proposed waste streams to the WIPP until the waste characterization process detailed above is met at that generator site for the given waste stream(s).

3. Future State Assumptions (§ 194.25)

Section 194.25 stipulates that performance assessments (''PA'') and compliance assessments ''shall assume that characteristics of the future remain what they are at the time the compliance application is prepared, provided that such characteristics are not related to hydrogeologic, geologic or climatic conditions.'' Section 194.25 also requires DOE to provide documentation of the effects of potential changes of hydrogeologic, geological, and climatic conditions on the disposal system over the regulatory time frame. The purpose of the future state assumptions is to avoid unverifiable and unbounded speculation about possible future states of society, science, languages, or other characteristics of mankind. The Agency has found no acceptable methodology that could make predictions of the future state of society, science, languages, or other characteristics of mankind. However, the Agency does believe that established scientific methods can make plausible predictions regarding the future state of geologic, hydrogeologic, and climatic conditions. Therefore, § 194.25 focuses the PA and compliance assessments on the more predictable significant features of disposal system performance, instead of allowing unbounded speculation on all developments over the 10,000-year regulatory time frame.

The EPA proposed to find DOE in compliance with the requirements of § 194.25 because the future state assumptions that DOE made and documented in the CCA were inclusive of all relevant elements of the PA and compliance assessments and were consistent with the requirements of § 194.25. (62 FR 58816–7) The Agency reviewed the future state assumptions DOE made about hydrogeologic and geologic characteristics and found that DOE accurately characterized, screened, and modeled the potential changes from current conditions. For climatic changes, EPA found DOE's approach to be conservative and consistent with the compliance criteria, since DOE examined the worst-case scenario of increased precipitation at the WIPP rather than the potential effects of global warming, which could be beneficial to the WIPP. (§ 194.25(b)(3)) The EPA found that DOE's incorporation of these changes into the PA was adequate. Finally, EPA found that the CCA's approach to dealing with uncertainty, including use of conservative assumptions to compensate for uncertainty, are consistent with the features, events, and processes list, screening arguments, and model descriptions.

The EPA received no public comments on this topic beyond those addressed in the proposal, and so finds DOE in compliance with the requirements of § 194.25. For further information concerning EPA's evaluation of compliance with § 194.25, see CARD 25. (Docket A–93–02, Item V–B–2) For additional information on the features, events, and processes included in the PA and compliance assessments, see CARD 32 (Docket A–93–02, Item V–B–2) and the preamble discussion of performance assessment issues (Section VIII.B). For additional information on both geologic and hydrogeologic conditions of the WIPP, see the preamble discussion of § 194.14.

4. Expert Judgment (§ 194.26)

The requirements of 40 CFR 194.26 apply to expert judgment elicitation.

Expert judgment is typically used to elicit two types of information: numerical values for parameters (variables) that are measurable only by experiments that cannot be conducted due to limitations of time, money, and physical situation; and essentially unknowable information, such as which features should be incorporated into passive institutional controls to deter human intrusion into the repository. (61 FR 5228) Quality assurance requirements (specifically § 194.22(a)(2)(v)) must be applied to any expert judgment to verify that the procedures for conducting and documenting the expert elicitation have been followed.

The requirements of 40 CFR Part 194 prohibit expert judgment from being used in place of experimental data, unless DOE can justify that the necessary experiments cannot be conducted. Expert judgment may substitute for experimental data only in those instances in which limitations of time, resources, or physical setting preclude the successful or timely collection of data.

The CCA did not identify any formal expert elicitation activities. During the Agency's review of performance assessment (''PA'') parameters, EPA found inadequate explanation and information for 149 parameters that DOE claimed had been derived using professional judgment. The compliance criteria do not provide for utilization of ''professional judgement.'' Input parameters are to be derived from data collection, experimentation, or expert elicitation. The EPA requested that DOE provide additional information on the derivation of the 149 parameters. (Docket A–93–02, Items II–I–17, II–I–25, and II–I–27)

The DOE responded to EPA's requests by adding information to and improving the quality of the records stored in the Sandia National Laboratory (''SNL'') Records Center in order to enhance the traceability of parameter values. The EPA deemed the documentation provided by DOE adequate to demonstrate proper derivation of all but one of the ''professional judgment'' parameters—the waste particle size distribution parameter. For a comprehensive discussion of the technical review of PA parameters, see the preamble discussion of performance assessment, CARD 23 (Section 12.0), and EPA's ''Parameter Report'' and ''Parameter Justification Report.'' (Docket A–93–02, Items V–B–2, V–B–12, V–B–14) The EPA required DOE to use the process of expert elicitation to develop the value for the waste particle size distribution parameter. (Docket A–93–02, Item II–I–27)

The waste particle size parameter is important in performance assessments because the distribution of waste particle diameters affects the quantity of radioactive materials released in spallings from inadvertent human intrusion. Because particle diameters are uncertain and cannot be estimated either directly from available data or from data collection or experimentation, the waste particle size parameter had to be based on an elicitation of expert judgment.

The DOE conducted the expert judgment elicitation on May 5–9, 1997. The results of the expert elicitation consisted of a model for predicting waste particle size distribution as a function of the processes occurring within the repository, as predicted by the PA. The DOE completed a final report entitled, ''Expert Elicitation on WIPP Waste Particle Size Distributions(s) During the 10,000-Year Regulatory Post-closure Period.'' (Docket A–93–02, Item II–I–34) The particle size distribution derived from the expert elicitation was incorporated in the PA verification test (''PAVT'') calculations.

The EPA's review of DOE's compliance with the requirements of § 194.26 principally focused on the conduct of the elicitation process, since § 194.26 sets specific criteria for the performance of an expert judgement elicitation. The EPA observed DOE's elicitation process and conducted an audit of the documentation prepared in support of DOE's compliance with § 194.26. The scope of the audit covered all aspects of the expert judgment elicitation process, including: panel meetings, management and team procedures, curricula vitae of panel members, background documents, and presentation materials. The EPA also assessed compliance with the quality assurance requirements of § 194.22(a)(2)(v). The EPA found that the documentation was appropriate, that the panel members were appropriately qualified, and that the results of the elicitation were used consistent with the stated purpose; EPA, therefore, proposed to find DOE in compliance with § 194.26. (62 FR 58817–18)

Comments on EPA's proposed decision for § 194.26 related to two main issues: (1) Commenters questioned DOE's statement that it did not conduct any expert judgement activities in developing the CCA; and (2) commenters questioned the use or role of ''professional judgement'' in the development of input parameters used in the CCA. The DOE's understanding of expert judgment was consistent with EPA's use of the term ''expert judgment'' in the compliance criteria, namely a formal, highly structured elicitation of expert opinion. (Response to Comments for 40 CFR Part 194, Docket A–92–56, Item V–C–1, p. 8–4) However, EPA agrees that the CCA initially did not contain adequate information to ascertain whether a large number of the input parameters had been properly derived. The DOE subsequently provided additional information, and substantially improved the quality of the records at the SNL Records Center, which enabled EPA to confirm that all but one of the parameters were adequately supported.

In regard to the use of professional judgement in the development of input parameters, the compliance criteria in § 194.26 do not provide for derivation of input parameters through ''professional judgement.'' Input parameters used in the PA are to be derived from data collection, experimentation, or expert elicitation. The Agency, however, recognizes that raw data resulting from data collection or experimentation may require ''professional judgment'' in the development of input parameters. Professional scientific judgment may be used to interpolate, extrapolate, interpret, and apply data to develop parameter values but cannot substitute for data. (Expert judgment may substitute for data, but only when information cannot reasonably be obtained through data collection or experimentation.) The applicability of § 194.26 does not extend to professional scientific judgment used in such circumstances. (Docket A–92–56, Item V–C–1, p. 8–5)

Based on its review of documentation developed by DOE and its contractors, the results of EPA's audit, and consideration of public comments, EPA concludes that DOE complied with the requirements of § 194.26 in conducting the required expert elicitation. For further information on EPA's evaluation of compliance with § 194.26, see CARD 26. (Docket A–93–02, Item V–B–2)

5. Peer Review (§ 194.27)

Section 194.27 requires DOE to conduct peer review evaluations related to conceptual models, waste characterization analyses, and a comparative study of engineered barriers. A peer review involves an independent group of experts who are convened to determine whether technical work was performed appropriately and in keeping with the intended purpose. The required peer reviews must be performed in accordance with the Nuclear Regulatory

Commission's NUREG–1297, ''Peer Review for High-Level Nuclear Waste Repositories,'' which establishes guidelines for the conduct of a peer review exercise. Section 194.27 also requires DOE to document in the compliance application any additional peer reviews beyond those explicitly required.

The EPA proposed to find DOE in compliance with the requirements of § 194.27 because EPA's independent audit established that DOE had conducted and documented the required peer reviews in a manner compatible with NUREG–1297. The Agency also proposed that DOE adequately documented additional peer reviews in the CCA. The EPA received no public comments on this topic beyond those addressed in the proposal (62 FR 58818), and so finds DOE in compliance with the requirements of § 194.27. For further information concerning EPA's evaluation of compliance with § 194.27, see CARD 27. (Docket A–93–02, Item V–B–2)

D. Assurance Requirements

1. Active Institutional Controls (§ 194.41)

Section 194.41 implements the active institutional controls (''AICs'') assurance requirement. The disposal regulations define AICs as ''controlling access to a disposal site by any means other than passive institutional controls, performing maintenance operations or remedial actions at a site, controlling or cleaning up releases from a site, or monitoring parameters related to disposal system performance.'' (40 CFR 191.12) Section 194.41 requires AICs to be maintained for as long a period of time as is practicable after disposal; however, contributions from AICs for reducing the rate of human intrusion in the PA may not be considered for more than 100 years after disposal.

The DOE proposed to: construct a fence and roadway around the surface footprint of the repository; post warning signs; conduct routine patrols and surveillance; and repair and/or replace physical barriers as needed. The DOE also identified other measures that function as AICs, such as DOE's prevention of resource exploration at the WIPP and DOE's construction of long-term site markers. The DOE will maintain the proposed AICs for at least 100 years after closure of the WIPP, and the WIPP PA assumed that AICs would prevent human intrusion for that period.

The EPA reviewed the proposed AICs in connection with the types of activities that may be expected to occur in the vicinity of the WIPP site during the first 100 years after disposal (i.e., ranching, farming, hunting, scientific activities, utilities and transportation, ground water pumping, surface excavation, potash exploration, hydrocarbon exploration, construction, and hostile or illegal activities) and examined the assumptions made by DOE to justify the assertion that AICs will be completely effective for 100 years. The DOE stated in the CCA that the proposed AICs will be maintained for 100 years, and that regular surveillance could be expected to detect a drilling operation in a prohibited area that is set up in defiance or ignorance of posted warnings.

The EPA received public comments on its proposed certification decision stating that it was unreasonable to assume that AICs could be completely effective for 100 years. While EPA recognizes that 100 percent effectiveness of AICs over 100 years cannot be established with certainty, the proposed AICs are fully within DOE's present capability to implement and may be expected to be enforceable for a period of 100 years. Therefore, EPA found it reasonable for DOE to assume credit in the PA for 100 years. The EPA found the assumptions regarding longevity and efficacy of the proposed AICs to be acceptable based on the fact that the types of inadvertent intrusion which AICs are designed to obviate are not casual activities, but require extensive resources, lengthy procedures for obtaining legal permission, and substantial time to set up at the site before beginning.

Contributions from AICs in the PA are considered as a reduction in the rate of human intrusion. The EPA reviewed the CCA and the parameter inputs to the PA and determined that DOE did not assume credit for the effectiveness of active institutional controls for more than 100 years after disposal. The EPA found DOE's assumptions to be sufficient to justify DOE's assertion that AICs will completely prevent human intrusion for 100 years after closure. Because DOE adequately described the proposed AICs and the basis for their assumed effectiveness and did not assume in the PA that AICs would be effective for more than 100 years, EPA finds DOE in compliance with § 194.41. For further information on EPA's evaluation of compliance for § 194.41, refer to CARD 41. (Docket A–93–02, Item V–B–2)

2. Monitoring (§ 194.42)

Section 194.42 requires DOE to monitor the disposal system to detect deviations from expected performance. The monitoring requirement distinguishes between pre-and post-closure monitoring because the monitoring techniques that may be used to access the repository during operations (pre-closure) and after the repository has been backfilled and sealed (post-closure) are different. Monitoring is intended to provide information about the repository that may affect the predictions made about the PA or containment of waste. The EPA proposed that DOE was in compliance with this requirement. (62 FR 58827)

Public comments on EPA's proposed decision stated that the monitoring plan presented by DOE does not comply with certain hazardous waste (Resource Conservation and Recovery Act) and Nuclear Regulatory Commission (''NRC'') requirements. However, the monitoring techniques and parameters suggested by commenters are not required by § 194.42, which requires only that the post-closure monitoring plan be complementary to certain applicable hazardous waste monitoring requirements. The purpose of this language is to eliminate potential overlap with hazardous waste monitoring requirements while ensuring that monitoring will be conducted even if not required by the applicable hazardous waste regulations. (Response to Comments for 40 CFR Part 194, Docket A–92–56, Item V–C–1, p. 14–7)

One commenter stated that DOE should monitor additional parameters and perform remote monitoring to prolong the length of time that data is gathered. The EPA determined that monitoring the additional parameters would provide no significant benefit because these parameters were not identified as significant to the containment of waste or to verifying predictions made about the repository. The EPA also determined that additional remote monitoring of the panel rooms would neither provide significant information on the performance of the repository nor verify predictions about its performance.

The plans in the CCA addressed both pre-closure and post-closure monitoring and included the information required by the compliance criteria. Therefore, EPA finds that DOE is in compliance with the requirements of § 194.42. Under its authority at § 194.21, EPA intends to conduct inspections of DOE's implementation of the monitoring plans that DOE has set forth. For further information on EPA's evaluation of compliance for § 194.42, see CARD 42. (Docket A–93–02, Item V–B–2)

3. Passive Institutional Controls (§ 194.43)

The compliance criteria at § 194.43 require a description of passive institutional controls (''PICs'') that will be implemented at the WIPP. The EPA defined PICs in the disposal regulations as markers, public records and archives, government ownership of and restrictions on land use at a site, and any other means of preserving knowledge of a site. (40 CFR 191.12) PICs are intended to deter unintentional intrusions into a disposal system by people who otherwise might not be aware of the presence of radioactive waste at the site.

Section 194.43 requires DOE to: (1) identify the controlled area with markers designed, fabricated, and emplaced to be as permanent as practicable; (2) place records in local State, Federal, and international archives and land record systems likely to be consulted by individuals in search of resources; and (3) employ other PICs intended to indicate the location and dangers of the waste. In accordance with § 194.43(b), DOE also must indicate the period of time that PICs are expected to endure and be understood by potential intruders. Finally, DOE is permitted to propose a credit for PICs in the PA, as explained in § 194.43(c). This credit must be based on the proposed effectiveness of PICs over time, and would take the form of reduced likelihood in the PA of human intrusion over several hundred years. The compliance criteria prohibit DOE from assuming that PICs could entirely eliminate the likelihood of future human intrusion into the WIPP.

The EPA proposed that DOE complied with § 194.43(a) and (b) because the measures proposed in the CCA are comprehensive, practicable, and likely to endure and be understood for long periods of time. The EPA also proposed a condition that DOE submit additional information concerning the schedule for completing PICs, the fabrication of granite markers, and commitments by various recipients to accept WIPP records. (62 FR 58827–29) The EPA did not receive any comments disputing this decision, and so finds DOE in compliance with § 194.43(a) and (b). However, DOE must fulfill Condition 4 of Appendix A to 40 CFR Part 194 no later than the final recertification application. For further information on EPA's evaluation of compliance with § 194.43, see CARD 43. (Docket A–93–02, Item V–B–2)

Some commenters expressed the concern that PICs in general, and DOE's plan in particular, would not be sufficient to prevent drilling or other intrusions into the WIPP over 10,000 years. The EPA has never asserted that PICs, as an assurance measure, could or must be sufficient to prevent human intrusion into a site entirely or for a specified period (such as 10,000 years). In fact, the WIPP compliance criteria prohibit DOE from assuming that PICs can completely eliminate the likelihood of human intrusion. (§ 194.43(c)) DOE's design incorporates features that will serve to promote the endurance and comprehensibility of PICs over time, such as: redundant markers, highly durable materials with low intrinsic value, messages in multiple languages, and record storage in multiple locations. Also, the CCA clearly discusses the manner in which DOE accounted in the design for possible, realistic failures. The Agency believes that the existence of site-specific markers and records, designed to be durable over long periods of time, will greatly improve the chances that future generations will retain knowledge of the hazard posed by waste stored at the WIPP.

The EPA proposed to deny DOE's request under § 194.43(c) that the likelihood of human intrusion into the WIPP during the first 700 years after closure be reduced by 99 percent based on the anticipated effectiveness of PICs. The EPA denied the credit because DOE did not use an expert judgment elicitation to derive the credit, as explicitly envisioned by the Agency. The EPA expected that an expert judgment elicitation that makes use of the best available information and expertise would be used to account for the considerable uncertainties associated with a prediction of the ability of PICs to prevent human intrusion hundreds of years into the future. Since the WIPP is located in an area of resource exploitation, the uncertainty was not sufficiently reflected in the near 100 percent credit proposed in the CCA.

The Agency received comments both supporting and refuting this decision. Comments supporting EPA's proposed decision tended to reflect the position that any PICs credit would be too uncertain for use in the PA. In opposition to EPA's decision, comments stated that EPA drew improper conclusions about DOE's use of expert judgment and treatment of uncertainty. These comments requested that EPA reverse its denial of PICs credit, or at least consider future credit proposals, but did not identify why EPA's conclusions were incorrect other than to reiterate positions taken in the CCA that were explicitly assessed by EPA in the proposal. (62 FR 58828) Therefore, EPA sees no cause to reverse its decision to deny DOE's request for PICs credit under § 194.43(c). However, EPA's final decision today applies only to the credit proposal in the CCA and should not be interpreted as a judgment on the use of PICs credit in performance assessments generally. In the future, DOE may present to EPA additional information derived from an expert elicitation of PICs credit. Any future PICs credit proposals will be considered in the context of a modification rulemaking, and will be subject to public examination and comment.

4. Engineered Barriers (§ 194.44)

Section 194.44 requires DOE to conduct a study of available options for engineered barriers at the WIPP and submit this study and evidence of its use with the compliance application. Consistent with the assurance requirement found at 40 CFR 191.14, DOE must analyze the performance of the complete disposal system, and any engineered barrier(s) that DOE ultimately implements at the WIPP must be considered in the PA and EPA's subsequent evaluation. Based on the comparative study that constitutes Appendix EBS of the CCA, DOE proposed magnesium oxide (MgO) backfill as an engineered barrier and proposed to emplace bags of MgO between and around waste containers in the repository. The EPA proposed to find DOE in compliance with § 194.44 because DOE conducted and documented the required study in a manner consistent with the WIPP compliance criteria and proposed to implement an engineered barrier to delay the movement of water or radionuclides. (62 FR 58829)

Public comments on the proposal stated that the waste should be treated before being placed in the repository. Commenters stated that treatment of waste could serve to provide additional confidence in the safety of the disposal system beyond that demonstrated by the performance assessment, based on the assumption that waste treatment would reduce the potential effects of a repository breach. Commenters therefore urged EPA to encourage DOE to treat the waste in order to add additional assurance in the predicted performance of the WIPP.

Section 194.44 of the compliance criteria requires DOE to perform a comparison of the benefits and detriments of waste treatment options (referred to as ''engineered barriers'' by EPA and as ''engineered alternatives'' by DOE). DOE's evaluation incorporated such treatment methods as vitrification and shredding. Based on this

evaluation, DOE selected the use of MgO as an engineered barrier. The EPA determined that MgO will be an effective barrier, based on DOE's scientific evaluation of the proposed barrier's ability to prevent or substantially delay the movement of radionuclides toward the accessible environment.

Section 194.44 does not require specific engineered barriers or the implementation of more than one engineered barrier. Since DOE will employ the use of a barrier as required by this section, and since the performance assessment results showed compliance with the containment requirements with the use of this barrier, EPA does not consider it necessary to require DOE to treat waste prior to emplacement. However, EPA agrees that waste treatment or additional barriers may further enhance the containment ability of the WIPP. In the future, if DOE were to select a new treatment option (such as vitrification) that differs significantly from the option in the most recent compliance application, DOE must inform EPA prior to making such a change. (§ 194.4(b)(3)(i) and (vi)) The EPA will evaluate the information provided by DOE and determine if the certification warrants modification.

Other commenters expressed concern that DOE failed to consider alternatives to the proposed 55-gallon steel waste drums that could reduce releases or the formation of gas in the repository due to the degradation of carbon. Commenters further stated that DOE failed to consider adequately how engineered barriers could reduce releases from four human intrusion scenarios: fluid injection, air drilling, stuck pipe, and direct brine release.

The EPA recognized that gas production from waste drum degradation was a relevant issue and so included consideration of ''improved waste containers'' in the list of factors for DOE to consider when evaluating engineered barriers. (40 CFR 194.44(b)) The DOE did, in fact, consider various aspects of waste packages in the engineered barrier study. Appendix A of Appendix EBS (p. A–10) states that the ''improved waste container'' options scored low in a qualitative assessment because of their minimal ability to improve conditions with respect to waste solubility and shear strength. As explained in CARD 44 (Docket A–93–02, Item V–B–2), DOE also examined the effects of engineered barriers on the long-term performance of the WIPP using the Design Analysis Model (''DAM''), which provided a relative comparison of the potential benefits of the different barriers on the performance of the repository. There was no attempt to determine the absolute effect of the barriers on the performance of the repository since the objective of the study (in accordance with the WIPP compliance criteria) was only to provide DOE with information for use in the selection or rejection of additional engineered barriers. (Docket A–93–02, Item V–B–2, CARD 44, Section 44.C.4) It was not necessary for DOE to show the absolute effect of each barrier on the WIPP's performance in the face of a specific human intrusion scenario such as air drilling. Rather, it was sufficient for DOE to consider the relative ability of barriers to prevent or delay radionuclide migration in the event of human intrusion.

Other comments expressed concern that the ''containment'' and ''assurance'' requirements were not kept separate, as was intended by EPA's disposal standards. The separation of the requirements is valid only to the extent that engineered barriers may be used to meet the containment requirements, but must be used to meet the assurance requirements. The effects of all engineered barriers employed at the WIPP must be considered in performance assessments. Excluding such barriers from consideration would result in inaccurate modeling of the disposal system, which is defined in § 191.12(a) to include engineered barriers. (Response to Comments for 40 CFR Part 194, Docket A–92–56, Item V–C–1, pp. 16–10, 16–13) Although not required to comply with § 194.44, DOE and others performed calculations showing that the WIPP can comply with the containment requirements with or without the use of MgO as an engineered barrier. (Docket A–93–02, Items IV–D–12 and IV–G–7)

The EPA finds that DOE complies with § 194.44. The EPA found that DOE conducted the requisite analysis of engineered barriers and selected an engineered barrier designed to prevent or substantially delay the movement of water or radionuclides toward the accessible environment. The DOE provided sufficient documentation to show that MgO can effectively reduce actinide solubility in the disposal system. The DOE proposed to emplace a large amount of MgO around waste drums in order to provide an additional factor of safety and thus account for uncertainties in the geochemical conditions that would affect CO_2 generation and MgO reactions. For further information on EPA's evaluation of compliance for § 194.44, see CARD 44. (Docket A–93–02, Item V–B–2) For further information regarding the PA modeling of solubility and chemical conditions in the repository, see CARD 23—Models and Computer Codes. (Docket A–93–02, Item V–B–2)

5. Consideration of the Presence of Resources (§ 194.45)

Section 194.45 implements the assurance requirement that the disposal system be sited so that the benefits of the natural barriers of the disposal system will compensate for any increased probability of disruptions to the disposal system resulting from exploration and development of existing resources. (61 FR 5232) In issuing the WIPP compliance criteria, EPA determined that the performance assessment (''PA'') is the appropriate tool to weigh the advantages and disadvantages of the WIPP site because the PA demonstrates whether potential human intrusion will cause unacceptably high releases of radioactive material from the disposal system. Comments on § 194.45 for the proposed certification decision did not address the question of compliance with this requirement but instead focused on the criterion itself, stating that it was inconsistent with the original basis for the assurance requirements to be qualitative in nature. The EPA believes that the presence of resources requirement is reasonable because the performance assessment must account for the increased potential for human intrusion into the disposal system due to the presence of known resources, based on historical rates of drilling and mining in the vicinity of the WIPP. (Docket A–92–56, Item V–C–1, p. 17–1) In any case, it is beyond the scope of the certification rulemaking to fundamentally re-examine or change the disposal regulations or compliance criteria as they relate to the presence of resources.

Because the PA incorporated human intrusion scenarios and met EPA's release limits in accordance with the WIPP compliance criteria, EPA determines that DOE has demonstrated compliance with § 194.45. For discussion of comments on human intrusion scenarios, results, and other aspects of the PA, refer to Section B (''Performance Assessment: Modeling and Containment Requirements'') of this preamble. For further information on EPA's evaluation of compliance for § 194.45, refer to CARD 45. (Docket A–93–02, Item V–B–2)

6. Removal of Waste (§ 194.46)

Section 194.46 requires DOE to provide documentation that the removal of waste from the disposal system is feasible for a reasonable period of time

after disposal. In the proposed certification decision on WIPP, EPA proposed that DOE was in compliance with this requirement.

Public comments on EPA's proposed decision expressed concern that there would be no way to remove the waste once the WIPP repository is sealed. The technology used to dispose of the waste is substantially the same as the technology that would be used to remove it. This technology may reasonably be expected to remain available for at least 100 years after the repository is sealed. Public comments also stated that EPA and DOE should identify the limitations of DOE's removal of waste plan. In Appendix WRAC of the CCA, DOE acknowledges the expense and hazard of removing the waste from the repository. The purpose of the requirement at § 194.46 is to demonstrate that the removal of waste remains possible, not necessarily simply or inexpensive, for a reasonable period of time after disposal. (50 FR 38082)

The DOE demonstrated that it is possible to remove waste from the repository for a reasonable period of time after disposal. Therefore, EPA determines that DOE is in compliance with § 194.46. For further information on EPA's evaluation of compliance with § 194.46, see CARD 46. (Docket A–93–02, Item V–B–2)

E. Individual and Ground-water Protection Requirements (§§ 194.51–55)

Sections 194.51 through 194.55 of the compliance criteria implement the individual protection requirements of 40 CFR 191.15 and the ground-water protection requirements of Subpart C of 40 CFR Part 191. Assessment of the likelihood that the WIPP will meet the individual dose limits and radionuclide concentration limits for ground water is conducted through a process known as compliance assessment. Compliance assessment uses methods similar to those of the PA (for the containment requirements) but is required to address only undisturbed performance of the disposal system. That is, compliance assessment does not include human intrusion scenarios (i.e., drilling or mining for resources). Compliance assessment can be considered a ''subset'' of performance assessment, since it considers only natural (undisturbed) conditions and past or near-future human activities (such as existing boreholes), but does not include the long-term future human activities that are addressed in the PA.

Section 194.51 requires DOE to assume in compliance assessments that an individual resides at the point on the surface where the dose from radionuclide releases from the WIPP would be greatest. The EPA required that the CCA identify the maximum annual committed effective dose and the location where it occurs, and explain how DOE arrived at those results.

In DOE's analysis, an individual receives the highest dose if one assumes that the individual takes drinking water directly from the Salado Formation at the subsurface boundary of the WIPP area. The DOE assumed that an individual would receive the maximum estimated dose regardless of location on the surface and calculated the resultant doses accordingly. EPA found this approach to be conservative and proposed that DOE complied with § 194.51. The Agency received no public comments on this topic beyond those addressed in the proposal (62 FR 58831), and so finds DOE in compliance with the requirements of § 194.51.

Section 194.52 requires DOE to consider in compliance assessments all potential exposure pathways for radioactive contaminants from the WIPP. The DOE must assume that an individual consumes two liters per day of drinking water from any underground source of drinking water outside the WIPP area.

The DOE considered the following pathways: an individual draws drinking water directly from the Salado Formation; an individual ingests plants irrigated with contaminated water or milk and beef from cattle whose stock pond contained contaminated water from the Salado; and an individual inhales dust from soil irrigated with contaminated water from the Salado. Intended to result in the maximum dose, DOE's assumption that water is ingested directly from the Salado actually is so conservative as to be unrealistic, since Salado water is highly saline and would have to be greatly diluted in order to function as drinking or irrigation water.

The EPA proposed that DOE complied with § 194.52 because DOE considered all potential exposure pathways and assumed that an individual consumes two liters of Salado water a day, following dilution. The Agency received no public comments on this topic beyond those addressed in the proposal (62 FR 58831), and so finds DOE in compliance with the requirements of § 194.52. For further information concerning EPA's evaluation of compliance for §§ 194.51 and 194.52, see CARD 51/52. (Docket A–93–02, Item V–B–2)

Section 194.53 requires DOE to consider in compliance assessments underground sources of drinking water (''USDWs'') near the WIPP and their interconnections. A USDW is defined at 40 CFR 191.22 as ''an aquifer or its portion that supplies a public water system, or contains a sufficient quantity of ground water to do so and (i) currently supplies drinking water for human consumption or (ii) contains fewer than 10,000 mg per liter of total dissolved solids.''

The DOE identified three potential USDWs near the WIPP—the Culebra Member of the Rustler Formation, the Dewey Lake Red Beds, and the Santa Rosa Sandstone of the Dockum Group—despite incomplete data showing that they meet the regulatory definition of a USDW. The DOE did not analyze underground interconnections among these water bodies, instead assuming conservatively that people would draw water directly from the Salado Formation, bypassing other USDWs closer to the surface and thus resulting in greater exposure.

The EPA proposed that DOE complied with § 194.53 because DOE adequately considered potential USDWs near the WIPP. The Agency received a few public comments that raised questions about DOE's approach to evaluating USDWs. For example, some commenters questioned DOE's assertion that USDWs such as Laguna Grande de la Sal would not be contaminated if the WIPP is left undisturbed. In fact, the compliance assessments assumed that water in the Salado Formation constituted a hypothetical USDW that would provide drinking water after being diluted. Radionuclide concentrations would be expected to be greatest in the Salado at the subsurface boundary of the WIPP, since the disposal system is located in that geologic formation. Thus, by demonstrating that EPA's drinking water standards would be met where radioactive contamination would be greatest, DOE also showed that other, more distant potential aquifers also would comply. This conservative approach compensates for substantial uncertainties that would otherwise be involved in the calculation of radionuclide transport to potential USDWs.

Even using an analysis that was designed to maximize radionuclide releases, DOE showed that the WIPP will comply with EPA's limits for radionuclides in ground water by a wide margin. The EPA therefore finds DOE in compliance with § 194.53. For further information concerning EPA's evaluation of compliance with § 194.53, see CARD 53. (Docket A–93–02, Item V–B–2)

Sections 194.54 and 194.55 relate to the scope and results of compliance assessments conducted to determine

compliance with the individual dose and ground-water protection requirements. The EPA found that DOE appropriately evaluated and screened out natural features, processes, and events related to undisturbed performance, and proposed to find DOE in compliance with § 194.54. (62 FR 58832) The Agency received no specific comments on this decision. Comments on issues that could affect predictions of undisturbed performance, such as site characterization or ground-water modeling, are discussed separately in this preamble and did not necessitate changes to compliance assessments. (See ''Geologic Scenarios and Disposal System Characteristics'' under the Performance Assessment sections of this preamble.) The EPA therefore finds that DOE complies with § 194.54. For further information on EPA's evaluation of compliance with § 194.54, see CARD 54. (Docket A–93–02, Item V–B–2)

The EPA found that compliance assessments conducted by DOE appropriately documented uncertainty, documented probability distributions for uncertain parameters, randomly sampled across the distributions, and generated and displayed a sufficient number of estimates of radiation doses and ground-water concentrations. Further, the resulting estimates of radiation doses and radionuclide concentrations in ground water (and independent calculations by EPA) were well below the limits in § 191.15 and Subpart C of 40 CFR Part 191. In its proposal, the Agency found that DOE is in compliance with the requirements of § 194.55, and received no comments disputing this decision, which is therefore finalized. For further information on EPA's evaluation of compliance for § 194.55, see CARD 55. (Docket A–93–02, Item V–B–2)

IX. Does DOE Need to Buy Existing Oil and Gas Leases Near the WIPP?

The EPA finds that DOE does not need to acquire existing oil and gas leases in the vicinity of the WIPP in order to comply with EPA's disposal regulations. These existing leases, and EPA's need to evaluate their effects on the WIPP, are addressed by the 1992 WIPP Land Withdrawal Act (''LWA'') which provides for EPA's regulatory authority at the WIPP.[37] (See Section X of this preamble, entitled ''Why and How Does EPA Regulate the WIPP,'' for more information on the WIPP LWA.) The 1992 WIPP LWA withdrew the geographic area containing the WIPP facility from all forms of entry, appropriation, and disposal under public land laws. The WIPP LWA transferred jurisdiction of the land to the Secretary of Energy explicitly for the use of constructing, operating, and conducting other authorized activities related to the WIPP. The WIPP LWA prohibits all surface or subsurface mining or oil or gas production is prohibited at all times on or under the land withdrawal area. (WIPP LWA, section 4(b)(5)(A)) However, section 4(b)(5)(B) states that existing rights under two oil and gas leases (Numbers NMNM 02953 and 02953C) (referred to as ''the section 4(b)(5)(B) leases'') shall not be affected unless the Administrator determines, after consultation with DOE and the Department of the Interior, that the acquisition of such leases by DOE is required to comply with EPA's final disposal regulations.

Before DOE can emplace waste in the WIPP, DOE must acquire the leases, unless EPA determines that such acquisition is not required. (WIPP LWA, section 7(b)(2)) This determination is separate and apart from the WIPP LWA requirement for EPA to conduct the certification decision by notice-and-comment rulemaking. (WIPP LWA, section 8(d)). Nonetheless, the Agency chose to address this matter as part of the certification process because the determination of whether potential drilling on the leases could possibly affect the integrity of the WIPP is closely related to similar determinations that must be made to determine compliance with the disposal regulations and WIPP compliance criteria. (See §§ 194.32(c), 194.54(b))

As discussed in the proposed certification decision, EPA examined DOE's analysis of a number of potential activities in the life cycle of a well-drilling, fluid injection (for both waterflooding and brine disposal), and abandonment—that could affect the WIPP disposal system. The Agency agreed with DOE that the effects of drilling a borehole would be highly localized, due to well casing procedures and borehole plugging practices. The EPA found that the effects of fluid injection can also be expected to be localized, due to underground injection control requirements. Finally, even abandoned boreholes would have little consequence on waste panels more than a meter away. Because the closest possible approach of a borehole drilled from the section 4(b)(5)(B) leases is over 2400 meters (8000 feet) from the WIPP waste disposal rooms, EPA determined that such a borehole would have an insignificant effect on releases from the disposal system (and in turn, on compliance with the disposal regulations). (62 FR 58835–58836)

For the reasons discussed above, EPA concluded in its proposed rule that the Secretary of Energy does not need to acquire Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C. (62 FR 58836) A number of comments on the proposed rule suggested that DOE conducted inadequate performance assessment analyses on drilling activities occurring prior to or soon after disposal in the vicinity of the WIPP, but only one commenter took issue directly with EPA's decision to not require the Secretary of Energy to acquire the Section 4(b)(5)(B) leases. This commenter questioned the impact of drilling activities by lease holders.

The DOE's analysis of drilling for the performance assessment indicated that wells drilled into the controlled area, but away from the waste disposal room and panels, will not adversely affect the disposal system's capability to contain radionuclides. A slant-drilled borehole from outside the Land Withdrawal Area, into the section 4(b)(5)(B) lease area at least 6000 feet below the surface, would be at least 2400 meters (8000) feet away from the WIPP disposal rooms and would thus have an insignificant effect on releases from the disposal system or compliance with the disposal regulations. The EPA finds that potential activities at the section 4(b)(5)(B) leases will not cause the WIPP to violate the disposal regulations. (For more information on drilling scenarios, see the preamble discussions related to performance assessment.) Therefore, EPA determines that it is not necessary for the Secretary of Energy to acquire the Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C.

X. Why and How Does EPA Regulate the WIPP?

The WIPP Land Withdrawal Act is the statute that provides EPA the authority to regulate the WIPP. The EPA's obligations and the limitations on EPA's regulatory authority under that law are discussed below.

A. The WIPP Land Withdrawal Act

The EPA's oversight of the WIPP facility is governed by the WIPP Land Withdrawal Act (''LWA''), passed initially by Congress in 1992 and amended in 1996. (Prior to the passage of the WIPP LWA in 1992, DOE was self-regulating with respect to the WIPP; that is, DOE was responsible for determining whether its own facility complies with applicable regulations for radioactive waste disposal.) The WIPP LWA delegates to EPA three main tasks, to be completed sequentially, for reaching a compliance certification decision. First, EPA must finalize

[37] Pub. L. 102–579, sections 4(b)(5) and 7(b)(2).

general regulations which apply to all sites—except Yucca Mountain—for the disposal of highly radioactive waste.[38] These regulations, located at Subparts B and C of 40 CFR Part 191 (''disposal regulations''), were published in the **Federal Register** in 1985 and 1993.[39]

Second, EPA must develop, by rulemaking, criteria to implement and interpret the general radioactive waste disposal regulations specifically for the WIPP. The EPA issued the WIPP compliance criteria, which are found at 40 CFR Part 194, in 1996.[40]

Third, EPA must review the information submitted by DOE and publish a certification decision.[41] Today's action constitutes EPA's certification decision as required by section 8 of the WIPP LWA.

Today's action also addresses the requirement at section 7(b)(2) that, before DOE can emplace waste in the WIPP, DOE must acquire existing oil and gas leases near the WIPP unless EPA determines that such acquisition is not required in order for DOE to comply with the disposal regulations. The EPA determines that acquisition of the leases is not necessary. For further discussion of this requirement, refer to the preamble section entitled, ''Does DOE need to buy existing oil and gas leases near the WIPP?''

Besides requiring EPA to issue a certification decision, the WIPP LWA also requires the Agency to conduct periodic recertifications, if the facility is initially certified. Every five years, EPA must determine whether documentation submitted by DOE demonstrates that the WIPP continues to be in compliance with the disposal regulations.[42] Recertifications are not conducted through rulemaking, and are not addressed by today's action. However, the WIPP compliance criteria address the process by which EPA intends to conduct recertifications, including publishing public notices in the **Federal Register** and providing a public comment period. (§ 194.64) For further information on recertification, refer to the preamble sections entitled, ''EPA's Future Role at the WIPP'' and ''How will the public be involved in EPA's future WIPP activities?''

B. Limits of EPA's Regulatory Authority at the WIPP

As discussed above, the WIPP LWA conveys specific responsibilities on EPA to ensure the safety of the WIPP as a permanent disposal facility. The Agency's primary responsibility, described in section 8 of the WIPP LWA, is to determine whether the WIPP facility will comply with EPA's disposal regulations. Members of the public have expressed, in written comments and in oral testimony on the proposed rule, a desire for the Agency to oversee other aspects of the WIPP's operation. In response to such concerns, EPA must clarify that its authority to regulate DOE and the WIPP is limited by the WIPP LWA and other statutes which delineate EPA's authority to regulate radioactive materials in general. The limitations on EPA's authority necessarily limit the scope of the present rulemaking.

A number of commenters suggested that EPA should explore alternative methods of waste disposal, such as neutralizing radioactive elements, before proceeding with a certification decision. Others stated that the WIPP should be opened immediately because underground burial of radioactive waste is less hazardous than the current strategy of above-ground storage. In the WIPP LWA, Congress did not delegate to EPA the authority to abandon or delay the WIPP because future technologies might evolve and eliminate the need for the WIPP. Also, Congress did not delegate to EPA the authority to weigh the competing risks of leaving radioactive waste stored above ground compared to disposal of waste in an underground repository. These considerations are outside the authority of EPA as established in the WIPP LWA, and thus outside the scope of this rulemaking. However, as technologies evolve over the operating period of the WIPP, DOE may incorporate them into the facility design through a modification or during the required recertification process. The EPA will evaluate how any such changes in design or activities at the WIPP may affect compliance with the radioactive waste disposal regulations.

Some commenters requested that EPA consider certain factors in making its certification decision. These factors include reviews by organizations other than EPA, and the political or economic motivations of interested parties. The EPA's certification decision must be made by comparing the scope and quality of relevant information to the objective criteria of 40 CFR Part 194. Where relevant, the Agency has considered public comments which support or refute technical positions taken by DOE. Emotional pleas and comments on the motives of interested parties are factors that are not relevant to a determination of whether DOE has demonstrated compliance with the disposal regulations and WIPP compliance criteria, and are therefore outside the scope of this rulemaking.

Finally, the hazards of transporting radioactive waste from storage sites to the WIPP is of great concern to the public. Transportation is entirely outside EPA's general authority for regulating radioactive waste. Moreover, in the WIPP LWA, Congress did not authorize any role for EPA to regulate transportation. Instead, the WIPP LWA reiterated that DOE must adhere to transportation requirements enforced by the U.S. Nuclear Regulatory Commission and the U.S. Department of Transportation. (WIPP LWA, section 16) Because all transportation requirements for the WIPP are established and enforced by other regulators, EPA does not address the issue further in today's action.

The preamble section entitled, ''What is EPA's response to general comments received on the certification decision?'' provides further discussion of general issues, including several related to the scope of EPA's certification rulemaking.

C. Compliance With Other Environmental Laws and Regulations

The WIPP must comply with a number of other environmental and safety regulations in addition to EPA's disposal regulations—including, for example, the Solid Waste Disposal Act and EPA's environmental standards for the management and storage of radioactive waste. Various regulatory agencies are responsible for overseeing the enforcement of these Federal laws. For example, the WIPP's compliance with EPA's radioactive waste management regulations, found at Subpart A of 40 CFR Part 191, is addressed by an EPA guidance document which describes how EPA intends to implement Subpart A at the WIPP. (Copies of the WIPP Subpart A Guidance are available by calling the WIPP Information Line at 1–800–331–WIPP or from EPA's WIPP home page at www.epa/gov/radiation/wipp.) Enforcement of some parts of the hazardous waste management regulations has been delegated to the State of New Mexico. The State's authority for such actions as issuing a hazardous waste operating permit for the WIPP is in no way affected by EPA's certification decision. It is the responsibility of the Secretary of Energy to report the WIPP's compliance with all applicable Federal laws pertaining to public health and the environment.[43] Compliance with environmental or

[38] WIPP LWA, section 8(b).

[39] 50 FR 38066–38089 (September 19, 1985) and 58 FR 66398–66416 (December 20, 1993).

[40] 61 FR 5224–5245 (February 9, 1996).

[41] WIPP LWA, section 8(d).

[42] WIPP LWA, section 8(f).

[43] WIPP LWA, sections 7(b)(3) and 9.

public health regulations other than EPA's disposal regulations and WIPP compliance criteria is not addressed by today's action.

XI. How Has the Public Been Involved in EPA's WIPP Activities?

Section 8(d)(2) of the WIPP LWA requires that the Administrator's certification decision be conducted by informal (or ''notice-and-comment'') rulemaking pursuant to Section 4 of the Administrative Procedure Act (''APA''). Notice-and-comment rulemaking under the APA requires that an agency provide notice of a proposed rulemaking, an opportunity for the public to comment on the proposed rule, and a general statement of the basis and purpose of the final rule.[44]

The WIPP compliance criteria, at Subpart D of 40 CFR Part 194, established a process of public participation that exceeds the APA's basic requirements, and provides the public with the opportunity to participate in the regulatory process at the earliest opportunity. The WIPP compliance criteria contain provisions that require EPA to: publish an advance notice of proposed rulemaking (''ANPR'') in the **Federal Register**; allow public comment on DOE's compliance certification application (''CCA'') for at least 120 days, prior to proposing a certification decision; hold public hearings in New Mexico, if requested, on the CCA; provide a minimum of 120 days for public comment on EPA's proposed certification decision; hold public hearings in New Mexico on EPA's proposal; produce a document summarizing the Agency's consideration of public comments on the proposal, and maintain informational dockets in the State of New Mexico to facilitate public access to the voluminous technical record, including the CCA. The EPA has complied with each of these requirements.

A. Public Involvement Prior to Proposed Rule

The EPA received DOE's CCA on October 29, 1996. Copies of the CCA and all the accompanying references submitted to EPA were placed in EPA's dockets in New Mexico and Washington, DC. On November 15, 1996, the Agency published in the **Federal Register** (61 FR 58499) an ANPR announcing that the CCA had been received, and announcing the Agency's intent to conduct a rulemaking to certify whether the WIPP facility will comply with the disposal regulations. The notice also announced a 120-day public comment period, requested public comment ''on all aspects of the CCA,'' and stated EPA's intent to hold public hearings in New Mexico.

The EPA published a separate notice in the **Federal Register** announcing hearings to allow the public to address all aspects of DOE's certification application. (62 FR 2988) Public hearings were held on February 19, 20 and 21, 1997, in Carlsbad, Albuquerque and Santa Fe, New Mexico, respectively. In addition to the public hearings, EPA held three days of meetings in New Mexico, on January 21, 22 and 23, 1997, with the principal New Mexico Stakeholders. Detailed summaries of these meeting were placed in Docket A–93–02, Category II–E.

The Agency received over 220 sets of written and oral public comments in response to the ANPR. The Agency reviewed all public comments submitted during the ANPR 120-day comment period or presented at the preliminary meetings with stakeholders. The EPA provided responses to these comments in the preamble to the proposed certification as well as in the compliance application review documents (''CARDs'') for the proposed certification decision. The CARDs also addressed late comments—and comments on the completeness of DOE's CCA—received after the close of the public comment period (on March 17, 1997) but before August 8, 1997. (62 FR 27996–27998) All relevant public comments, whether received in writing, or orally during the public hearings, were considered by the Agency as the proposed certification decision was developed. For further discussion of EPA's completeness determination and other pre-proposal activities, see the preamble to the proposed certification decision, 62 FR 58794–58796.

B. Proposed Certification Decision

On October 30, 1997, EPA published a Notice of Proposed Rulemaking in the **Federal Register**, fulfilling the requirements of the WIPP compliance criteria at § 194.62. (62 FR 58792–58838) The notice announced the Administrator's proposed decision, pursuant to section 8(d)(1) of the WIPP LWA, as amended, to issue a certification that the WIPP facility will comply with the disposal regulations, and solicited comment on the proposal. The notice also marked the beginning of a 120-day public comment period on EPA's proposed certification decision. Finally, the notice announced that public hearings would be held in New Mexico during the public comment period.

C. Public Hearings on Proposed Rule

Further information on the hearings was provided in a **Federal Register** notice published on December 5, 1997. (62 FR 64334–64335) The Agency conducted hearings in three cities in New Mexico—Carlsbad, Albuquerque, and Santa Fe—on January 5 through 9, 1998. The EPA took a number of steps to ensure that citizens were aware of the hearings and to accommodate requests to testify before the EPA panel. For example, EPA placed forty-six notices in newspapers across the State to advertise the hearings and provided a manned, toll-free telephone line for pre-registration. The Agency also allowed on-site registration, and extended the hours of the hearings in both Albuquerque and Santa Fe in order to allow everyone present who wished to testify the opportunity to do so.

D. Additional Public Input on the Proposed Rule

In addition to the public hearings, EPA held two days of meetings in New Mexico, on December 10–11, 1997, with the principal New Mexico stakeholders, including the New Mexico Attorney General's Office, the New Mexico Environmental Evaluation Group (''EEG''), Concerned Citizens for Nuclear Safety, Citizens for Alternatives to Radioactive Dumping, and Southwest Research and Information Center. Detailed summaries of these meetings were placed in Docket A–93–02, Item IV–E–8. Additional meetings were also held in January 1998 in New Mexico and Washington, DC with the New Mexico EEG (IV–E–10 and IV–E–11) and other stakeholders (IV–E–11).

In response to concerns expressed in meetings with stakeholders and in public hearings, EPA performed additional analyses of air drilling (a specialized drilling method which stakeholders raised as an issue which could potentially affect the WIPP if it occurred near the site). In light of the significant public interest in this issue, EPA conducted its analysis and released its report during the comment period on the proposed rule, in order to allow an opportunity for the public to comment on EPA's technical analysis. The Agency published a **Federal Register** notice of availability for the report and provided a 30-day public comment period. (63 FR 3863; January 27, 1998) The report was placed in the public docket and also sent electronically to a number of interested stakeholders, including the New Mexico Attorney General, the New Mexico Environmental Evaluation Group, Citizens for Alternatives to Radioactive

[44] 5 U.S.C. 553.

Dumping, Concerned Citizens for Nuclear Safety, and Southwest Research and Information Center.

E. Final Certification Decision, Response to Comments Document

Today's notice of EPA's final certification decision pursuant to section 8(d)(1) of the WIPP LWA fulfills the requirement of the WIPP compliance criteria at § 194.63(a). Also in accordance with § 194.63(b), EPA is publishing a document, accompanying today's action and entitled ''Response to Comments,'' which contains the Agency's response to all significant comments received during the comment period on the proposed certification decision. (Docket A–93–02, Item V–C–1) (For further discussion of EPA's treatment of ANPR and other pre-proposal comments, refer to the preamble to the proposed rule, 62 FR 58794–58796.) All comments received by EPA, whether written or oral, were given equal consideration in developing the final rule. All comments received by the Agency were made available for public inspection through the public docket. (Docket A–93–02, Categories IV–D, IV–F, and IV–G)

F. Dockets

In accordance with 40 CFR 194.67, EPA maintains a public docket (Docket A–93–02) that contains all information used to support the Administrator's proposed and final decisions on certification. The Agency established and maintains the formal rulemaking docket in Washington, D.C., as well as informational dockets in three locations in the State of New Mexico (Carlsbad, Albuquerque, and Santa Fe). The docket consists of all relevant, significant information received to date from outside parties and all significant information considered by the Administrator in reaching a certification decision regarding whether the WIPP facility will comply with the disposal regulations. The EPA placed copies of the CCA in Category II–G of the docket. The Agency placed supplementary information received from DOE in response to EPA requests in Categories II–G and II–I.

The final certification decision and supporting documentation can be found primarily in the following categories of Docket A–93–02: Category V–A (final rule and preamble), Category V–B (Compliance Application Review Documents and Technical Support Documents), and Category V–C (Response to Comments document).

The hours and locations of EPA's public information dockets are as follows: Docket No. A–93–02, located in room 1500 (first floor in Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460 (open from 8:00 a.m. to 4:00 p.m. on weekdays); 2) EPA's docket in the Government Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico, (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); 3) EPA's docket in the Fogelson Library of the College of Santa Fe in Santa Fe, New Mexico, located at 1600 St. Michaels Drive (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, 1:00 p.m. to 9:00 p.m. on Sunday); and 4) EPA's docket in the Municipal Library of Carlsbad, New Mexico, located at 101 S. Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying docket materials.

XII. How Will the Public be Involved in EPA's Future WIPP Activities?

The EPA's regulatory role at the WIPP does not end with its initial certification decision. The Agency's future WIPP activities will include periodic recertifications, review of DOE reports on activities at the WIPP, assessment of waste characterization and QA programs at waste generator sites, announced and unannounced inspections of the WIPP and other facilities, and possibly modification, revocation, or suspension of the certification for cause. These activities are described above in the preamble section entitled ''EPA's Future Role at the WIPP.'' The EPA has provided for public involvement in these activities through rulemaking procedures, **Federal Register** notices and public comment periods, and by making information available in its public dockets. (See the preamble sections entitled ''Dockets'' and ''Where can I get more information about EPA's WIPP activities?'' for more information regarding EPA's rulemaking docket.)

While a suspension may be initiated at the discretion of the Administrator in order to promptly reverse or mitigate a potential threat to public health, any modification or revocation of the certification will be conducted through rulemaking. (§§ 194.65–66) To modify or revoke the certification, EPA will first publish a Notice of Proposed Rulemaking in the **Federal Register**. This notice will announce EPA's proposed action, describe the basis for the decision, and provide the opportunity for public comment on the proposal. Documentation related to the decision will be made available to the public through EPA's docket. Any final rule on modification or revocation will also be published in the **Federal Register**. In addition, EPA will release a document which summarizes and responds to significant public comments received on its proposal.

The recertification process—EPA's periodic review of the WIPP's continued compliance with the disposal regulations and WIPP compliance criteria—will include many of the same elements as notice-and-comment rulemaking. For example, EPA will publish a **Federal Register** notice announcing its intent to conduct such an evaluation. The certification application for recertification will be placed in the docket, and at least a 30-day period will be provided for submission of public comments. The Agency's decision on whether to recertify the WIPP facility will again be announced in a **Federal Register** notice. (§ 194.64)

Although not required by the APA, the WIPP LWA, or the WIPP compliance criteria, EPA intends to place in the docket all inspection or audit reports and annual reports by DOE on conditions and activities at the WIPP. The Agency also plans to docket information pertaining to the enforcement of certification conditions. For the enforcement of Conditions 2 and 3 (regarding quality assurance (''QA'') and waste characterization programs at waste generator sites), a number of additional steps will be taken. As described in § 194.8 of the WIPP compliance criteria, before approving QA and waste characterization controls at generator sites, EPA will publish a **Federal Register** notice announcing EPA inspections or audits. The requisite plans and other appropriate inspection or audit documentation will be placed in the docket, and the public will be allowed the opportunity to submit written comments. A comment period of at least 30 days will be provided. Thus, EPA's decisions on whether to approve waste generator QA program plans and waste characterization controls'—and thus, to allow shipment of specific waste streams for disposal at the WIPP'—will be made only after EPA has conducted an inspection or audit of the waste generator site and after public comment has been solicited on the matter. The Agency's decisions will be conveyed by a letter from EPA to DOE.

A copy of the letter, as well as the results of any inspections or audits, will be placed in EPA's docket.

XIII. Where Can I Get More Information About EPA's WIPP Activities?

The EPA's docket functions as the official file for Agency rulemakings. The EPA places all information used to support its proposed and final decisions in the docket, which is available for review by the public. For the WIPP certification rulemaking, information is placed in Air Docket Number A–93–02. The official docket is located in Washington, DC, and informational dockets are provided in three cities in New Mexico. (See the ''Dockets'' section of this preamble for more information on the location and hours of EPA's WIPP dockets.) The contents of the docket include technical information received from outside parties and other information considered by EPA in reaching a certification decision, as well as the Agency's rationale for its decision. The technical support documents which describe the basis for EPA's certification decision are discussed below; sources of more general information on EPA's WIPP activities are also addressed.

A. Technical Support Documents

For more specific information about the basis for EPA's certification decision, there are a number of technical support documents available. The Compliance Application Review Documents, or CARDs, contain the detailed technical rationale for EPA's certification decision. This document is found at Docket A–93–02, Item V–B–2.

The CARDs discuss DOE's compliance with the individual requirements of the WIPP compliance criteria. Each CARD is a section in the document which is numbered according to the section of 40 CFR Part 194 to which it pertains. For example, CARD 23 addresses § 194.23, ''Models and Computer Codes.'' Each CARD: restates the specific requirement, identifies relevant information expected in the CCA, explains EPA's compliance review criteria, summarizes DOE's approach to compliance, and describes EPA's compliance review and decision. The CARDs also list additional EPA technical support documents and any other references used by EPA in rendering its decision on compliance. All technical support documents and references are available in Docket A–93–02 with the exception of generally available references and those documents already maintained by DOE or its contractors in locations accessible to the public. (Instructions for obtaining access to DOE documents can be found at Docket A–93–02, Item V–B–1.)

B. WIPP Information Line, Mailing List, and Internet Homepage

For more general information and updates on EPA's WIPP activities, interested citizens may contact EPA's toll-free WIPP Information Line at 1–800–331–WIPP. The hotline offers a recorded message, in both English and Spanish, about current EPA WIPP activities, upcoming meetings, and publications. Callers are also offered the option of joining EPA's WIPP mailing list. Periodic mailings, including a WIPP Bulletin and fact sheets related to specific EPA activities, are sent to members of the mailing list (currently numbering over 800). The WIPP internet homepage, at www.epa.gov/radiation/wipp, provides general information on EPA's regulatory oversight of the WIPP. **Federal Register** notices are also announced on the homepage, and a number of documents (ranging from outreach materials and hearings transcripts to technical support documents) are available to review or download.

XIV. With What Regulatory and Administrative Requirements Must This Rulemaking Comply?

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of 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. Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is a ''significant regulatory action'' because it raises novel policy issues which arise from legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Regulatory Flexibility

The Regulatory Flexibility Act (''RFA'') generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because it sets forth requirements which apply only to Federal agencies. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The EPA has determined that this proposed rule contains no information collection requirements as defined by the Paperwork Reduction Act (44 U.S.C. 3501 et seq).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Pursuant to Title II of the UMRA, EPA has determined that this regulatory action is not subject to the requirements of sections 202 and 205, because this action does not contain any ''federal mandates'' for State, local, or tribal governments or for the private sector. The rule implements requirements that are specifically set forth by the Congress in the Waste Isolation Pilot Plant Land Withdrawal Act (Pub. L. 102–579) and that apply only to Federal agencies.

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income, minority, and native American communities. The EPA has complied with this mandate. The requirements specifically set forth by

the Congress in the Waste Isolation Pilot Plant Land Withdrawal Act (Pub. L. 102–579), which prescribes EPA's role at the WIPP, did not provide authority for EPA to examine impacts in the communities in which wastes are produced, stored, and transported, and Congress did not delegate to EPA the authority to consider alternative locations for the WIPP.

The EPA involved minority and low-income populations early in the rulemaking process. In 1993 EPA representatives met with New Mexico residents and government officials to identify the key issues that concern them, the types of information they wanted from EPA, and the best ways to communicate with different sectors of the New Mexico public. The feedback provided by this group of citizens formed the basis for EPA's WIPP communications and consultation plan. To help citizens, including a significant Hispanic population in Carlsbad and the nearby Mescalero Indian Reservation, stay abreast of EPA's WIPP-related activities, the Agency developed many informational products and services. The EPA translated into Spanish many documents regarding WIPP, including educational materials and fact sheets describing EPA's WIPP oversight role and the radioactive waste disposal standards. The EPA also established a toll-free WIPP Information Line, recorded in both English and Spanish, providing the latest information on upcoming public meetings, publications, and other WIPP-related activities. The EPA also developed a vast mailing list, which includes many low-income, minority, and native American groups, to systematically provide interested parties with copies of EPA's public information documents and other materials. Even after the final rule, EPA will continue its efforts toward open communication and outreach.

F. Small Business Regulatory Enforcement Fairness Act of 1996

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the right or obligations of non-agency parties. (5 U.S.C. 804(3)) The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

G. National Technology Transfer & Advancement Act of 1995

Section 12 of the National Technology Transfer & Advancement Act of 1995 is intended to avoid ''re-inventing the wheel.'' It aims to reduce the costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry. To comply with the Act, EPA must consider and use ''voluntary consensus standards,'' if available and applicable, when implementing policies and programs, unless doing so would be ''inconsistent with applicable law or otherwise impractical.'' The EPA has determined that this regulatory action is not subject to the requirements of National Technology Transfer & Advancement Act of 1995 as this rulemaking is not setting any technical standards.

H. Executive Order 13045—Children's Health Protection

This final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 194

Environmental protection, Administrative practice and procedure, Nuclear materials, Radionuclides, Plutonium, Radiation protection, Uranium, Transuranics, Waste treatment and disposal.

Dated: May 13, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 194 is amended as follows.

PART 194—CRITERIA FOR THE CERTIFICATION AND RE-CERTIFICATION OF THE WASTE ISOLATION PILOT PLANT'S COMPLIANCE WITH THE 40 CFR PART 191 DISPOSAL REGULATIONS

1. The authority citation for part 194 is revised to read as follows:

Authority: Pub. L. 102–579, 106 Stat. 4777, as amended by Pub. L. 104–201,110 Stat. 2422; Reorganization Plan No. 3 of 1970, 35 FR 15623, Oct. 6, 1970, 5 U.S.C. app. 1; Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011–2296 and 10101–10270.

2. In § 194.2, a definition is added in alphabetical order to read as follows:

§ 194.2 Definitions.

* * * * *

Administrator's authorized representative means the director in charge of radiation programs at the Agency.

3. Section 194.8 is added to subpart A to read as follows:

§ 194.8 Approval Process for Waste Shipment from Waste Generator Sites for Disposal at the WIPP

(a) *Quality Assurance Programs at Waste Generator Sites.* The Agency will determine compliance with requirements for site-specific quality assurance programs as set forth below:

(1) Upon submission by the Department of a site-specific quality assurance program plan the Agency will evaluate the plan to determine whether it establishes the applicable Nuclear Quality Assurance (NQA) requirements of § 194.22(a)(1) for the items and activities of §§ 194.22(a)(2)(i), 194.24(c)(3) and 194.24(c)(5). The program plan and other documentation submitted by the Department will be placed in the dockets described in § 194.67.

(2) The Agency will conduct a quality assurance audit or an inspection of a Department quality assurance audit at the relevant site for the purpose of verifying proper execution of the site-specific quality assurance program plan. The Agency will publish a notice in the **Federal Register** announcing a scheduled inspection or audit. In that or another notice, the Agency will also solicit public comment on the quality assurance program plan and appropriate Department documentation described in paragraph (a)(1) of this section. A public comment period of at least 30 days will be allowed.

(3) The Agency's written decision regarding compliance with the requisite quality assurance requirements at a waste generator site will be conveyed in a letter from the Administrator's authorized representative to the Department. No such compliance determination shall be granted until after the end of the public comment period described in paragraph (a)(2) of this section. A copy of the Agency's compliance determination letter will be placed in the public dockets in accordance with § 194.67. The results of any inspections or audits conducted by the Agency to evaluate the quality assurance programs described in paragraph (a)(1) of this section will also

be placed in the dockets described in § 194.67.

(4) Subsequent to any positive determination of compliance as described in paragraph (a)(3) of this section, the Agency intends to conduct inspections, in accordance with §§ 194.21 and 194.22(e), to confirm the continued compliance of the programs approved under paragraphs (a)(2) and (a)(3) of this section. The results of such inspections will be made available to the public through the Agency's public dockets, as described in § 194.67.

(b) *Waste Characterization Programs at Waste Generator Sites.* The Agency will determine compliance with the requirements for use of process knowledge and a system of controls at waste generator sites as set forth below:

(1) For each waste stream or group of waste streams at a site, the Department must:

(i) Provide information on how process knowledge will be used for waste characterization of the waste stream(s) proposed for disposal at the WIPP; and

(ii) Implement a system of controls at the site, in accordance with § 194.24(c)(4), to confirm that the total amount of each waste component that will be emplaced in the disposal system will not exceed the upper limiting value or fall below the lower limiting value described in the introductory text of paragraph (c) of § 194.24. The implementation of such a system of controls shall include a demonstration that the site has procedures in place for adding data to the WIPP Waste Information System (''WWIS''), and that such information can be transmitted from that site to the WWIS database; and a demonstration that measurement techniques and control methods can be implemented in accordance with § 194.24(c)(4) for the waste stream(s) proposed for disposal at the WIPP.

(2) The Agency will conduct an audit or an inspection of a Department audit for the purpose of evaluating the use of process knowledge and the implementation of a system of controls for each waste stream or group of waste streams at a waste generator site. The Agency will announce a scheduled inspection or audit by the Agency with a notice in the **Federal Register**. In that or another notice, the Agency will also solicit public comment on the relevant waste characterization program plans and Department documentation, which will be placed in the dockets described in § 194.67. A public comment period of at least 30 days will be allowed.

(3) The Agency's written decision regarding compliance with the requirements for waste characterization programs described in paragraph (b)(1) of this section for one or more waste streams from a waste generator site will be conveyed in a letter from the Administrator's authorized representative to the Department. No such compliance determination shall be granted until after the end of the public comment period described in paragraph (b)(2) of this section. A copy of the Agency's compliance determination letter will be placed in the public dockets in accordance with § 194.67. The results of any inspections or audits conducted by the Agency to evaluate the plans described in paragraph (b)(1) of this section will also be placed in the dockets described in § 194.67.

(4) Subsequent to any positive determination of compliance as described in paragraph (b)(3) of this section, the Agency intends to conduct inspections, in accordance with §§ 194.21 and 194.24(h), to confirm the continued compliance of the programs approved under paragraphs (b)(2) and (b)(3) of this section. The results of such inspections will be made available to the public through the Agency's public dockets, as described in § 194.67.

4. Appendix A to Part 194 is added to read as follows:

Appendix A to Part 194—Certification of the Waste Isolation Pilot Plant's Compliance With the 40 CFR Part 191 Disposal Regulations and the 40 CFR Part 194 Compliance Criteria

In accordance with the provisions of the WIPP Compliance Criteria of this part, the Agency finds that the Waste Isolation Pilot Plant (''WIPP'') will comply with the radioactive waste disposal regulations at part 191, subparts B and C, of this chapter. Therefore, pursuant to Section 8(d)(2) of the WIPP Land Withdrawal Act (''WIPP LWA''), as amended, the Administrator certifies that the WIPP facility will comply with the disposal regulations. In accordance with the Agency's authority under § 194.4(a), the certification of compliance is subject to the following conditions:

Condition 1: § 194.14(b), Disposal system design, panel closure system. The Department shall implement the panel seal design designated as Option D in Docket A–93–02, Item II–G–1 (October 29, 1996, Compliance Certification Application submitted to the Agency). The Option D design shall be implemented as described in Appendix PCS of Docket A–93–02, Item II–G–1, with the exception that the Department shall use Salado mass concrete (consistent with that proposed for the shaft seal system, and as described in Appendix SEAL of Docket A–93–02, Item II–G–1) instead of fresh water concrete.

Condition 2: § 194.22: Quality Assurance. The Secretary shall not allow any waste generator site other than the Los Alamos National Laboratory to ship waste for disposal at the WIPP until the Agency determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3) and 194.24(c)(5) for waste characterization activities and assumptions. The Agency will determine compliance of site-specific quality assurance programs at waste generator sites using the process set forth in § 194.8.

Condition 3: § 194.24: Waste Characterization. The Secretary may allow shipment for disposal at the WIPP of legacy debris waste at the Los Alamos National Laboratory (''LANL'') that can be characterized using the systems and processes inspected by the Agency and documented in Docket A–93–02, Item II–I–70. The Secretary shall not allow shipment of any waste from any additional LANL waste stream(s) or from any waste generator site other than LANL for disposal at the WIPP until the Agency has approved the processes for characterizing those waste streams for shipment using the process set forth in § 194.8.

Condition 4: § 194.43, Passive institutional controls.

(a) Not later than the final recertification application submitted prior to closure of the disposal system, the Department shall provide, to the Administrator or the Administrator's authorized representative:

(1) a schedule for implementing passive institutional controls that has been revised to show that markers will be fabricated and emplaced, and other measures will be implemented, as soon as possible following closure of the WIPP. Such schedule should describe how testing of any aspect of the conceptual design will be completed prior to or soon after closure, and what changes to the design of passive institutional controls may be expected to result from such testing.

(2) documentation showing that the granite pieces for the proposed monuments and information rooms described in Docket A–93–02, Item II–G–1, and supplementary information may be: quarried (cut and removed from the ground) without cracking due to tensile stresses from handling or isostatic rebound; engraved on the scale required by the design; transported to the site, given the weight and dimensions of the granite pieces and the capacity of existing rail cars and rail lines; loaded, unloaded, and erected without cracking based on the capacity of available equipment; and successfully joined.

(3) documentation showing that archives and record centers will accept the documents identified and will maintain them in the manner identified in Docket A–93–02, Item II–G–1.

(4) documentation showing that proposed recipients of WIPP information other than archives and record centers will accept the information and make use of it in the manner indicated by the Department in Docket A–93–02, Item II–G–1 and supplementary information.

(b) Upon receipt of the information required under paragraph (a) of this condition, the Agency will place such documentation in the public dockets identified in § 194.67. The Agency will determine if a modification to the

compliance certification in effect is necessary. Any such modification will be conducted in accordance with the requirements at §§ 194.65 and 194.66.

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May 18, 1998

Part IV

Department of Education

Special Education: State Program Improvement Grants Program; Inviting Applications for New Awards for Fiscal Year 1998; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.323A]

Special Education: State Program Improvement Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: The purpose of this program, newly authorized under the Individuals with Disabilities Education Act (IDEA) Amendments of 1997, is to assist State educational agencies to establish a partnership with local educational agencies and other State agencies involved in, or concerned with, reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

Eligible Applicants: A State educational agency of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

General Requirements: (a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA);

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA); and

(c) Projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project.

Deadline for Transmittal of Applications: October 1, 1998.

Deadline for Intergovernmental Review: November 30, 1998.

Available Funds: $21 million.

Estimated Range of Awards: Awards will be not less than $500,000, nor more than $2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and not less than $80,000, in the case of an outlying area. The Secretary sets the amount of each grant after considering: (1) the amount of funds available for making the grants; (2) the relative population of the State or outlying area; and (3) the types of activities proposed by the State or outlying area.

Estimated Average Size of Awards: $1,000,000.

Estimated Number of Awards: 21.

Note: The Department of Education is not bound by the estimated size and number of awards in this notice.

Project Period: Not less than one year and not more than five years.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria for this program are drawn from EDGAR in 34 CFR 75.210.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Description of Program

The statutory authorization for this program and the application requirements that apply to this competition are set out in section 651–655 of the IDEA.

Findings and Purposes

(a) States are responding with some success to multiple pressures to improve educational and transitional services and results for children with disabilities in response to growing demands imposed by ever-changing factors, such as demographics, social policies, and labor and economic markets.

(b) In order for States to address those demands and to facilitate lasting systemic change that is of benefit to all students, including children with disabilities, States must involve local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations in carrying out comprehensive strategies to improve educational results for children with disabilities.

(c) Targeted Federal financial resources are needed to assist States, working in partnership with others, to identify and make needed changes to address the needs of children with disabilities into the next century.

(d) State educational agencies, in partnership with local educational agencies and other individuals and organizations, are in the best position to identify and design ways to meet emerging and expanding demands to improve education for children with disabilities and to address their special needs.

(e) Research, demonstration, and practice over the past 20 years in special education and related disciplines have built a foundation of knowledge on which State and local systemic-change activities can now be based.

(f) Such research, demonstration, and practice in special education and related disciplines have demonstrated that an effective educational system now and in the future must—

(1) Maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals;

(2) Create a system that fully addresses the needs of all students, including children with disabilities, by addressing the needs of children with disabilities in carrying out educational reform activities;

(3) Clearly define, in measurable terms, the school and post-school results that children with disabilities are expected to achieve;

(4) Promote service integration, and the coordination of State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who require significant levels of support to maximize their participation and learning in school and the community;

(5) Ensure that children with disabilities are provided assistance and support in making transitions as described in section 674(b)(3)(C) of the Act;

(6) Promote comprehensive programs of professional development to ensure that the persons responsible for the education or a transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children;

(7) Disseminate to teachers and other personnel serving children with disabilities research-based knowledge about successful teaching practices and models and provide technical assistance to local educational agencies and schools on how to improve results for children with disabilities;

(8) Create school-based disciplinary strategies that will be used to reduce or

eliminate the need to use suspension and expulsion as disciplinary options for children with disabilities;

(9) Establish placement-neutral funding formulas and cost-effective strategies for meeting the needs of children with disabilities; and

(10) Involve individuals with disabilities and parents of children with disabilities in planning, implementing, and evaluating systemic-change activities and educational reforms.

Absolute Priority

Under Section 653 of the Act and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority.

This priority supports projects that assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

State Improvement Plan

Applicants must submit a State improvement plan that—

(a) Is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965 and the Rehabilitation Act of 1973, if appropriate;

(b) Identifies those critical aspects of early intervention, general education, and special education programs (including professional development, based on an assessment of State and local needs) that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16) of the Act. Specifically, applicants must include:

(1) An analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State, including—

(i) Their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;

(ii) Their participation in postsecondary education and employment; and

(iii) How their performance on the assessments and indicators compares to that of non-disabled children;

(2) An analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum:

(i) The number of personnel providing special education and related services; and

(ii) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (b)(2)(i) with temporary certification), and on the extent of certification or retraining necessary to eliminate those shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs;

(3) An analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and

(4) An analysis of other information, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities;

(c) Describes a partnership agreement that —

(1) Specifies —

(i) The nature and extent of the partnership among the State educational agency, local educational agencies, and other State agencies involved in, or concerned with, the education of children with disabilities, and the respective roles of each member of the partnership; and

(ii) How those agencies will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of these persons and organizations; and

(2) Is in effect for the period of the grant;

(d) Describes how grant funds will be used in undertaking the systemic-change activities, and the amount and nature of funds from any other sources, including funds under part B of the Act retained for use at the State level under sections 611(f) and 619(d) of the Act, that will be committed to the systemic-change activities;

(e) Describes the strategies the State will use to address the needs identified under paragraph (b), including how it will—

(1) Change State policies and procedures to address systemic barriers to improving results for children with disabilities;

(2) Hold local educational agencies and schools accountable for educational progress of children with disabilities;

(3) Provide technical assistance to local educational agencies and schools to improve results for children with disabilities;

(4) Address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities, including a description of how it will—

(i) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the State will work with other States on common certification criteria;

(ii) Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

(iii) Work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

(iv) Work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation;

(v) Work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;

(vi) Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(vii) Acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State, if appropriate, will adopt promising practices, materials, and technology;

(viii) Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are

underrepresented in the fields of regular education, special education, and related services;

(ix) Integrate its plan, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

(x) Provide for the joint training of parents and special education, related services, and general education personnel;

(5) Address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel;

(6) Disseminate results of the local capacity-building and improvement projects funded under section 611(f)(4) of the Act;

(7) Address improving results for children with disabilities in the geographic areas of greatest need; and

(8) Assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and

(9) Coordinate its improvement strategies with public and private sector resources.

Required Partners

Applicants must:

(a) Establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities; and

(b) Work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including—

(1) The Governor;

(2) Parents of children with disabilities;

(3) Parents of nondisabled children;

(4) Individuals with disabilities;

(5) Organizations representing individuals with disabilities and their parents, such as parent training and information centers;

(6) Community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(7) The lead State agency for part C of the Act;

(8) General and special education teachers, and early intervention personnel;

(9) The State advisory panel established under part B of the Act;

(10) The State interagency coordinating council established under part C of the Act; and

(11) Institutions of higher education within the State.

Optional Partners

A partnership established by applicants may include agencies such as—

(a) Individuals knowledgeable about vocational education; (b) The State agency for higher education;

(c) The State vocational rehabilitation agency;

(d) Public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and

(e) Other individuals.

Reporting Procedures

Each State educational agency that receives a grant shall submit performance reports to the Secretary pursuant to a schedule to be determined by the Secretary, but not more frequently than annually. The reports must describe the progress of the State in meeting the performance goals established under Section 612(a)(16) of the Act, analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance. Grantees must also provide information required under EDGAR at 34 CFR 80.40.

Use of Funds

Each State educational agency that receives a State Improvement Grant under this program—

(a) May use grant funds to carry out any activities that are described in the State's application and that are consistent with the purpose of this program;

(b) Shall, consistent with its partnership agreement established under the grant, award contracts or subgrants to local educational agencies, institutions of higher education, and parent training and information centers, as appropriate, to carry out its State improvement plan;

(c) May award contracts and subgrants to other public and private entities, including the lead agency under part C of the Act, to carry out that plan;

(d)(1) Shall use not less than 75 percent of the funds it receives under the grant for any fiscal year—

(i) To ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children; or

(ii) To work with other States on common certification criteria; or

(2) Shall use not less than 50 percent of those funds for these purposes, if the State demonstrates to the Secretary's satisfaction that it has the personnel described in paragraph (d)(1).

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (15 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(iii) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated.

(b) *Significance.* (15 points) (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers one or more of the following factors:

(i) The likelihood that the proposed project will result in system change or improvement.

(ii) The extent to which the proposed project is likely to build local capacity to provide, improve or expand services that address the needs of the target population.

(c) *Quality of the project design.* (15 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(iv) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(v) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(vi) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(vii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(viii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(ix) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(d) *Quality of project services.* (15 points) (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers one or more of the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(vi) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(vii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(viii) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(ix) The extent to which the services to be provided by the proposed project are focused on those with greatest needs.

(e) *Quality of project personnel.* (10 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers one or more of the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Adequacy of resources.* (10 points) (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers one or more of the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project.

(iv) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(v) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(vi) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(vii) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(g) *Quality of the management plan.* (10 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(h) *Quality of the project evaluation.* (10 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers one or more of the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce

quantitative and qualitative data to the extent possible.

(v) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an inter-governmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. The addresses of individual State Single Point of Contact are in the Appendix to this notice.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.323A, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above Address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and three copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.323A), Washington, D.C. 20202–4725; or

(2) Hand-deliver the original and three copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.323A), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice is divided into three parts, plus a statement regarding estimated public reporting burden, additional non-regulatory guidance, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

The following forms and other items must be included in the application:

a. Estimated Public Reporting Burden.

b. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

c. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

d. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: This form is intended for the use of grantees and should not be transmitted to the Department.)

e. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget in the **Federal Register** (61 FR 1413) on (January 19, 1996).

f. Addresses of the individual State Single Point of Contact.

g. Table of Contents.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit *one* original signed application, including ink signatures on all forms and assurances, and three copies of the application. Please mark each application as ''original'' or ''copy''. No grant may be awarded unless a completed application has been received.

For Applications and General Information Contact

Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 600 Independence Avenue, SW, room 3317, Switzer Building, Washington, DC 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the

Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

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

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

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

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

Dated: May 13, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1820-0620. The time required to complete this information collection is estimated to average between 50–130 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to*: U.S. Department of Education, Washington, D.C. 20202–4651. *If you have any comments or concerns regarding the status of your individual submission of this form, write directly to*: Office of Special Education Programs, U.S. Department of Education, 600 Independence Avenue, SW., Washington, D.C. 20202–2641.

Application Narrative

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions, not resumes.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include six additional copies. Do not use elaborate bindings or covers. The application must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of *October 1, 1998*.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs.

This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program.

All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirements of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how its intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1820–0620 (Exp. 10/31/98).

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Questions and Answers

Following is a series of questions and answers that will serve as guidance for State Educational Agency in completing the grant application for a State Improvement Grant (SIG) as authorized by the Individuals with Disabilities Education Act (IDEA). The questions were chosen to provide additional insight into the statutory requirements contained in the grant application. The questions were generated from a number of sources including parents of students with disabilities, Regional Resource Centers, the Federal Resource Center, State Directors of Special Education, State Educational Agency staff and staff from the Office of Special Education Programs.

Eligible Applicants

1. Who May Apply for a State Improvement Grant?

A State Educational Agency of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).[1] (Sections 602(18), 602(27), 652(a), and 655(a)(1)(2)).

2. Can Two or More SEAs Apply Jointly for a SIG?

No. A State applying for a State Improvement Grant shall submit an individual application. However, included in the application will be a description of how: (1) the State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation; and (2) the State will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel (Section 653(c)(3)(D)(iv) and (v)).

Partners

3. With Whom Is the State Supposed To Form Partnerships and How Are Such Partnerships Structured?

Part D Subpart 1—State Program Improvement Grants for Children with Disabilities, Section 652 (b) describes three types of State partners. In order to be considered for a State Improvement Grant, a State educational agency must establish a partnership with individuals and organizations considered ''Required Partners.'' Required partners are made up of two subsets of partners—those called ''Contractual partners'' and those called ''Other partners.'' The SEA's contractual partners are local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities. These partners are called contractual because they must be parties to a formal ''partnership agreement'' that is explained further below in question four. The ''other partners'' are individuals and organizations involved in, and concerned with, the education of children with disabilities, with whom the SEA must work in partnership to implement the State improvement grant. Other partners may be, but the SEA is not required to make them, parties to the formal partnership agreement. Those ''other partners'' must include the Governor; parents of children with disabilities; parents of nondisabled children; individuals with disabilities; organizations representing individuals with disabilities and their parents, such as parent training and information centers; community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities; the lead State agency for Part C; general and special education teachers, and early intervention personnel; the State advisory panel established under Part B; the State interagency coordinating council established under Part C; and institutions of higher education within the State.

In addition to required partners, the SEA, at its option, may include as partners individuals and organizations called ''Optional Partners.'' The SEA may include ''optional partners'' as parties to the formal partnership agreement or work in partnership with them, without them being parties to the partnership agreement. Those optional partners may include individuals knowledgeable about vocational education, the State agency for higher education, the State vocational rehabilitation agency, public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice and other individuals.

4. What is the Partnership Agreement and What Must It Include?

Each State Improvement Plan submitted with the State's application shall include a description of the partnership agreement entered into by the SEA with its contractual partners and with any ''other'' and ''optional'' partners who will be parties to the partnership agreement. As specified in the grant application package, the partnership agreement must specify the nature and extent of the partnership among the SEA, the LEAs, and other State agencies involved in, or concerned with, the education of children with disabilities. It must specify the respective roles of each member of the partnership in the implementation of the State improvement plan. The partnership agreement must also specify how the SEA, LEAs, and other State agencies identified above, will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities (these would be the ''other partners'' and any ''optional partners''), and must specify the respective roles of each of these persons and organizations (Section 653(c)(1)(B)).

The partnership agreement must indicate that it is in effect for the period of the grant. The terms of the partnership agreement will determine whether the SEA will award subgrants or contracts to any of the partners listed in Section 654(a)(2)(A).

5. What Is the Connection Between the Partnership Agreement and the SEA's Use of Funds?

The SEA shall, as appropriate, award contracts or subgrants to LEAs, IHEs, and parent training and information centers identified in the partnership agreement to carry out the State improvement plan. To carry out the State improvement plan, the SEA may also award contracts and subgrants to other public and private entities, including the lead agency under Part C and other agencies that are partners, as well as public and private entities that are not partners. It is anticipated that an SEA will need and desire the resources of other individuals and organizations to develop and implement all of the systemic change, technical assistance, in-service and pre-service training,

[1] Unless otherwise noted, the term ''state'' refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the outlying areas (United States Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands).

dissemination and assessment activities designated in the State improvement plan. There is, however, no required amount of funds that must be used for contracts or subgrants (Section 654(a)(2)).

Funding availability and levels

6. What Are the Grant Amounts to States?

The Secretary shall make a grant to each State educational agency whose application the Secretary has selected for funding under this subpart in an amount for each fiscal year that is: (1) not less than $500,000, nor more than $2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and (2) not less than $80,000, in the case of an outlying area (United States Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands (Section 655(a)).

Beginning with fiscal year 1999, the Secretary may increase the maximum amount under (1) to account for inflation.

7. How Will Decisions Be Made Regarding the Amount of Funds That States Will Receive if Approved for a State Improvement Grant?

The Secretary will set the amount of each grant, within the limits outlined in the response to question 6, after considering: (1) the relative population of the State; (2) the types of activities proposed by the State; and (3) the amount of funds available for making the grants (Section 655(c)).

8. How Will the Connection Between Grant Amounts and ''Need'' Be Determined?

As previously stated in the response to question 7, the Secretary shall set the amount of each grant after considering: (1) the relative population of the State; (2) the types of activities proposed by the State or outlying area; and (3) the amount of funds available for making the grants. ''Need'' will be determined through the quality of the needs assessment performed under Section 653(b) including: (i) an analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State; (ii) an analysis of State and local needs for professional development for personnel to serve children with disabilities; (iii) an analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and (iv) an analysis of other information, for example, findings made by the Secretary's Office for Civil Rights, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities.

9. What Will the Secretary Consider in Making an Award on a Competitive Basis?

Using the selection criteria identified elsewhere in this application package, the Secretary expects to select for funding applications from States that demonstrate a need for improvement and effective strategies to meet those State needs. The application should show how the State plans to fulfill the purpose of the State Improvement Grant, which is to assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. The Secretary may give priority to applications on the basis of need, as indicated by such information as the findings of Federal compliance reviews (Section 653(d)).

10. When Will Funds Be Available?

First year funds to support the State Improvement Grant will become available for obligation by the Federal Government on July 1, 1998 and must be obligated by the Federal Government by September 30, 1999.

Improvement Strategies and Use of Funds

11. Can Funds From the State Improvement Grants be Distributed to LEAs on a Competitive Basis?

Yes. The statute does not provide a particular method for States to use when distributing State Improvement Grant funds to LEAs or other entities. When awarding and administering subgrants, under 34 CFR § 80.37(a), the State must follow state law and procedures. As long as the SEA's plan to contract or subgrant SIG funds is consistent with the partnership agreement and the funds are used to support the activities specified in the approved grant application, there is no statutory prohibition against the funds being distributed to LEAs on a competitive basis.

12. Can Charter Schools Be Involved as Partners in the State Improvement Grant?

Yes. Charter schools are schools under contract—or charter—between a public agency and groups of parents, teachers, community leaders or others who want to create alternatives and choice within the public school system. Charter schools can be involved as partners in the State Improvement Grant, either as an LEA or as part of an existing LEA, consistent with the State charter schools law.

13. Does the ''Service Obligation'' Apply to the Use of State Improvement Grant Funds if They Are Being Used for Scholarships?

No. The ''service obligation'' contained under the Personnel Preparation discretionary grant program provides that a recipient of a scholarship funded by the Personnel Preparation program under Section 673(b), (c), (e), and to the extent appropriate (d), shall subsequently perform work in the field in which they were trained or repay the cost of the financial assistance. The service obligation only applies to scholarships awarded under the Personnel Preparation program.

14. Can Funds Be Used To Prepare Early Intervention Personnel?

Yes, but only in limited circumstances. Under Section 654(b)(1) a State educational agency that receives a grant shall use not less than 75 percent of the funds it receives under the grant for any fiscal year to work with other States on common certification criteria or to ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children. This Section ensures that based on the needs assessment, the State focuses at least 75% of the funds received under the State Improvement Grant on the professional development and training of regular education, special education, or related services personnel. Only 50% of the funds must be used on professional development if the State can demonstrate to the Secretary that it has sufficient personnel. Training that prepares personnel to deliver early intervention services that could not also be considered regular education, special education, or related services would not be a permissible use of the 75%, or 50% as the case may be, of the funds. However, it would be permissible for early intervention personnel to participate in training in those areas of

special education and related services that would be useful to them, even if the training is funded using the 75% of the funds. There is no limitation on the use of the remaining 25% of the funds received under the SIG; it can be used to train personnel to provide early intervention services or for any other activity in an approved SIG plan.

15. What Is the Relationship of the SIG to the State Set Aside Under Part B?

In order to carry out the activities proposed in the State's SIG application, a State may choose to supplement the State Improvement Grant award with funds from the IDEA Part B State set aside (i.e., the portion of the IDEA, Part B grant awards retained for use by the SEA under Sections 611(f) and 619(d) of the Act for discretionary purposes).

16. Can Funds From Sources Other Than the SIG Be Used to Support the Required Activities for Awards Under This Program?

Yes. In addition to the SIG award, funds from other sources (e.g., other IDEA discretionary grants, Part B State set aside funds, preschool grants) may be used, so long as those activities are permissible under the funding statute and regulations to carry out any activities described in the State's SIG application. States may also use funds from private sources (e.g., foundations) to carry out activities described in the State's application. In its State Improvement Plan, the State must describe the amount and nature of funds from any other sources, including the Part B funds retained for use under Sections 611(f) and 619(d) of the Act and Part D discretionary funds that will be committed to the SIG program.

17. Can SIG Funds Be Used for Direct Services to Children With Disabilities?

Yes. The statute does not forbid the use of SIG funds for direct services to children with disabilities; however, funding for these services must come from the 25% or 50% of the grant award, as the case may be, not obligated by statute to fund professional development activities or to work with other States on common certification criteria. In addition, the need for direct services must be one of the critical aspects of early intervention, general education and special education identified in the State's needs assessment. The direct services improvement strategy must be described in the State's application and be consistent with the purpose of the grant, which is to assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

Strategies Used To Address Identified Needs

18. Is interstate Personnel Preparation Mandatory?

No. The State is required to describe how it will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within the State to justify support or development of such a program of preparation (Section 653(c)(3)(D)(iv)). If the State demonstrates, through its needs assessment, that there is sufficient demand within the State to support its own personnel preparation programs, then interstate collaborative agreements are not required.

19. Is Training of General Education Personnel Required?

Yes. In its application, the State is required to include a description of how the State will prepare general as well as special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities (Section 653(c)(3)(D)(i)).

20. Is Training of Parents Required?

Yes. In its application, the State is required to include a description of how the State will provide for the joint training of parents and special education, related services, and general education personnel (Section 653(c)(3)(D)(x)).

Role of Regional Resource Center/ Technical Assistance and Dissemination Projects

21. What Role Can the Regional Resource Center (RRC) Play in the Development of the State Improvement Plan and Grant Application?

The RRC is encouraged to provide general technical assistance to States in the development of their State Improvement Plans. An RRC is funded to provide technical assistance and resources to all states within its region and must do so on an equitable basis across those States. Helping States improve their special education programs is the central mission of the RRCs and many State activities related to the State Improvement Grant program will be crucial in these improvement efforts. It would be inappropriate, however, for an RRC to help a State in drafting its grant application or even to provide technical assistance on strategies to improve the competitiveness of a State's application because it could be viewed as providing a competitive advantage to one potential applicant over another. On the other hand, helping States, for example, with data analyses, needs assessments, and facilitating meetings concerning planning the States' improvement activities could be, except as noted above, a part of the RRC's technical assistance activities to the States in their region. RRCs can also assist States in their implementation of a State Improvement Grant once those grants are awarded.

22. Can the State Use SIG Funds to Subcontract or Contract With the University or Entity in Which the RRC is Located To Carry Out SIG Activities?

Yes. The State can use SIG funds to subgrant or contract with the University or entity in which the RRC is located to carry out SIG activities. However, the University or other entity would need to ensure that personnel time and other resources covered by the RRC's cooperative agreement with the Department are not used to work on SIG activities performed under such a subgrant or contract and that work done under such other subcontract or contract is not represented as being performed as part of the cooperative agreement with the Department of Education.

23. Can Technical Assistance and Dissemination (TA&D) Projects Funded by OSEP Play a Role in SIG Activities?

Similar to RRCs, TA&D projects funded by OSEP must ensure that the services they provide are fairly and evenhandedly available to their respective audience (under the terms of their OSEP funding agreement/grant/ contract) in all States, that the proposed SIG activity is permissible under the terms of the particular Project's funding agreement/grant/contract/with OSEP and that Projects do not accept SIG funds under contract or grant with an SEA for activities they are currently receiving Federal funds to provide. In addition, TA&D projects, like the RRCs, should not engage in activities that could be seen as providing a competitive advantage to any one State over others in the SIG competition.

Relationship Between State Improvement Plan and other Federal statutes and requirements

24. What is the Link Between the Comprehensive System of Personnel Development (CSPD) and the SIG? What Are the Similarities and Differences?

The requirements for a CSPD as amended by IDEA 97 must be implemented by July 1, 1998 regardless of whether or not a State receives a SIG. Under Section 612(a)(14) of IDEA, in order to be eligible for funding under Part B, a State must have in effect a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, related services, and early intervention personnel and that meets the requirements contained in the personnel development sections of the State Improvement Plan addressing needs assessment and improvement strategies. It is intended that the CSPD meet the SIG personnel development requirements so that it may serve as the framework for the State's personnel development part of a SIG grant application.

25. To What Extent Does This Plan Have To Be Linked to the Elementary and Secondary Education Act of 1965 (ESEA) and the Rehabilitation Act of 1973?

To the ''maximum extent possible'' State Improvement Plans must be linked to State plans under ESEA and the Rehabilitation Act of 1973. The IDEA Amendments of 1997 emphasize that children with disabilities have access to the general curriculum and general educational reforms. Although the legislation does not mention integration with any other state plans under any other Federal statute, because the State Improvement Plan is focused on systems change for students with disabilities, integration with relevant state plans or projects would be beneficial (Section 653(a)(2)(A)).

26. What Is the Relationship Between the Performance Goals and Indicators a State Must Have to be Eligible for Part B and the State Improvement Plan?

Under Part B (612(a)(16)), in order to be eligible to receive financial assistance under Part B, the State must have in place by July 1, 1998 performance goals for children with disabilities that must promote the purposes of the IDEA and be consistent, to the maximum extent appropriate, with other goals and standards developed for children established by the State and performance indicators to assess progress toward achieving those goals. A State must have developed those performance goals and indicators in order to apply for a State Improvement Grant because in conducting the needs assessment required as part of its application, the State shall identify those critical aspects of early intervention, general education, and special education programs that must be improved to enable children with disabilities to meet the performance goals and indicators established by the State for the performance of children with disabilities under Section 612(a)(16). In submitting the required SIG performance reports to the Secretary under Section 653(f), the State shall describe the progress of the State in meeting the performance goals established under section 612(a)(16), analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance.

Monitoring and Corrective Action Plans

27. How Is the State Improvement Grant Aligned With Federal Compliance Reviews?

There are three areas in which the State Improvement Grant aligns with Federal compliance reviews. First, the State improvement plan must include an analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities (Section 653(b)(2)(C). The second is that the State improvement plan must include a description of strategies that will address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel (Section 653(c)(3)(E). The third area of alignment with monitoring is that in determining competitive awards the Secretary may give priority to applications on the basis of need, as indicated by such information as the findings of Federal compliance reviews (Section 653(d)(2)).

28. Can the State Improvement Grant Funds be Used To Address Deficiencies Identified in Federal Compliance Reviews?

Yes, if the activities to address the deficiencies are consistent with the purposes of the grant and described in the State's application. If, for example, a Federal compliance review identified that a personnel shortage impacted on the provision of a free appropriate public education to students with disabilities, then it would be consistent with the purposes of the grant to use grant funds to address the personnel shortage.

Applications, Length of Awards, and Reapplication

29. Can the First Grant be Written as a Planning Grant?

No. The purpose of the SIG program is to assist State educational agencies, and their partners referred to in Section 652(b), in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. In order to be funded a State must include in its application improvement strategies that were developed to address State and local needs identified in the State needs assessment. The purpose of the needs assessment is to provide the necessary information to facilitate the development of a State improvement plan that identifies those critical aspects of early intervention, general education, and special education programs that must be improved to enable children with disabilities to meet the goals established by the State under Section 612(a)(16). In conjunction with the needs assessment, the improvement strategies (Section 653(c)) subsumed in the State Improvement Plan constitute the State's plan for the use of SIG funds.

30. Is There a Page Limitation for the Application?

No. There is no page limitation for first year applications. However, in order to facilitate the peer review process, applicants are advised to submit applications that address all of the requirements of the application and are well written, organized, succinct, and address each of the selection criteria. It is also suggested that the requirements be addressed in the order in which they appear in the application package.

31. What Grant Period Can a State Request in its Initial Application?

A state may request a grant of from one to five years. However, the Secretary may award a grant that is shorter than the state requests, but not less than one year, if the state's application does not sufficiently justify the full requested duration.

32. If a Project is Funded for Less Than Five Years, can it Be Extended Later?

No, with the exception of relatively short ''no-cost'' extensions that are sometimes given to allow the completion of project activities. These

extensions do not award new funds or approve new activities.

33. After a State Completes One State Program Improvement Grant, Can it Apply for Another? If so, Will it Compete Against all Applicants or Only Against Other States That Have Received Previous Grants?

Yes, a state can apply for another SIG after it completes one. It will be in competition with all applicants, not just those with previous grants. The Secretary may give priority to applications on the basis of need (Section 653(d)(2)).

34. If a State Applies Unsuccessfully in One Year, Will It Be Able To Apply Again?

Yes.

35. Will a Project Be Approved and Funded All at Once or a Year at a Time?

At the time of the initial grant award, the project duration of one to five years will be determined and budgets for all years of the grant will be established. However, funds can only be awarded one year at a time. States receiving multi-year grants will submit annual performance reports to demonstrate that their grants are making ''substantial progress.'' Funding for project years after the first will be based, in part, on these reports. This is not part of the competitive process of awarding funds, and it is expected that funding will be continued each year for the duration of the project, provided that substantial progress is demonstrated and that Congress continues to fund the program.

36. Does Funding Have To Be the Same for All Years of the Project?

No.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ■ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*:	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying ~~Entity~~ Registrant** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
~~11. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ○ e. deferred ☐ f. other; specify: _____~~	
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash ☐ b. in-kind; specify: nature _____ value _____~~		
~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~ ~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~		
~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~		
16. **Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.**	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:**	
Federal Use Only	**Authorized for Local Reproduction Standard Form - LLL**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate~~. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

BILLING CODE 4000–01–C

State Single Points of Contact (as of December 2, 1997)

Note: In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated State Single Points of Contact (SPOCs). Because participation is voluntary, some States and territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

The jurisdictions not listed no longer participate in the process. However, an applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SPOC.

Arizona

Joni, Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th Street, room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning and Research, 1600 Ninth Street, room 250, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

Block Grants only that pertain to Mental Health Substance Abuse

PATH

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Management & Development, 717 14th Street, NW., suite 400, Washington D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904–487–2899

Georgia

Tom L. Reid, III, Coordinator, Georgia State Clearinghouse, 270 Washington Street, S.W.—8th Floor, Atlanta, GA 30334, Telephone: (404) 656–3855, FAX: (404) 656–3828

Illinois

Ms. Virginia Bova, Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, IL 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 239–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Monies, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, John-Mark Hack, Deputy Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–2849

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

William G. Carroll, Manager, Plan & Project Review, Maryland Office of Planning, 301 W. Preston Street, room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 767–4490, FAX: (410) 767–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive, suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39302–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Mike Blake, Intergovernmental Review Process, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Robert Peters, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

South Carolina

Rodney Grizzle, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 331, Columbia, South Carolina

29201, Telephone: (803) 734–0494, FAX: (803) 734–0356

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1880

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street, 6th floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capitol, room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–7446, FAX: (307) 632–3909.

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825.

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444; (809) 723–6190, FAX: (809) 724–3270; (809) 724–3103.

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272, Contact person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272.

Virgin Islands

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802. Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069.

Note: This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to Donna Rivelli (Telephone: (202) 395–5858) at the Office of Management and Budget and to the State in question. Changes to the list will only be made upon formal notification by the State. The list is updated every six months and is also published biannually in the Catalogue of Federal Domestic Assistance. The last changes made were Kentucky (12–2–97) and California telephone and FAX numbers (1–29–98).

[FR Doc. 98–13160 Filed 5–15–98; 8:45 am]

BILLING CODE 4000–01–P

Monday
May 18, 1998

Part V

Department of Housing and Urban Development

24 CFR Part 982

Section 8 Rental Voucher and Certificate Programs; Restrictions on Leasing to Relatives; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4149–F–02]

RIN 2577–AB73

Section 8 Rental Voucher and Certificate Programs; Restrictions on Leasing to Relatives

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule would limit the circumstances under which a landlord could lease a unit with Section 8 voucher or certificate assistance to a relative of the landlord. It would permit such leasing only if an HA determines that the leasing would accommodate a person with disabilities. The rule is intended to reduce the potential for misuse of Section 8 assistance.

EFFECTIVE DATE: June 17, 1998.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Operations Division, Office of Rental Assistance, Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0477. Hearing or speech impaired individuals may call HUD's TTY number (202) 708–4594 or 1–800–877–8399 (Federal Information Relay Service TTY). (Other than the ''800'' number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Discussion

Proposed Rule

On March 10, 1997, the Department published a proposed rule at 62 FR 10786. Under that proposed rule, a housing agency (HA) may not approve a unit for lease if the owner is the parent, child, grandparent, grandchild, sister, or brother of the Section 8 voucher or certificate holder that is seeking to rent the unit. (Under § 982.306(e), ''owner'' includes a principal or other interested party.) The HA, however, could still approve the unit for lease, if the HA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

When implemented, the policy would apply to new admissions and to moves with continued assistance. HUD would add to HAP contract forms a simple certification by the owner that the owner is not a parent, child, grandparent, grandchild, sister, or brother of any member of the family. HUD would also add a comparable certification to the rental voucher and the rental certificate.

After considering the comments discussed below, the Department has decided to publish this final rule as it was proposed.

Summary of Public Comments and Responses

The Department received 154 public comments. Sixty comments came from individuals that either were Section 8 tenants leasing from relatives or were landlords leasing to relatives with Section 8 assistance. Sixty-six comments were from housing agencies (HAs). One HA included 119 letters addressed to the HA from Section 8 tenants and landlords. The Department also received comments from two Congressmen, several cities, trade associations, and entities involved in managing housing. The following summarizes the major comments and gives the Department's response.

A. Comments on the Merits of the Policy

The following public comments, both pro and con, concern the overall merits of the policy of prohibiting leasing to close relatives with voucher or certificate assistance.

1. *The Presence or Absence of Program Abuse.* Several commenters urged HUD to adopt the rule because it would curtail program abuse. Some of them noted instances where property was quitclaimed and reconveyed to relatives and then leased to the former owner and other instances where the tenant was listed as a co-owner of the property. Some commenters noted instances where families were paying for their homes with Section 8 assistance by leasing to their relatives. Others indicated that there are times when landlords do not collect the full amount of tenants' share of the rent when they lease to relatives.

Other commenters said they did not see fraud where a landlord is renting to a relative. They argued that tenants have to follow the same policies whether they rent from relatives or nonrelatives and that HUD audits and reviews could see if the HA is being consistent when leasing with relative and nonrelative landlords. They claimed that the preamble to the proposed rule indicated that HUD's reviews did not disclose program violations. Some contended that there is no need for the rule if the HA is doing its job. If there is a problem in detecting fraud or abuse, it should be addressed by additional documentation, not by the proposed rule.

Some commenters viewed the rule as a reaction by HUD to bad press. They asserted that the reason HUD is proposing the rule is appearances. They thought the rule corrects a public perception more than program misuse. They believed HUD's arguments for the rule to be speculative with no documentation for the assertion that current policy encourages families that can house family members to obtain Federal assistance that would otherwise be available to more needy families. To assume that there is something improper in renting to relatives is a faulty assumption. HUD should not focus on an area that has yet to be proven misused but should focus on actual fraud cases. HUD should gather data showing abuse before it issues restrictions on housing choice.

Other commenters, however, pointed out that halting a practice that may appear to be improper is an important step in maintaining the integrity of the programs and the HAs operating them.

Some commenters saw the rule, if adopted, as increasing the possibility of abuse. They noted that the family relationship may be difficult to verify. An ''other interested party'' might not be on the deed. Some believe that the prohibition could be avoided by landlords ''trading'' relatives. HAs do not have the staff to verify property ownership.

2. *Extent of Practice of Renting to Relatives.* There was disagreement among commenters (mostly HAs) on the perceived extent of the practice of renting to relatives. A few commenters argued that there was little need for the rule because in their experience there were few instances of renting to relatives.

Other commenters, however, favored the rule because in their experience the practice is not rare. One HA indicated that about 12 percent of the units under lease were in units owned by immediate family. This commenter claimed that, from conversations with other HAs, this number may be representative of HAs in general. The commenter gave specific examples of landlords with a number of rental properties renting under Section 8 to a parent or child.

3. *Effect on Supply of Affordable Housing.* Another group of commenters acknowledged that the practice of leasing to relatives may be extensive, but favored the practice because they believed that it increased the supply of affordable housing. One commenter noted that 20% of its certificate holders rent from relatives and that its locality had a vacancy rate of 2 percent.

Some commenters asserted that the prohibition on leasing to relatives

would severely decrease the supply of affordable rental housing in small communities and rural areas which have few rental properties. Because of tight housing markets, family members purchase mobile homes and lease to relatives participating in the Section 8 program. The commenters stressed that their relatives are as needy as other Section 8 participants. They believed that the rule will reduce the base of participating owners. A relative is more likely to rent to a family member with a history of problems or a disability.

A few commenters thought that HUD was sending a mixed message because under HUD Notice PIH 97–13, ''Lease-Purchase Agreements in the Section 8 Tenant-Based Rental Voucher and Certificate Programs,'' HUD clarified that Section 8 regulations do not prohibit lease purchase arrangements.

For these reasons some commenters recommended one or more of the following exceptions: for tight rental markets and for families working toward self-sufficiency; for HAs with fewer than 500 certificates and vouchers; and for rural areas.

4. *Landlords are not generally affluent.* Many of the commenters that were opposed to the rule believed that landlords who rented to relatives, in general, were not affluent and were not in a position to provide low rents without the Section 8 assistance. They argued that the owner/relatives are continuing to take responsibility for their family members even though some cost is borne by the Federal Government and that the rule would make it more difficult for relatives to assume some responsibility for a needy relative. Many of the comments from individuals explained how they either were aided by renting from relatives or were aiding relatives by renting to them. The most frequently described situation was of an owner renting to a low-income adult child, single-parent family. Some commenters believed that the current policy encourages family unity or promotes self-sufficiency.

While most of these commenters wanted HUD to drop the rule, some commenters recommended exceptions for certain owners. These recommendations included exceptions for owners: with fewer than 100 units; with fewer than 5 units; that own only one property; that cannot allow the unit to go unrented. One commenter asked for an exception for an owner-occupied duplex where one unit is occupied by an elderly relative or a relative with child care needs.

Another approach that was recommended was to permit leasing to relatives but require business financial statements from a landlord that is a relative. This commenter recommended that an HA's determination of an owner's ability to forgo rent should include considering family size. One commenter, a landlord, expressed a willingness to provide financial information to show inability to support the relative.

5. *Costs.* The commenters disagreed on whether the rule would increase or decrease program costs. Some commenters indicated that their experience was that many voucher holders would probably give up assistance if they could not rent from a relative, indicating that assistance would become available for more needy families. Other commenters argued that contract rents generally are lower than average when a landlord leases to a relative. They believed that, if families do not rent from relatives, they will rent elsewhere; therefore, the rule could result in paying out higher assistance payments. One commenter's experience is that young families who rent from relatives do not stay on rental assistance long.

Some commenters noted that rental units owned by relatives are usually in good condition. Repairs generally are made quickly. They believed that there are fewer landlord-tenant problems and the tenant is more likely to help maintain the unit. Related owners are likely to provide transportation and child care which addresses obstacles to employment.

6. *Only Concerns Should Be Eligibility of Applicant and Condition of Property.* Some commenters objected to the proposed rule as seriously negating the goal of ''maximum housing choice for assisted families.'' They believed that there should be no exception to current general policies on participation. That is, participants should choose where to reside and landlords should be able to lease to anyone as long as the tenant is income eligible and unit is in good condition. Income and assets of other relatives, they asserted, have never been a consideration in determining eligibility. They saw the rule as creating a back-door method of means testing of relatives without Congressional intent to do this. This is not an owner-income tested program, but rather a tenant-income tested program. Some commenters noted that food stamps and energy assistance can be used to buy food or fuel from a relative.

Some commenters saw the rule as injecting a morality that they did not believe belongs in regulations. They argued that there is no legal obligation for closely related individuals to provide for each other financially. Unless there is a means to hold families accountable for housing all of their members, this rule will accomplish little. The Federal government and the HA are not in a position to determine if an owner can or should be responsible for housing a low income relative.

HUD Response. The Department acknowledges that information on the practice of owners leasing to relatives is anecdotal. Nonetheless, the Department continues to believe that both the actual instances of program abuse and allowing leasing among closely related persons create a systemic incentive to misuse the program. In addition, public perception that the program can be used in such a manner is itself detrimental to the program.

The restriction on leasing to a relative does not change the general eligibility requirements of these programs. The rule does not in any way impose a means test on owners. It should not substantially restrict housing choice to the certificate or voucher holder. The vast majority of affordable housing within the market remains available to voucher and certificate holders. It is only housing that is owned by a close relative which cannot be leased. Indeed, the argument that prohibiting leasing to relatives will decrease the supply of affordable housing underscores the doubt that such housing is truly available under the voucher and certificate programs. Rather, its availability appears to be dependent upon the family relationship between the landlord and tenant.

Adopting this rule should not increase the risk of fraud under the program. The practice of leasing to relatives exists in large part because it is permitted under current policies. Certification by the owner and the certificate or voucher holders is a minimally burdensome way of implementing this requirement.

B. Comments on Specific Elements of the Policy

1. *Comments Concerning Scope of Restriction and Exceptions.*

Comment. Some commenters recommended that the rule also exclude leasing to other relatives, such as, aunts, uncles and cousins. Other commenters believed that the restriction should apply to in-laws and step parents. They thought it might be easy to get around the proposed restriction if the restriction were not expanded.

HUD Response. The Department is not inclined, at this time, to expand the scope of relatives to which the restriction applies. This is both to keep the restriction easier to apply and because the Department believes that

the class of relatives covered is sufficient to cover the circumstances in which the program is most likely to be abused.

Comment. Most comments on the exception for persons with disabilities were favorable. They indicated that the exception should be kept because rentals for persons with disabilities are not readily available and relatives are better able to assist a family member who is a person with disabilities. Some commenters asked for a complete description of ''person with disabilities.'' Others requested that persons with mental disabilities be included. One commenter recommended that the exception should also apply when the owner is the person with disabilities.

A few commenters were opposed to an exception for the persons with disabilities because they believed that many times such persons have other resources to rely on. One commenter was not opposed to the exception, but noted an inconsistency between restricting leasing to relatives (a resource issue) and allowing leasing to persons with disabilities regardless of the wealth of the owner.

HUD Response. The Department has retained the exception permitting leasing to a relative when the HA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities. In the rental voucher and rental certificate programs, the term ''person with disabilities,'' for purposes of reasonable accommodation and program accessibility for persons with disabilities, means ''individual with handicaps'' as defined in 24 CFR 8.3. For purposes of determining eligibility based upon disability status, ''Person with disabilities'' is defined for these programs in section 3(b)(3)(E) of the United States Housing Act of 1937.

Comment. A number of commenters argued that the exception should apply to the elderly. They believed that it was less costly to enable the elderly to live independently with assistance than to be placed in a nursing home. A commenter argued that it would create a hardship if he could not rent the adjacent duplex to his mother. Some commenters recommended that the exception should include: elderly, persons with disabilities (any form of disability not just physical), HIV positive, and AIDS tenants. Some commenters asked how the rule is fair to the elderly when they are allowed to transfer assets to become eligible for Medicaid.

HUD Response. This rule does not prevent the elderly person who is qualified for Section 8 assistance from living independently. If the elderly person is also a person with disabilities then he or she would qualify for that exception.

Comment. Some commenters recommended an exception for a tenant that is losing project-based assistance, such as under moderate rehabilitation.

HUD Response. Subject to the availability of funds, these tenants would receive a voucher or certificate. The Department does not see a reason for treating such a tenant differently than other certificate or voucher holders.

2. *HA Discretion.* A number of commenters argued that the rule should be discretionary for HAs. They characterized the rule as ''overkill.'' They recommended that HAs should be able to address how to deal with leasing to relatives in their Administrative Plans if they perceived a problem. The Department has not adopted this recommendation because it believes that a uniform policy will better ensure the integrity of the Section 8 program.

3. *Alternatives to Prohibiting Leasing to Relatives.* There were a number of comments recommending restrictions that fell short of a general prohibition on leasing to relatives altogether.

One recommendation was that the contract rent for a relative should be set at 90 percent of the lower of the FMR for authorized or actual bedroom size when the landlord rents to a relative; others recommended that the rent be set at some percentage below FMR. Some of these commenters would prohibit such leases if the relative resides in the same building and would otherwise set the initial contract rent at no more than rent previously charged for the unit.

One commenter recommended that HUD require every such tenant to pay one quarter of the total rent.

HUD Response. The Department does not believe that any of the restrictions on rent deal directly with the problem which is avoiding having relatives structure arrangements where a family member receives assistance for housing that would be provided anyway.

4. *Affect on In-Place Tenants.* A number of commenters agreed with applying the new policy only to new admissions and moves. To do otherwise, they noted, would require HAs to apply the restriction to existing rental agreements which would create unnecessary confusion and hardship. One commenter contended that forcing someone who is eligible for assistance to relocate would not serve the overall goals of the program.

Other commenters believed that current participants leasing from relatives should not have the lease renewed in place. They recommended that current participants be given 6 months (some suggested 5 years) to locate another unit. Others thought that current tenants should have their assistance terminated at the next annual review if they did not move. Another recommendation was that, if a relative is allowed to remain in the unit, the owner should not be allowed a rent increase.

HUD Response. The Department recognizes that the rule does not address the concern about families that are currently benefiting from Section 8 by taking advantage of the fact that there was no prohibition on renting to relatives. These participants, however, have existing living arrangements that presumably were entered into in conformity with then applicable regulations. The Department is reluctant to alter these arrangements through this rulemaking.

5. *Issue of Discriminatory Practice.* Some commenters questioned whether the proposed restriction was a fair housing violation. Many commenters characterized the policy of refusing to allow landlords to rent to relatives as discriminatory.

HUD Response. The policy is not discriminatory. It does not distinguish between people based on a prohibited status. Rather it imposes a restriction based on a legal relationship that exists between individuals.

II. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Department of Housing

and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C.

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), that this final rule does not have a significant economic impact on a substantial number of small entities because it simply restricts leasing with assistance between certain related individuals and does not otherwise restrict or impose burdens on the use or availability of Section 8 rental certificate or rental voucher assistance.

Unfunded Mandates Reform Act

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this final rule does not impose a Federal mandate that will 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.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this final rule 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. The final rule does not alter the relationship between HUD and the HAs. Rather, it simply amends one of the conditions for receipt of Federal assistance.

Catalog

The Catalog of Federal Domestic Assistance numbers are 14.855 and 14.857.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 982 is amended as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

1. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d).

2. In § 982.306, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f) and a new paragraph (d) is added to read as follows:

§ 982.306 HA disapproval of owner.

* * * * *

(d) The HA must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the HA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

* * * * *

Dated: May 8, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–13157 Filed 5–15–98; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.J. Res. 102/P.L. 105–175
Expressing the sense of the Congress on the occasion of the 50th anniversary of the founding of the modern State of Israel and reaffirming the bonds of friendship and cooperation between the United States and Israel. (May 11, 1998; 112 Stat. 102)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

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